

DEPARTMENT OF EDUCATION FLEXIBLE WORKING HOURS AGREEMENT 2022

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1. Introduction

- 1.1 This Flexible Working Hours Agreement (the flex agreement) is made between the Secretary of the NSW Department of Education (the Department), as the employer of staff employed under the *Government Sector Employment Act 2013* and the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales (the Association) being the union representing those employees.
- 1.2 The flex agreement is to be read in conjunction with the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009 (the Award)* in particular, clause 21, Flexible Working Hours.
- 1.3 The flex agreement is made between the Department and the Association in accordance with clause 10, Local Arrangements, and clause 21.16.5 of the Award.
- 1.4 Implementation of the flex agreement should be on a cost neutral basis.

2. Principles, Purpose and Statement of Intent

- 2.1 The flex agreement reflects the Department's commitment to ensure that all roles are 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 as well as employee work/life balance.

Flexible working enables the Department 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.

- 2.2 The purpose of this agreement is to provide flexible working hours. The Department, Association and employees commit to fostering the practice of flexible working hours within the Department in line with this flex agreement.
- 2.3 The intention of the flex agreement is to provide greater flexibility to manage workloads, deadlines and work/life balance. All parties are committed to managing work, facilitating flexibility and avoiding the forfeiture of accrued hours.
- 2.4 When utilising the provisions of the flex agreement and determining the hours of work, managers and employees should consider the balance between meeting the Department's operational requirements, in maintaining customer service and individual employee needs and requests.

This should be done in a manner that ensures equitable access to the provisions of the flex agreement.

- 2.5 Parties to the flex agreement recognise that operational requirements will vary depending on the work demands and work performed by individual business units. The flex agreement promotes a team approach in relation to how work is distributed amongst a team, on a fair and equitable basis.
- 2.6 The flex agreement is to be read in conjunction with the *Premier's Memorandum C2020-12 Managing Accrued Recreation Leave Balances*, and any subsequent memoranda relating to the reduction of accrued recreation leave balances.

3. Definitions

- 3.1 *Accrued Work Time (AWT)* is all time worked by the employee (except paid overtime) during the settlement period.
- 3.2 *Award* is the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009* or its successor.
- 3.3 *Bandwidth* means the period during the day when all employees may work and may accrue flexible hours in credit for time worked. See clause 5 for details regarding the various departmental bandwidths.
- 3.4 *Business Hours* are the hours of operation in which network offices and state offices are kept open to provide customer service. Business hours are determined by relevant network and state office managers.
- 3.5 *Contract Hours* means the contract hours for a settlement period which are calculated by multiplying the employee's weekly contract hours by twelve (ie the number of weeks in a settlement period). For full time employees the weekly contract hours are 35 hours, and the daily contract hours are 7 hours.
- 3.6 *Coretime* means the period during the day when an employee is normally required to be on duty. See clause 6 for details regarding the coretime.
- 3.7 *Department* for the purposes of this Agreement means the NSW Department of Education.
- 3.8 *Employee* means:
- (a) all persons in ongoing and temporary employment, employed in accordance with the provisions of the *Government Sector Employment Act 2013*, who are employed as Day Workers under the Award, and who on or after the date of making this Agreement work under a flex time scheme; or
 - (b) all field-based employees, including Hub Coordinators, Senior Field Officers, Field Officers, Field Support Officers and Investigators within

the Early Childhood Education (ECE) Directorate, employed in ongoing or temporary employment in accordance with the provisions of the *Government Sector Employment Act 2013*, who are employed as Day Workers under the Award, and who on or after the date of making of this Agreement work under a flex time scheme; or

