

DEPARTMENT OF PREMIER AND CABINET

FLEXIBLE WORKING HOURS AGREEMENT

[insert approved Month & Year]



Premier
& Cabinet

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1. Introduction

1.1 This Flexible Working Hours Agreement ("the Agreement") is to be read in conjunction with the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009* ("the Award").

1.2 The Agreement is intended to provide flexibility for employees, including the ability for employees to work hours that differ from traditional business hours which may have been previously practiced.

1.3 The Agreement is not an instrument whereby employees can be directed to work unusual hours without the payment of appropriate allowances in accordance with the Award, nor does the Agreement replace conditions of employment as contained in the Award.

1.4 The Agreement is made between the Public Service Association of NSW (PSA) and the Department of Premier and Cabinet (DPC) in accordance with the provisions of clause 10 - *Local Arrangements* of the Award.

1.5 The Agreement will take effect on and from 4 July 2022.

2. Flexibility Statement

2.1 The Agreement reflects the Department's commitment to ensure that all roles can be flexible on an 'if not, why not' basis. Doing this will assist us to realise the benefits of using flexible working to improve service delivery and customer satisfaction.

Flexible working enables us to attract people with the best skills and attributes to develop a workforce whose diversity reflects that of our customer and the people of NSW. We understand that organisations who value flexible working have productive and fulfilling workplaces that assist them to attract and retain employees, leading to savings in recruitment and training costs, as well as maintaining corporate knowledge and expertise. It also reduces the high costs associated with workplace exclusion such as increased turnover, absenteeism and reduced productivity.

Our objectives for flexible working are to:

- be an employer of choice for all our people
- manage for outcomes and manage achievement, rather than focus on inputs and activities such as where and when work is performed
- make flexible working a central part of how we work
- support and empower our employees to do their best and bring their whole selves to the workplace; and
- ensure that all employees have equitable access to opportunities available at work and are recognised and rewarded for their contributions.

2.2 What is flexible working?

Flexible working enables employees to have access to flexibility across all roles, for any reason, enabling them to have successful and engaging careers. Flexibility also improves the performance and wellbeing of organisations, teams, and individuals.

Flexible working is a broad range of informal and formal arrangements for the when, where and how work can be done. It can include remote working, career breaks, flexible start and finish times, job sharing, flexible rostering and much more.

For flexible working to be successful, it requires the support from both management and employees and a mutual understanding that flexibility works both ways.

2.3 Our flexible working principles include, but are not limited to:

- everyone has access to flexibility. What that arrangement looks like will vary depending on the individual, their assigned role and the requirements of their team
- managers and teams consider what is possible on the basis of 'if not, why not?'
- flexibility is not a special provision or reward that needs to be earned
- successful flexibility embodies the best outcome for employees, employers and the customer
- flexible working should be considered in the context of the team, with all arrangements taking a team overview about how work will be distributed and address the needs of the team
- flexible work requires give and take between an employee, manager and teams
- managing flexible work practices should be seen as an everyday norm and requires management and employees to work in partnership together for it to be successful
- managers and employees need to work together to ensure an appropriate work life balance. It is imperative that both parties 'disconnect' to maintain productivity and employee engagement and that flexibility is freely discussed without undue influence or pressure
- managers and employees have a role in ensuring ongoing conversations continue around reasonable workloads to achieve outcomes; and
- managers and employees should respect the individual agreed flexible arrangements of others and not place unreasonable expectations, workloads or deadlines.

3. Agreement Principles

3.1 The Agreement will apply to all employees, as defined in clause 4 – *Definitions*, and will operate in conjunction with the following principles:

3.1.1 The purpose of the Agreement is to modify Clause 21 *Flexible Working Hours* of the Award as it applies to the Department.

3.1.2 The introduction of this agreement is intended to improve organisational performance and increase flexibility for all employees to ensure that there is an appropriate balance between work and personal commitments.

3.1.3 The PSA, management and employees recognise for there to be an appropriate balance between work and personal commitments, all parties understand and accept the spirit of the

Agreement for which it is intended, its operation, and respect the needs of the organisation, teams, colleagues and individual employees.

3.1.4 That customer service and operational delivery will be maintained to the required standard.

3.1.5 That management and employees shall take all reasonable steps to ensure that an employee does not constantly accrue excess credit hours at the conclusion of a settlement period.

3.1.6 That all parties to the Agreement recognise that all employees may not have equal access to extended flexible work arrangements due to the operational requirements of the Department/Agency and that managers will maximise opportunities to access flexible working arrangements through ongoing conversations with employees.

