

WITHOUT PREJUDICE

TfNSW and RMS Award Bargaining 2022
Combined Transport Unions Draft Flexible Work Clauses (Topic 6)
4 April 2022

Item Ref	TfNSW Claim Number	RMS Claim Number	Claim	Specifics	Topic	Draft Text for clause
1	6.1	6.1	Enhanced flexible work practices and agreements, including better access.	A. The Award to reflect the current practice surrounding working from home and the hybrid ways of working, including approval to work from home can be made at the local level. When considering an individuals request to work from home the employer will consider the health of the employee and those who they live with and have carers responsibilities for.	Flexible Work	See Appendix: Flexible Work Clauses 4 April 2022 - TfNSW Award Unions draft clause 21.7 - RMS Award Unions draft clause 26.6
2	6.1	6.1	Enhanced flexible work practices and agreements, including better access.	B. Where the employer declines an employees request for Flexible Working Arrangements the specific reason for the refusal will be put the employee in writing within 14 days of the employees request.	Flexible Work	See Appendix: Flexible Work Clauses 4 April 2022 - TfNSW Award Unions draft clause 21.4 - RMS Award Unions draft clause 26.2
3	6.1	6.1	Enhanced flexible work practices and agreements, including better access.	C. Where employees request flexible work practices as a result of health related issues the employer is to seek any medical information from the employee's doctor prior to sending the employee to an 'independent' medical assessment.	Flexible Work	See Appendix: Flexible Work Clauses 4 April 2022 - TfNSW Award Unions draft clause 21.6 - RMS Award Unions draft clause 26.5
4	6.1	6.1	Enhanced flexible work practices and agreements, including better access.	D. Harmonisation of flexible work practices between the awards - Relates to Claim 9 on Modernisation	Flexible Work	See Appendix: Flexible Work Clauses 4 April 2022 - TfNSW Award Unions draft clause 21.1, 21.2, 21.5 - RMS Award Unions draft clause 26.3
5	6.2	6.2	Ensuring the protection of flexible working hours provisions.	Import and enhance Transport for NSW, Sydney Metro and Roads and Maritime Services Flexible Working Hours Agreement 2019	Flexible Work	See Appendix: Flexible Work Clauses 4 April 2022 - under heading "Flexible Working Hours Agreement/Flex Time (RMS & TfNSW)" with amendments in red .

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TfNSW Flexible Work Arrangement	RMS Flexible Work Arrangement
<p>21.1 <u>The Employer recognises the importance of ensuring Employees maintain a work/life balance. Workplace flexibility underpins Employees performance and productivity and is a key contributor to the achievement of the Employers’ corporate objectives. It also contributes to the attraction and retention of people with valuable skills and assists the participation of diverse groups in the workforce.</u></p> <p>21.2 Flexible work arrangements may be agreed between the Employer and the Employee.</p> <p>21.2 In addition to leave and flexible working hours arrangements/<u>time in lieu</u>, examples of workplace flexibility initiatives that may be considered include:</p> <ul style="list-style-type: none"> (a) <u>Remote working (including working from home or specified Telecentre)Working from home</u> (b) Changing from full-time to part-time employment on a temporary or permanent basis (c) Job-sharing (d) Transition to retirement arrangements <p>21.3 A flexible work arrangement must be cost neutral and conform to Work Health and Safety requirements.</p> <p>21.4 <u>The Employer supports a number of workplace flexibility initiatives and will grant an Employee’s request.</u> The Employer will not unreasonably refuse an Employee’s request for a flexible working arrangement as long as the arrangements can be structured to maintain business efficiency and productivity. <u>Where it is not possible to accommodate such a request:</u></p> <p><u>(a) within 14 days the Employer is to provide in writing to the Employee :</u></p>	<p>26.1 The Employer recognises the importance of ensuring Employees maintain a work/life balance. Workplace flexibility underpins Employees performance and productivity and is a key contributor to the achievement of the Employers’ corporate objectives. It also contributes to the attraction and retention of people with valuable skills and assists the participation of diverse groups in the workforce.</p> <p>26.2 The Employer supports a number of workplace flexibility initiatives and will grant an Employee’s request for flexible working options subject to the arrangements maintaining business efficiency and productivity. <u>The Employer will not unreasonably refuse an employee’s request.</u> Where it is not possible to accommodate such a request:</p> <ul style="list-style-type: none"> (a) <u>within 14 days</u> the Employer is to provide <u>in writing to</u> the Employee <u>within a reasonable time</u>: <ul style="list-style-type: none"> (i) the reason(s) the request cannot be granted; (ii) any alternative arrangements the Employer can provide the Employee; and (iii) any other relevant information that will assist the Employee to understand the reasons the request has been rejected. (b) Should no alternative arrangements be provided, the Employee may apply to the Director People for a review of the request who will consider the matter and provide a recommendation to the Employee. (c) Should no agreement be reached following the steps outlined above, the Employee may choose to have the matter progressed under clause 5 Dispute Settlement Procedure.