- (c) all Training Advisors and Training Coordinators within Training Services NSW, employed in ongoing or temporary employment in accordance with the provisions of the *Government Sector Employment Act 2013*, who are employed as Day Workers under the Award, and who on or after the date of making of this Agreement work under a flex time scheme; or
 - (d) any other persons who by agreement between the parties are deemed to be covered by this Agreement;
- 3.9 *Flexible working hours credit* means the time exceeding the contract hours for a settlement period and includes any time carried over from a previous settlement period.
- 3.10 *Flexible working hours debit* means the contract hours not worked by an employee and not covered by approved leave during the settlement period, as well as any debit carried over from the previous settlement period.
- 3.11 *Flex leave* means a period or periods an employee may absent themselves from work with the approval of their manager under this agreement during which no time is credited towards the employee's Accrued Work Time.
- 3.12 *Normal hours of duty* means the ordinary hours of duty that the Department Head requires an employee to work within a specified bandwidth of the flex agreement.
- 3.13 *Standard Hours* means the set and regular working hours required to be worked by an employee who is not covered by the flex agreement; or who no longer has access to the provisions of the flex agreement by election (subject to CI 7.2) or direction (subject to CI 7.6).
- 3.14 *Ordinary Hours* should equal the daily contract hours, ie 7 hours a day, 35 hours per week for a full time employee and pro rata for part time employees, to be worked Monday to Friday.
- 3.15 *Overtime* means all time worked at the direction of the manager, which, due to its character or special circumstances, cannot be performed during the bandwidth hours.
- 3.16 *The Association* is the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales.

4. Settlement Period and Ordinary Hours

- 4.1 The settlement period is 12 weeks.
- 4.2 Ordinary hours for full-time employees are 35 hours per week, Monday to Friday.
- 4.3 Ordinary hours for part-time employees are less than 35 hours per week, Monday to Friday.

5. Bandwidth

- 5.1 The standard bandwidth for all employees, excluding ECE field-based employees and Training Advisors and Training Coordinators within Training Services NSW, is 7.30am to 6.00pm.
- 5.2 The maximum bandwidth for ECE field-based employees is 13 hours, the earliest starting time being 7.00am and the latest finishing time being 8.00pm, Monday to Friday.
- 5.3 The maximum bandwidth for employees working as Training Advisors and Training Coordinators within Training Services NSW is 14 hours, the earliest starting time being 6.00am and the latest finishing time being 8.00pm, Monday to Friday.
- 5.4 The standard bandwidth may be varied by written agreement between an employee and their manager, providing the daily contract hours are not varied and that changing the bandwidth does not of itself incur additional overtime, meal money payments or travelling compensation claims. While the start and finish times of the bandwidth may be varied, the total length of the bandwidth must remain unchanged.
- 5.5 Where an employee is directed by their manager to work additional hours outside of the bandwidth, either the standard bandwidth or a bandwidth varied by agreement, the overtime provisions of the Award will apply.

6. Coretime

- 6.1 The standard coretime for all employees, excluding ECE field-based employees, is 9.30am to 3.00pm.
- 6.2 The coretime for ECE field-based employees is a floating period of any six continuous hours (including a meal break of not less than 30 minutes and no more than 3 hours) within the bandwidth, during which staff are required to be on duty unless on authorised leave.
- 6.3 The standard coretime may be varied by written agreement between the employee and their manager, providing the daily contract hours are not varied.

While the start and finish times of the coretime may be varied, the total length of the coretime must remain unchanged.

