

NESA Flexible Working Hours Agreement 2026

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1. Introduction

- 1.1. This agreement shall be known as the *NESA Flexible Working Hours Agreement 2026* (the Flex Agreement).
- 1.2. This Flex Agreement is made between the NSW Education Standards Authority (NESA), employer of staff employed under the *Government Sector Employment Act 2013* (NSW) (GSE Act) and the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales (the PSA or the Association), being the union representing the employees.
- 1.3. The Flex Agreement is to be read in conjunction with the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009* (the Conditions Award).
- 1.4. The Flex Agreement will modify clause 21 of the Conditions Award as it applies to NESA.
- 1.5. This Flex Agreement is made between NESA and the Association in accordance with clause 10, Local Arrangements, and clause 21.16.5 of the Conditions Award.

2. Principles, Purpose and Application

Principles

- 2.1. NESA is committed to ensuring that all roles are flexible on an 'If Not, Why Not?' basis, in recognition of the benefits of flexible working hours to enhance service delivery and customer satisfaction, whilst supporting employee work/life balance.
- 2.2. NESA embraces flexible working hours to enhance our capacity to recruit and retain employees of the highest calibre, skill, and attributes, and to ensure the workforce reflects the diverse communities we serve across NSW.

Purpose

- 2.3. The Flex Agreement provides employees with flexible working hours within the Flexible Working Bandwidth.
- 2.4. The Flex Agreement is intended to support effective management of team and individual workloads and deadlines, while promoting employee wellbeing and work/life balance. All parties are committed to managing workloads, facilitating flexibility and avoiding the forfeiture of accrued hours.
- 2.5. This purpose will be achieved through a team-based approach to ensuring operational coverage of work requirements, whilst maintaining access to individual employee flexibility.

Application

- 2.6. Application of the Flex Agreement recognises that operational requirements may vary depending on the functions performed by different directorates or business units. Managers and employees will need to consider the balance between meeting NESA's operational requirements, and team and individual employee needs.
- 2.7. The Flex Agreement will be applied through genuine consultation between managers and their teams; and managers and individual employees seeking flexible working hours, taking into account the following factors:
 - a. the operational requirements of NESA
 - b. the need to maintain high standards of customer service
 - c. seasonal peaks of work within NESA e.g. HSC, NAPLAN

- d. critical service delivery and other associated requirements, including the need to provide support on short notice
 - e. the availability of productive work within the business unit
 - f. the need to limit the working of overtime
 - g. personal commitments and needs of individual employees
 - h. Work, Health and Safety (WHS) and equity issues
 - i. any other factors as may be agreed, from time to time, by the parties.
- 2.8. NESAs and its employees shall take all reasonable steps to ensure that an employee does not accumulate excess credit hours at the conclusion of settlement periods.
- 2.9. No employee covered by the Flex Agreement will suffer any loss or diminution in their conditions of employment as contained in the Conditions Award as a consequence of this Flex Agreement.
- 2.10. The Flex Agreement will operate in conjunction with the requirements of the NESAs *Flexible Working Policy* or its replacement.
- 2.11. The Flex Agreement will operate in conjunction with the reasonable management of high Recreation leave balances, in accordance with the NSW Department of Premier and Cabinet Circular *C2020-12 Managing Accrued Recreation Leave Balances*, or any successor memoranda, subject to and consistent with the obligations in the relevant industrial instruments and legislation.
- 2.12. Any disputes arising from the application of this Flex Agreement will initially be dealt with as close to the source as possible, with graduated steps for further attempts at resolution at higher levels of authority within NESAs, or as otherwise required under relevant dispute settling procedures.

3. Coverage

- 3.1. This Flex Agreement applies to all ongoing and temporary employees of NESAs except for Public Service Senior Executives and employees under the *Crown Employees (New South Wales Education Standards Authority – Education Officers) Salaries and Conditions Award*.
- 3.2. Casual employees, contractors and contingent labour are not in scope.

4. Definitions

- 4.1. The following definitions apply throughout this Flex Agreement.
- 4.1.1. *Accrued Work Time (AWT)* is all time worked by an employee within the Flexible Working Bandwidth during the 12-week settlement period, excluding any overtime directed and worked outside the Award Bandwidth.
- 4.1.2. *Award Bandwidth* means the bandwidth as defined in the Conditions Award which is 7.30am – 6.00pm, Monday to Friday. Award Bandwidth applies in the case of directed Overtime as per clause 4.1.16.
- 4.1.3. *Business Hours* are the hours of operation in which offices are open to provide customer service.
- 4.1.4. *Conditions Award* is the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009* or its replacement.
- 4.1.5. *Contract Hours* means the hours an employee has been contracted to work within a settlement period. Contract Hours are calculated by multiplying the employee’s weekly

contract hours by the 12 weeks in a settlement period. For example, a full-time employee contracted to work 35 hours per week will have 420 contract hours in a settlement period (35 hours x 12 weeks).