3.1.7 Actual working hours and patterns of work will be determined by mutual agreement between an employee and their manager.

3.1.8 Decisions regarding working hours and patterns of work will be made by taking into account the following factors:

- (a) the operational requirements of the business area and work team;
- (b) customer contact hours;
- (c) seasonal peaks of work;
- (d) the availability of necessary and productive work within the business area;
- (e) the need to limit the working of overtime;
- (f) personal commitments and needs of individual employees;
- (g) work, health and safety and equity issues; and
- (h) any other factors as may be agreed, from time to time, by the parties.

3.1.9 The taking and scheduling of flexible work arrangements shall be made in an equitable, transparent and fair manner that takes into account the impact on colleagues within the work team.

3.1.10 Other flexible work practices as they apply to the Department/Agency may be considered in conjunction with this Agreement.

4. Definitions

4.1 **Accrued Work Time** or (AWT) is all time worked by employees within the bandwidth except for paid overtime during a settlement period.

4.2 **Award** is the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009* or its successor.

4.3 **Contract Hours** for a settlement period shall be calculated by multiplying the employees weekly contract hours by the number of weeks in the settlement period.

4.4 **Customer Contact Hours** means the span of hours during which offices are open to external and internal customers.

4.5 **Daily Contract Hours** are the daily contract hours for which an employee is remunerated, Monday to Friday. For the purpose of connecting to the Award, Daily Contract Hours links to Standard Hours definition therein.

4.6 **Daily Hours Worked** are the agreed hours of work between an employee and their manager, Monday to Friday, meeting the employees weekly contract hours.

4.7 **Employee** means a Public Service employee employed in ongoing or temporary employment, or on secondment, in a Public Service agency to which this agreement extends to except for the Public Service Senior Executives, Ministerial employees, casual employees, contractors and any employee who has access to a rostered day off scheme in accordance with the Award.

4.8 **Flexible Working Hours Credit** means the time which exceeds the contract hours for a settlement period and can be accumulated under the Agreement or carried over into the next settlement period.

4.9 **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 any carry over from the previous settlement period, are less than the contract hours for the period.

4.10 **Flex leave** is the term given to those periods of time that an employee may, subject to the approval of the employee's manager and the principles of the Agreement, absent themselves from work.

4.11 **Settlement period** is 12 consecutive weeks.

5. Bandwidth

5.1 Bandwidth is the period during the working day when all employees may work, record and accrue credit for time worked.

5.2 The bandwidth is from 6.00 am to 10.00 pm, Monday to Friday.

5.3 For the purposes of accrual under clause 8 – *Accrual of work time within the settlement period*, time will not be credited to employees for attendance outside the bandwidth.

6. Daily Hours Worked

6.1 Hours of work are as agreed between an employee and their manager which comply with an employee's weekly contractual hours, Monday to Friday. An employee cannot be directed to work less than their Daily Contract Hours on any regular working day, although the Agreement allows an employee to work less than 7 hours, subject to the employee meeting their required hours worked by the end of the flex settlement period.

6.2 Generally hours of work as defined by the Award are 8.30am to 4.30pm however this is dependent on individual, team and business requirements which are discussed and agreed to.

6.3 Any lunch and meal breaks taken during an employee's hours of work do not contribute towards accrued work time.

6.4 An employee may, subject to the approval of their manager elect to work fixed start and finishing times.

6.5 Depending on the operational requirements of the business unit, a manager may require an employee to work their Daily Contract Hours.

6.6 An employee may vary their working hours at any time, subject to the approval of their manager and in accordance with the provisions of this Agreement.

6.7 The maximum hours worked each day shall not exceed 10 hours on any one day. If directed to do so overtime will apply.

6.8 Nothing in this Agreement shall prevent DPC from requiring an employee to work daily contract hours or limit flexible working hours arrangements where:

- operational demands so require and the employee agrees; or
- the Secretary finds in accordance with Part 7 Performance Management Government Sector Employment (General) Rules 2014 that the employee is not observing the terms of the Agreement.

6.9 There is no standard core time which applies to this agreement.

7. Lunch and Meal Breaks

7.1 An employee must take a meal break of at least 30 minutes after no more than 5 hours of continuous work.

7.2 The standard entitlement for a lunch break is 1 hour. By agreement of an employee's manager this break may be extended.

7.3 The scheduling and duration of lunch breaks are subject to the operational requirements of the work unit, the needs of the employee and the approval of the employee's manager.

8. Accrual of work time within the settlement period

8.1 An employee may only accumulate AWT in excess of the daily contract hours where a manager is satisfied that work is available.