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<p><u>(i) the reason(s) the request cannot be granted;</u></p> <p><u>(ii) any alternative arrangements the Employer can provide the Employee; and</u></p> <p><u>(iii) any other relevant information that will assist the Employee to understand the reasons the request has been rejected.</u></p> <p><u>(b) Should no alternative arrangements be provided, the Employee may apply to the Director People for a review of the request who will consider the matter and provide a recommendation to the Employee.</u></p> <p><u>(c) Should no agreement be reached following the steps outlined above, the Employee may choose to have the matter progressed under clause 5 Dispute Settlement Procedure.</u></p> <p><u>21.5 Consideration and approval of flexible working initiatives is in accordance with the TfNSW Group Workplace Flexibility Policy and other relevant Policies, Procedures or Guidelines.</u></p> <p><u>21.6 any request for flexible work arrangements based on the health of the employee the employer is required to adhere to clause XX [see previous PSA claim] and request any medical information from the employee's doctor prior to sending the employee to an independent medical assessment.</u></p> <p><u>21.7 Remote Working</u></p> <p><u>(a) The employer supports employees working both remotely and from the office. There are different scenarios that will be supported by the employer including:</u></p> <ul style="list-style-type: none"><u>i. Majority working from home with very limited in person office or work site attendance.</u><u>ii. Hybrid approach meaning a split between in person and remote working (this does not require an equal split.</u>	<p>26.3 In addition to leave and flex-time/time in lieu (TIL) initiatives, examples of workplace flexibility initiatives that can be considered include:</p> <ul style="list-style-type: none"><u>(a) Remote working (including working from home or specified Telecentre) Teleworking (including working from home or a specified Telecentre)</u>(b) Changing from full-time to part-time employment on a temporary or permanent basis(c) Job-sharing(d) Phased retirement arrangements in accordance with published procedures(e) Other negotiated flexible working requests <p>26.4 Consideration and approval of flexible working initiatives is in accordance with the RMS Group Workplace Flexibility Policy and other relevant Policies, Procedures or Guidelines.</p> <p><u>26.5 any request for flexible work arrangements based on the health of the employee the employer is required to adhere to clause XX [see previous PSA claim] and request any medical information from the employee's doctor prior to sending the employee to an independent medical assessment.</u></p> <p><u>26.6 Remote Working</u></p> <p><u>(f) The employer supports employees working both remotely and from the office. There are different scenarios that will be supported by the employer including:</u></p>
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<p><u>(b) Working remotely will be treated separately to requests for flexible working arrangement at clause 21.XX and will not require more than local management approval.</u></p> <p><u>(c) The approving local manager will discuss and agree on a flexible arrangement for working remotely considering how teams will come together and collaborate, as well as individual circumstances to ensure the health of the employee and those whom they with are not placed an unnecessary risk.</u></p> <p><u>(d) Employees who work remotely need to be flexible about attending important events in person. Where the employer requires attendance in person reasonable notice will be provided</u></p> <p><u>(e) The employer will not unreasonably prevent the employee from working remotely. Where the employer prevents an employee from working remotely they will within a reasonable period provide the employee in writing with the specific reasons for preventing the employee working remotely.</u></p>	<p><u>i. Majority working from home with very limited in person office or work site attendance.</u></p> <p><u>ii. Hybrid approach meaning a split between in person and remote working (this does not require an equal split.</u></p> <p><u>(g) Working remotely will be treated separately to requests for flexible working arrangement at clause 21.XX and will not require more than local management approval.</u></p> <p><u>(h) The approving local manager will discuss and agree on a flexible arrangement for working remotely considering how teams will come together and collaborate, as well as individual circumstances to ensure the health of the employee and those whom they with are not placed an unnecessary risk.</u></p> <p><u>(i) Employees who work remotely need to be flexible about attending important events in person. Where the employer requires attendance in person reasonable notice will be provided</u></p> <p><u>(j) The employer will not unreasonably prevent the employee from working remotely. Where the employer prevents an employee from working remotely they will within a reasonable period provide the employee in writing with the specific reasons for preventing the employee working remotely.</u></p>
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Flexible Working Hours Agreement/Flex Time (RMS & TfNSW)