4.1.6. *Core time* means the period during the day when an employee is normally required to be on duty. Core time for employees covered by this Flex Agreement is outlined in section 5.2.

4.1.7. *Daily contract hours* for full-time employees shall be calculated by dividing the employee's weekly contract hours by the number of working days in an ordinary working week. For example, where a full-time employee is contracted to work 35 hours per week over five (5) days, the daily contract hours will be seven (7) hours (35 hours ÷ 5 days).

For part-time employees:

- a. Daily contract hours for each working day will be specified in the employee's part-time contract, letter of offer, or any agreed variation.
- b. Where the daily contract hours are not specified, daily contract hours will be calculated using the same method as for full-time employees, based on the employee's contracted weekly hours and the number of working days.

4.1.8. *Employee* means all persons who are in ongoing and temporary employment with NESAs, in either a full or part-time capacity, under the provisions of the *Government Sector Employment Act 2013*. This excludes Public Service Senior Executives, casuals, contractors, contingent labour and employees covered by the *Crown Employees (New South Wales Education Standards Authority – Education Officers) Salaries and Conditions Award*.

4.1.9. *Flexible Working Bandwidth* means the period during the day when employees may work flexibly, and may record, and accrue hours in credit for time worked. The Flexible Working Bandwidth for employees covered by this Flex Agreement is outlined in section 5.1.

4.1.10. *Flexible working hours credit* means the time exceeding the contract hours for a settlement period and can be accumulated and carried over into the next settlement period under the Flex Agreement.

4.1.11. *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.

4.1.12. *Flex leave* means a period or periods of time that an employee, subject to the approval of their manager and the principles of the Flex Agreement, may be absent from work.

4.1.13. *Settlement period* is 12 consecutive weeks. The settlement periods for the purposes of recording attendance times and for Flex leave shall coincide.

4.1.14. *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.

4.1.15. *Ordinary Hours* should equal the daily contract hours, that is 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.

- 4.1.16. *Overtime* means approved work, as directed by an employee's manager, that is performed outside the Award Bandwidth specified in clause 4.1.2. Overtime will be managed and paid in accordance with section 6.2 of this Flex Agreement.

5. Operational Provisions

5.1. Flexible Working Bandwidth

- 5.1.1. The Flexible Working Bandwidth is the period during the working day when employees covered by this Flex Agreement may work flexibly, record and accrue hours in credit for time worked.
- 5.1.2. The Flexible Working Bandwidth for employees covered by this Flex Agreement is 7.00am to 7.00pm, Monday to Friday.
- 5.1.3. Managers and employees must consider the Work Health and Safety implications when considering working hours.
- 5.1.4. For the purposes of accumulation under section 5.7, time worked outside of the Flexible Working Bandwidth will not be credited to an employee's Accrued Work Time.
- 5.1.5. The Flexible Working 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 Flexible Working Bandwidth does not of itself incur additional overtime, meal money payments or travelling compensation claims. While the start and finish times of the Flexible Working Bandwidth may be varied, the total length of the bandwidth must remain unchanged.
- 5.1.6. Where an employee is directed by their manager to work hours outside of the applicable bandwidth, either the Award Bandwidth (as per clause 4.1.2) or a bandwidth varied by agreement, the overtime provisions of the Conditions Award will apply, as outlined in section 6.2.

5.2. Core Time

- 5.2.1. The standard core time for employees covered by this Flex Agreement is 9.30am to 3.30pm.
- 5.2.2. The standard core time 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 core time may be varied, the total length of the core time must remain unchanged.

5.3. Daily Hours Worked

- 5.3.1. All employees are entitled to work their minimum daily contract hours on any nominated normal working day. An employee cannot be directed to work less than the minimum daily contract hours on any nominated normal working day.
- 5.3.2. An employee may work more than their minimum contract hours within the Flexible Working Bandwidth and accrue flex time, subject to having productive work to do.
- 5.3.3. Nothing in this Flex Agreement requires an employee to work more than their contract hours where they do not wish to do so and where there is no productive work available. Managers and employees will work collaboratively to ensure employee workloads are manageable, considering both employee wellbeing and operational requirements.

- 5.3.4. The maximum hours worked each day shall not exceed 10 hours on any one day. This may be varied subject to management approval.
- 5.3.5. In accordance with section 5.5 of the Flex Agreement, employees in a business unit may be required to work a specific pattern of hours within the Flexible Working Bandwidth to meet specific and/or seasonal operational or customer service requirements. Any specific pattern of hours within the Flexible Working Bandwidth must still allow employees covered by this Flex Agreement to work flexibly and accrue flex time.
- 5.3.6. Prior to introducing a specific pattern of hours of work within the Flexible Working Bandwidth, NESAs will provide reasonable notice and consult with the impacted employees and the Association, in accordance with section 5.5 of this Flex Agreement.