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

8.3 An employee should have a minimum AWT of at least 410 hours at the conclusion of a settlement period. The minimum of 410 hours includes all credited AWT and all approved leave.

8.4 Where AWT is less than 410 hours at the end of the settlement period (in debit of 10 hours), the employee will be required to utilise recreation leave to cover the shortfall in hours. If the

employee has no leave available, leave without pay (LWOP) will apply for the amount below 410 hours and the LWOP is credited to the AWT total.

8.5 An employee is entitled to accumulate and take as flex leave up to 42 hours (6 days) in the settlement period and carry forward up to and including an additional 42 hours (6 days) in any one settlement period. Any additional hours accrued will be forfeited at the end of the settlement period.

8.6 Managers and employees will work together to ensure that employees do not accrue more than 42 credit hours in a settlement period and employees are encouraged to take at minimum 21 hours flex leave within the settlement period for which the hours are accrued to ensure employee wellbeing is supported.

8.7 Hours worked are to be monitored by the employee and manager over a 12 week period, through the use of flex timesheet records as set out in Clause 10 – *Monitoring of accrued work time*.

8.8 Where exceptional circumstances arise and it appears that the employee will be required to accrue more than 42 credit hours in a settlement period, this must be raised with the manager by the employee in writing and prior approval to accrue more than 42 credit hours must be given by the relevant delegated approver in writing. The delegated approver is to ensure that an accrued work time reduction strategy at clause 8.9 is implemented.

8.9 Once the additional accrual of work time is approved:

8.9.1 The manager and employee shall devise a strategy in writing to ensure that the employee is able to take the approved excess hours that have been worked as flex leave.

8.9.2 Strategies to reduce this credit in hours worked may include the taking of flex leave, deployment of flexible working strategies to reduce accrued work time or under exceptional circumstances the conversion of hours to exceptional circumstances leave which must be taken by the employee by the end of the following settlement period which the hours are accrued or the hours will be forfeited.

8.9.3 The identified strategy must be reported through the completion of an exceptional circumstances application form and approved by the delegated approver.

9. Flex time entitlements

9.1 Employees are entitled to take up to 6 flex leave days in any settlement period. This time may be taken together with other forms of leave including recreation and extended leave. The issue of when flex leave is taken should be agreed between the employee and the manager to ensure customer service delivery and operational requirements are maintained. The 6 flex leave days may be taken as either full days or half days or combinations of either. An employee does not receive any credit towards their AWT when taking flex leave.

9.2 Due to operational requirements, it may not be convenient for employees to take flex leave at certain times. In such cases, managers should take reasonable steps to ensure that employees are able to take at minimum 3 flex leave days within the settlement period where the time has been accrued, or in the next settlement period where hours may be carried over, to ensure the employee does not lose AWT hours.

9.3 Where an employee's recreation leave balance is 30 days or more, no flex leave days may be taken in accordance with C2020-12 Managing Accrued Recreation Leave Balances or any superseding circular.

9.4 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 30 days, then flex leave may be taken.

10. Monitoring of accrued work time

10.1 Hours worked are to be monitored by the employee and manager over a 12 week period, through the use of flex time records. Managers and employees must ensure that employees do not regularly work in excess of 42 credit hours in a settlement period, or hours will be forfeited.

10.2 Employees must complete a flex sheet for each 2 weeks of the settlement period. That is a partial flex sheet for the completed portion of the settlement period at 2 weeks, 4 weeks, 6 weeks, 8 weeks, 10 weeks and then a full flex sheet for the 12 week settlement period no later than 2 weeks following the conclusion of a settlement period.

10.3 Upon notification by the employee, the manager and employee shall devise a strategy to reduce any excess credit hours prior to the end of the settlement period. This strategy may require the approval of a further delegated authority.

10.4 Methods to ensure the reduction of excess credit hours may include reducing the hours worked during the remainder of the settlement period or the taking of flex leave to prevent the accrual of hours at the end of the 12 week settlement period.

10.5 Where an employee has credit hours in excess of 21 hours by the end of the 6th week of the settlement period the employee must notify their manager.

11. Scheduling flex leave

11.1 The taking and scheduling of flexible work arrangements will be made in an equitable, transparent and fair manner that takes into account its impact on colleagues and the team.

11.2 The scheduling of flex leave is to be negotiated between the employee and their manager.

11.2.1 Subject to the operational requirements of the business unit, an employee may vary working hours to suit their particular needs or absent themselves from work using approved flex leave.