7. Hours Worked

- 7.1 Ordinarily, all employees are to work a minimum of seven hours on any business day. An employee may choose to work less or more than seven hours in one day within the bandwidth, in consultation with their manager. This should be exercised reasonably by both manager and employee, taking into account team operational requirements, workload and individual employee work/life balance. An employee cannot be directed to work less than seven hours on any day. A manager may direct an employee to work more than seven hours in one day within the bandwidth, but this direction should be exercised reasonably.
- 7.2 Subject to operational requirements, an employee may elect to work standard hours – which means set and regular hours with prescribed starting and finishing times consistent with the Award. In this case, the employee will forgo access to the provisions of the flex agreement while working standard hours.
- 7.3 Training Advisors and Training Coordinators within Training Services NSW should not work (including official travel within bandwidth) more than 45 hours per week. Managers are to actively discourage staff from working more than 45 hours per week.
- 7.4 In line with clause 14 of the flex agreement, employees in a business unit may be required to work a specific pattern of hours within the bandwidth in order to meet operational and/or customer service needs. The requirement to work a specific pattern of hours within the bandwidth will still allow employees to accrue flex time, will not vary the daily contract hours and will not incur additional overtime, meal money payments or travelling compensation claims. Prior to the introduction of a specific pattern of hours of work within the bandwidth, a reasonable notice period and consultation with all affected employees and the Association will take place.
- 7.5 Employee working hours and patterns of work can be determined by the Department in consultation with the employee, taking into consideration the following factors:
 - a) The operational requirements of the business unit and team;
 - b) Business hours and customer contact hours;
 - c) Seasonal peaks of work;
 - d) The availability of productive work within the business unit;
 - e) The need to limit the working of overtime;
 - f) Employee personal commitments, needs and requests;
 - g) Health and safety issues;
 - h) Equity and fairness issues;
 - i) Any other factors as may be agreed, from time to time, by the parties.

- 7.6 In accordance with the Award, the Department Head may direct an employee to work standard hours and not flexible hours, where they have been found to have deliberately and persistently breached the provisions of the flex agreement. This will be subject to the outcome of a procedurally fair process.

8. Meal Breaks

- 8.1 An employee is to take a meal break of at least 30 minutes in a period of five hours continuous work.
- 8.2 An employee is entitled to take a meal break of one hour, but may reduce or extend that period to a minimum of 30 minutes or to a maximum of three hours respectively, subject to the needs of the work area.
- 8.3 Customer service must be maintained during employee meal breaks, which are to be taken between the hours of 11.30am and 2.30pm. Where there is an agreed variation to the coretime and/or bandwidth, the meal break may be taken at another time with the agreement of the manager
- 8.4 The scheduling and duration of employee meal breaks may be subject to the operational requirements of the business unit and the approval of the manager. A manager, in consultation with the team, may direct employee meal breaks to be taken at specific times to ensure continuity of customer service.

9. Flex Leave Entitlements

- 9.1 All employees are entitled to take up to six approved flex leave days (42 hours in any 12-week settlement period). This leave may be taken together with other forms of approved leave including recreation leave. The manager is responsible for ensuring that the Department's operational requirements are maintained by the team and will take this into account when considering an employee's request for flex leave. The six 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 accrued work time when taking flex leave and should not record any time in the adjustment column of the flexsheet.
- 9.2 Employee classifications providing direct services to schools, such as Student Support Officers and School Psychologists, who are unable to take accrued flex leave during a school term, may in agreement with their manager, take accrued flex leave during the next school vacation.

10. Accrual of Work Time

- 10.1 All time worked during the settlement period in accordance with this Agreement (except paid overtime) will count towards the employee's accrued work time (AWT).
- 10.2 An employee should have AWT of at least 406 hours at the conclusion of a

settlement period. The minimum of 406 hours includes all credited AWT and all approved leave.

- 10.3 Where AWT is less than 406 hours at the end of a settlement period the employee will be required to submit a recreation leave form for the amount of the shortfall. Should the employee have insufficient leave available, leave without pay for the amount of time below 406 hours will apply and the leave without pay is credited to the AWT total.
- 10.4 An employee with AWT at the conclusion of a settlement period that amounts to less than 420 hours and greater than 406 hours must carry the appropriate time in debit forward to the next settlement period.
- 10.5 An employee who has an AWT of between 420 hours and 462 hours at the conclusion of a settlement period may carry forward up to 42 hours in credit to the next settlement period. The 462 hours includes all credited AWT and all approved leave.
- 10.6 An employee is entitled to carry forward hours more than the 420 ordinary hours. The maximum a full-time employee may carry forward is 42 hours, comprising 42 hours in credit as per subclause 10.5.
- 10.7 Hours worked are to be monitored by the employee and the manager over a four weekly period using the Department's flexsheets.
- 10.8 It is intended that employees do not work more than 462 hours in any one settlement period (ie no more than 420 ordinary hours plus the maximum 42 hours in credit) other than in exceptional circumstances. Where it is obvious that an employee may exceed 462 hours in any one settlement period the manager and employee may meet to identify the reason for the additional hours and develop a strategy to address the cause, if required.