19.1 Flexible working hours is defined as where an Employee is able to:

- (a) vary their start and finish times within the bandwidth which is 6:00am to 8:00pm Monday to Friday;
- (b) accrue six flex day (7 hours) in each 12 week settlement period;

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(c) take flex leave at any time throughout the 12 week settlement period with management approval.

19.2 Definitions specific to this clause:

Accrued Work Time (AWT) means all time worked by Employees within the bandwidth with the exception of paid overtime and meal breaks

Bandwidth means the period during the working day when all Employee may work, record time and accrue credit for time worked.

Contract Hours - The 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.

Flex Leave means a period of time that an Employee may, subject to approval of the Employee's supervisor and the terms of the Agreement, absent themselves from work within the bandwidth.

Flexible Working Hours Credit means the time which exceeds the Minimum Contract Hours- An Employee may carry a maximum of 10 hours credit into the next settlement period. Subject to clauses 17.2(m) and 17.2(p), additional hours are forfeited.

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.

Lunch break - 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.

Minimum Daily Contract Hours: for a full time Employee means 7 hours of work 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.

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.

Maximum ordinary hours of work on any day to be accredited as flex-time will be 10 hours, excluding breaks

Ordinary hours: means those hours worked within the bandwidth that are not overtime.

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Settlement period - The settlement period shall be 12 weeks, and for time recording purposes, the settlement period and flex leave must coincide.

Settlement period: 12 consecutive weeks. The settlement periods for the purposes of time recording and for flex leave shall coincide.

Standard hours: in accordance with subclause 18.7(a) of the *Transport for NSW and Sydney Metro Salaries & Conditions of Employment Award 2019* or subclause 23.2(d) of the *Roads and Maritime Services Consolidated Salaries Award 2019*.

19.3 Flexible working hours are to operate as follows:

AWT will operate as follows:

- (a) the employee may work within the bandwidth subject to the following factors.
 - i. the operational requirements of the business unit and employee's role,
 - ii. the individual employee's personal circumstances
 - iii. any impact on other employees within the business unit,
 - iv. demonstrated service delivery contact hours of the employer
 - v. availability of work,
 - vi. demonstrated peak of work, including within the relevant business unit,
 - vii. project based nature of some business units,
 - viii. the need to limit excessive hours of work,
 - ix. WHS
- (b) The employer may direct an employee when to start and or finish work due to the factors at clause 19.3(a).
- (c) Work outside of the bandwidth and above the maximum ordinary hours is overtime and will not be credited as AWT.
- (d) All employees are entitled to work their minimum Daily contract hours and cannot be directed to work less. Only in exceptional circumstances may the employer direct an Employee to work their Minimum Daily contract hours.
- (e) All employees may work their minimum ordinary hours on any day anything less than that and the employee must take leave to make up the hours to their minimum ordinary hours.
- (f) An employee may only accumulate AWT in excess of the Minimum Daily contract hours where the employer is satisfied that work is available and approves the Employee to carry out such work.
- (g) All time worked during the settlement period in accordance with the flexible working hours clause (including approved leave) will count towards the Employee's AWT except approved overtime.

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- (h) An employee should have a minimum AWT of 406 hours at the conclusion of a settlement period. The minimum 406 hours include all credit AWT and all approved leave. Where an employees AWT is less than 406 hours at the end of the settlement period, the employee may choose a form of accrued leave to cover the shortfall.
- (i) An employee is entitled to carry over up to an additional 30 hours in excess of 420 AWT in any settlement period except where approval is given in accordance with clause XX.
- (j) Where exceptional circumstances arise and it appears that the employee will be required to by the Employer to accrue more than 450 hours in a settlement period, the Employee's manager shall, with the agreement of the Employee, seek approval of the Employer, in writing, to allow the Employee to carry over 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 the next settlement period.
- (k) Managers have a responsibility to ensure employees are not working in excess of 450 hours AWT. Where an employee works in excess of 450 AWT the employee will be paid overtime.
- (l) Repeated patterns whereby employees work above 450 AWT the employee and manager will formulate a plan so that future hours of work will not exceed 450 AWT.