11.2.2 The maximum flex leave able to be accessed by an employee is 6 flex days per settlement period.

11.2.3 Subject to the operational requirements of the business unit, an employee may schedule their approved flex leave as consecutive single days, single days or half days, up to the maximum of 6 flex days in a given settlement period.

11.2.4. Where exceptional circumstances have arisen and an employee has accrued additional hours in accordance with clause 8.8 of this agreement and requests to take flex leave of more than 6 consecutive days (e.g. the taking of flex leave and exceptional circumstances leave in

one block period), approval may only be given if the employee has complied with the requirements of clause 77 Recreation Leave of the Award, C2020-12 Managing Accrued Recreation Leave Balances or any superseding Award or circular which relates to Recreation Leave.

11.2.5 This time may be taken together with other forms of leave.

12. Overtime

12.1 The provisions of the Award will apply.

12.2 The application of overtime under the Agreement will be as follows:

- 12.2.1 Overtime will apply where an employee is directed to work outside the agreed bandwidth or directed to undertake work between 6.00 am and 7.30 am or after 6.00 pm as long as an employee has worked their daily contract hours.
- 12.2.2 Overtime is to be paid or taken as time in lieu, as nominated by the employee in accordance with clause 96, Payment for Overtime or Leave in Lieu the Award.
- 12.2.3 Overtime may only be worked following mutual agreement between the employee and their manager, with the written approval of the relevant delegated manager.

13. Separation from the Department

13.1 Where an employee gives notice of resignation, retirement or transfer to another government department, the manager and employee during the period of notice will take all necessary steps to eliminate any accumulated credit or debit of hours.

13.2 On resignation or separation from the Department, the notice period may be increased by the number of flex days available to the employee to ensure AWT is reduced by the last day of duty.

13.3 Where an employee has an accumulation of debit hours at the completion of the last day of service, the accumulated recreation leave or monies owing to that employee will be adjusted accordingly.

13.4 Every effort must be made to reduce credit hours as there will be no payment for any residual credit hours on the last day of duty.

13.5 Where it is requested by the employee and agreed by the new agency, the employee's credit hours may be carried forward to the new agency.

14. Part-time staff

14.1 All part-time employees, including those in job-share arrangements, have the same rights to flexible working hours 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.

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

14.3 All other provisions of this Agreement apply to part-time employees.

15. Monitoring and varying the agreement

15.1 In accordance with the objectives of the Award, the parties shall co-operate in the monitoring and operation of this Agreement.

15.2 Parties shall develop complimentary supporting documents within the first 6 months of implementation to support management and employees in the implementation of this Agreement.

15.3 The flexible work arrangements as detailed in this Agreement are to be trialed on a pilot basis for a period of 12 months following the signing of the Agreement.

15.4 At the conclusion of the trial period the Joint Consultative Committee will meet to review the outcome of the trial period and take action to address any problems.

15.5 Statistics on working hours are to be provided to both management and the Joint Consultative Committee in accordance with the specifications agreed to by the parties.

15.6 The parties may agree to further changes to the Agreement during its term.

16. Disputes concerning the agreement

16.1 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 successor Award or departmental policy.

16.2 In accordance with the principles of the Agreement, an employee may seek and rely upon the advice, assistance and/or representation of the PSA at any stage.

17. Savings of rights

17.1 In applying this provision, it is the intent of the parties that employees continue to be entitled to the net benefit of any changes made to the Award or its successor, where changes set a mandatory new standard across the NSW Public Service in relation to hours of duty arrangements.

18. Exit provisions

18.1 This Agreement will operate for a period of three (3) years and then will require review by all parties as to its suitability to continue, to be amended or to be terminated.

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

18.3 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.

18.4 In the absence of an agreement between the parties for a Local Arrangement for Flexible Working Hours the prevailing provision contained within the Award or its successor will apply.

19. Endorsements

This agreement was made on the [insert day] day of [insert month], 2021 between the Public Service Association of NSW and the Secretary, NSW Department of Premier and Cabinet.

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Appendix 1 - Coverage

The Department of Premier and Cabinet Flexible Working Hours Agreement (“The Agreement”) extends to those employees who were previously covered under the 2010 DPC Flexible Working Hours Agreement and any areas who were involved in the consultation of the Agreement.

Coverage extends to the Department of Premier and Cabinet (including NSW Employee Relations), Parliamentary Counsels Office, Public Service Commission and the Western Parklands City Authority.

This Agreement may also extend to outgoing employee groups from these Agencies who are impacted through Machinery of Government changes.

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