11. Absence from Duty

- 11.1 Approved flex leave can be used with other forms of approved leave or study time to cover a full day's absence from duty.
- 11.2 Absences on approved leave will be credited to the employee's Accrued Work Time (AWT). Such absences may be taken in hours and minutes (actuals) for public service employees and for periods of a quarter of a day for non-school based teaching service staff. The appropriate amount of time for the absence is to be recorded as accrued work time on the employee's flexsheet and debited to the employee's leave record maintained by the Department. A full day absence is equivalent to seven hours.
- 11.3 Absences using flex leave may occur during any period of recreation leave and may occur on more than one occasion during a settlement period. However, the employee's balance should be at least 406 hours of accrued work time at

the end of the settlement period.

12. Overtime

- 12.1 Overtime is work completed outside the agreed bandwidth as directed by an employee's manager.
- 12.2 Overtime rates and applicable allowances will apply where an employee is directed to work outside the agreed bandwidth. Payment for overtime will be made only where the employee works directed/approved overtime.
- 12.3 The overtime provisions of the Award will apply and overtime rates will be in accordance with clause 90, Overtime Worked By Day Workers.

13. Standard Working Hours

- 13.1 An employee already working standard hours, consistent with the exceptions specified at Cl. 7 of this agreement (by election or direction), may have these hours changed to a different set of standard hours to meet operational requirements. This will only occur following consultation with the affected employee and the Association and provided employee daily contract hours are not exceeded.
- 13.2 The Department after consultation and agreement with an employee may revert the employee to standard working hours to meet operational and customer service requirements.

14. Variations to Business Hours

- 14.1 Business hours may be varied to meet operational requirements after reasonable notice and consultation with employees and the Association.
- 14.2 Where business hours are required to change, due consideration will be given to the impact on employee hours of work. Any changes to employee start and finish times will only occur following consultation with both employees and the Association. In the event of any dispute the matter will be dealt with in accordance with clause 9, Grievance and Dispute Settling Procedures of the Award. The contract hours of employees will not be altered as a result of any such variation in business hours.

15. Disruption of Transport

- 15.1 Where an employee is delayed or prevented from attending the work place because of a transport strike or a major transport delay, the following conditions will apply:
 - (a) The employee may commence or cease duty at any time. Time worked on such days will accumulate in the normal way.

- (b) Where an employee is unable to attend the work place due to a transport disruption and is unable to work from home or attend another place of work, then the employee may take an additional flex day provided more than 406 hours are accrued in the following settlement period.
- (c) An employee affected by transport disruption will not be debited recreation leave or leave without pay if the employee has accrued less than 406 hours in the settlement period coinciding with the transport disruption. However, the employee must ensure that more than 406 hours are accrued in the following settlement period.

16. Separation from the Department

- 16.1 Where an employee gives notice of resignation, retirement or transfer to another government department, the manager and employee will, during the period of notice, take all reasonable steps to eliminate any accumulated flexible working hours in credit or debit.
- 16.2 Managers will facilitate the elimination of accumulated flexible working hours in credit or debit by such employees.
- 16.3 Where an employee has an accumulation of debit hours at the completion of the last day of service, the accumulated recreation leave or money owing to that employee will be adjusted accordingly.

17. Part-time Employees

- 17.1 Where the operational requirements allow, the working of flexible working hours under this Agreement are to be extended to an employee working under a part-time work arrangement. Subject to subclause 16.3, all provisions of this Agreement apply to a part-time employee on a pro rata basis according to the number of hours or pattern of hours worked. Normally part-time employees are engaged for a fixed number of days on a seven hours or three and a half hours per day basis.
- 17.2 Contract hours: are based on a standard seven hour day. Contract hours for a part-time employee would be either 7 hours, 14 hours, 21 hours or 28 hours per week, or 84 hours, 168 hours, 252 hours or 336 hours per 12-week settlement period. Based on a three and a half hours day, contract hours for a part-time employee would be either 3.5 hours, 7 hours, 10.5 hours, 14 hours or 17.5 hours per week, or 42 hours, 84 hours, 126 hours, 168 hours or 210 hours per 12-week settlement period.
- 17.3 Carry over of maximum flexible working hours in credit or debit: the carry forward hours for part time employees will be accrued on a pro rata basis. Up to 14 hours in debit may be carried over into the next settlement period.