Monitoring of AWT

- (a) Hours worked are to be monitored by the employee and employer over a 12 week settlement period, through the use of flex time records, as determined by TfNSW.
- (b) 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.
- (c) The employer may direct an Employee to reduce their hours of work to their minimum daily contracted hours during any normal working week during the settlement period for health and safety, employee welfare or if there is cause to believe the staff member is working excessive hours.

Flex Leave

- (a) Employees must apply for flex leave in a manner determined by the employer from time to time.
- (b) The requesting, approving and taking of flex leave will be done in an equitable, transparent and fair manner and subject to demonstrated operational requirements.
- (c) Employees may take a maximum of 6 flex days (42 hours) per settlement period. Banked flex days may be used in addition to the maximum number of days.
- (d) Employees may take flex leave as single days (7 hours) or half days (3.5 hours) or combinations of either, or in hours.

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- (e) Consecutive flex days may be approved by the employer subject to demonstrated operational requirements. [I have removed annual leave at the end of clause 10.4]
- (f) 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 or used in accordance with clause XX for use during the Closedown, subject to the minimum AWT at the end of the settlement period not being less than 406 hours after banking of the hours.
- (g) Where an employee accrues additional hours in accordance with XX the employer may approve an additional days flex leave in the following settlement period as part of the plan to reduce the excess hours.
- (h) The employee may take flex leave together with, or adjacent to other forms of leave, subject to the approval of the Employer.
- (i) An employee does not receive any credit towards their accrued work time when taking flex leave.
- (j) [removed clause 10.13 clause relating to annual leave]

Additional Flex

- (a) Subject to ongoing approval by the Secretary, an Employee entitled to flex time 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 the NSW Public Sector Industrial Relations or its successor. All other provisions in relation to flex time are to apply.
- (b) Employees are required to work a minimum period of their half days work prior to commencing the Easter additional half day flex.

Closedown

- (a) Any additional hours accrued during the year to be taken during the Closedown and which have not be taken will be forfeited on 1 February of that year.
- (b) Employees working in the transport management centre – an other business areas as determined by the Employer – who have received approval by the Employer may take the additional hours in accordance with that approval.
- (c) [didn't include clause 13.2 and 13.3]
- (d) Employees may take flex leave accrued in accordance with this Agreement during the period; accrued but untaken leave per subclause xx, or in combination of both.
- (k) An employee who is directed to be on duty for some or all of the working days during the Closedown period will be allowed access to 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 that year.
- (e)

Overtime

- (a) An application for overtime will apply;
 - i. where an employee is directed by the employer to : or
 - i. Work outside the bandwidth;
 - ii. In excess of 7 ordinary hours;
 - iii. Before 7am or after 7pm.
 - ii. **The employee works above their AWT as it will be considered the employer has approved overtime as the employee's manager is responsible for monitoring the employees hours of work.**
- (b) Overtime hours are not counted as AWT for the purposes of clause xx
- (c) Overtime is to be paid or taken as time in lieu in accordance with subclause 25.9 *Transport for NSW and Sydney Metro Salaries & Conditions of Employment Award 2019* or subclause 25.2(a) of the *Roads and Maritime Services Consolidated Salaries Award 2019*.
- (d) Overtime may only be worked with approval of the Employer.

Part time Employees

- (a) 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.
- (b) Flexible working hours credits and debit limits and period of flex leave permitted will the same as for full time employees.
- (c) The calculation of hours for a flex day taken on particular work day is based on the work hours as agreed under the Employee's part time work agreement.

Variations to Flexible working hours

- (a) 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 with be recorded in writing and will apply in place of the relevant provision in this Award.
- (b) No variation can be longer than 12 months but may be extended for a further minimum of 12 months prior to, or at, its end.

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- (c) 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 on agreed variation will be used 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.

Separation from the employer

- (a) Where an Employee has 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.
- (b) Any flexible working hours debit on an Employee's last day of service is to be deducted from any unpaid salary or monetary value of accrued recreation or extended leave.
- (c) Where 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.
- (d) Where 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.