- 17.4 Coretime: unless otherwise specified in an agreed coretime variation agreement, coretime for the days worked should be the same as for full time employees, ie 9.30 am to 3.00 pm or a floating period of any six continuous hours for ECE field-based employees.
- 17.5 Bandwidth: the bandwidth for part-time employees is the same as the bandwidths contained in clauses 5.1, 5.2 and 5.3.
- 17.6 Flex leave entitlements: part-time employees under this agreement are entitled to take up to 6 flex leave days (42 hours) in any 12-week settlement period.
- (a) If a part-time employee's standard contract day is seven hours per day, a flex day for that part-time employee is equivalent to seven hours. In accordance with subclause 9.1 the employee may take up to six flex days in any settlement period as either full days or half days or combinations of either.
- (b) If a part-time employee's standard contract day is three and a half hours per day, a flex day for that part-time employee is equivalent to three and a half hours, and a half flex day is equivalent to one-and-three-quarter hours. In accordance with subclause 9.1 the employee may take up to six flex days in any settlement period.

18. Temporary Assignment and Higher Duties Allowance

- 18.1 Flex leave taken by an employee during a period when the employee is in a temporary assignment is to be paid at the rate of the temporary assignment.
- 18.2 Flex leave taken by an employee whilst carrying out higher duties is to be paid at the rate inclusive of the higher duties allowance (HDA).
- 18.3 For employees in receipt of an above level temporary assignment allowance, the allowance is payable for any periods of leave that is less than 5 ordinary (consecutive) working days. For above-level temporary assignments or secondments of more than 3 months duration, the above-level allowance is payable for all periods of leave.

19. Easter concession

- 19.1 Employees working flexible working hours under this agreement may be granted, subject to operational requirements, an additional half day flex leave on the Thursday preceding the Good Friday public holiday.
- 19.2 Employees who wish to take the additional half day flex leave on the Thursday preceding the Good Friday public holiday must work a minimum of three and a half hours on that day.
- 19.3 Employees may be granted the additional half day flex leave on another

occasion within the applicable settlement period if they apply for the half day flex leave but are required to work on the afternoon of Easter Thursday.

20. Grievance and Dispute Resolution

- 20.1 Grievances and disputes regarding the implementation, operation or administration of any aspect of this agreement will be dealt with in accordance with the Award, Clause 9, Grievance and Dispute Settling Procedures. Parties agree to attempt to resolve individual matters as close to the source as possible in the first instance with graduated steps to escalate higher for resolution.
- 20.2 Parties agree that collective issues or disputes concerning the flex agreement can be brought to the Joint Consultative Committee and/or the Department Head.

21. Travelling on Official Business

- 21.1 Any travel on official business during the ordinary hours on a working day is treated as time worked for the purposes of this agreement.
- 21.2 Employees will be compensated for travelling time outside ordinary hours in accordance with the Award.
- 21.3 An employee's ordinary journey from home to headquarters (and return) is not considered to be travel on official business. If an employee is required to work at a location other than their headquarters and therefore spends more time travelling than their ordinary journey from home to headquarters (and return), the additional time spent travelling within the bandwidth will be treated as time worked for the purposes of this agreement.

22. Area, Incidence and Duration

- 22.1 The flex agreement applies to employees as defined.
- 22.2 The flex agreement takes effect on and from 17 December 2022 and will remain in force for three (3) years unless varied by consent.
- 22.3 Either party must provide the other party a minimum of three (3) months or a maximum of twelve (12) months' notice of any intention to terminate the agreement.