5.4. Standard Working Hours

- 5.4.1. An employee may request to work standard hours or minimum daily contract hours with fixed starting and finishing times. Where such a request is approved by the Chief Executive Officer or their delegate, the employee will forego access to the provisions of this Flex Agreement while working standard hours.
- 5.4.2. Standard hours or limits to flexible working hours may be applicable where:
 - a. the employee requests to work standard hours and this request is agreed to by the Chief Executive Officer or their delegate, or
 - b. the Chief Executive Officer or their delegate determines that flexible working hours do not meet operational or customer service requirements, following consultation with the Association, or
 - c. the Chief Executive Officer or their delegate directs as remedial action where an employee has been found to have deliberately and persistently breached the terms of this Flex Agreement.
- 5.4.3. An employee already working standard hours, consistent with the exceptions specified in clause 5.4.2 of this Flex Agreement (i.e. by election or direction), may have these hours changed to a different set of standard hours to meet operational requirements after genuine consultation between the employee and their manager and consultation with the Association and provided the employee's daily contract hours are not exceeded.

5.5. Variations to Business Hours

- 5.5.1. Business hours may be varied in some instances to meet specific and/or seasonal operational or customer service requirements after reasonable notice and consultation with the impacted employees and the Association.
- 5.5.2. Where business hours may require 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 the impacted individual employees and the Association. The overall contract hours of employees will not be altered because of any such variation in business hours.
- 5.5.3. In the event of any dispute the matter will be dealt with in accordance with section 7.2 of this Flex Agreement.

5.6. Breaks

- 5.6.1. An employee must take a meal break in accordance with the provisions of the Conditions Award. The standard entitlement for a lunch break is one (1) hour. This may be varied by agreement to a minimum of 30 minutes and a maximum of 2.5 hours.
- 5.6.2. The scheduling and duration of lunch breaks are subject to the operational requirements of NESAs, the needs of the employee and consultation with the employee's manager.
- 5.6.3. No employee will be required to work continuously for more than five (5) hours without a meal break.
- 5.6.4. In addition to an unpaid lunch break, employees may take a paid 10-minute morning break where business operations are not affected, and a 10-minute afternoon break on the same basis.

5.7. Accumulation of Work Time

- 5.7.1. Subject to the requirements of section 5.3, time worked within the Flexible Working Bandwidth during the settlement period, in accordance with this Flex Agreement, will count towards the employee's Accrued Work Time (AWT), except for overtime directed and worked outside the Award Bandwidth.
- 5.7.2. An employee should have worked their contract hours as AWT at the conclusion of the settlement period.
- 5.7.3. Where AWT results in more than 10 hours debit at the end of the settlement period, the employee will be required to use available accrued leave to cover the shortfall in hours. If the employee has no accrued leave available, Leave Without Pay (LWOP) may be used.
- 5.7.4. An employee is allowed to accumulate and carry forward up to and including an additional 42 hours in excess of their contract hours.
- 5.7.5. Hours worked are to be monitored by the employee and their manager over the 12-week settlement period, through the use of flex time records as set out in section 5.8 of this Flex Agreement.
- 5.7.6. It is intended that employees do not work more than 462 hours in any one settlement period (i.e. 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 must meet to identify the reason for the additional hours and develop a strategy to address the cause, if required.

5.8. Monitoring of Accrued Work Time

- 5.8.1. Hours worked are to be monitored by the employee and their manager over the 12-week settlement period through the use of flex time records. Managers should encourage employees not to work in excess of 42 credit hours in a settlement period.
- 5.8.2. Employees must ensure that a partially completed flex sheet is available for their manager in each four (4) weeks of the 12-week settlement period to review.
- 5.8.3. An employee must notify their manager if, at any time during the settlement period, their accrued work time exceeds 42 credit hours.
- 5.8.4. To avoid the forfeiture of hours, after notification, the employee and manager, will discuss and devise an agreed written strategy to ensure a balance at or below 42 credit hours at the end of the settlement period. This could include:

- a. managerial approval at short notice of the employee taking immediate Flex leave that would reduce their credit hours balance; or
- b. a mutually agreed plan for the employee to take a number of consecutive full day or a combination of full and half days of flex leave in the short-term future to reduce their credit hours balance; or
- c. managers and employees working collaboratively to ensure that for the remainder of the settlement period the employee's workload and hours are manageable in accordance with section

5.9. Flex Leave Entitlements

- 5.9.1. All employees are entitled to take up to six (6) 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.
- 5.9.2. The six (6) Flex leave days may be taken as either full days or half days or combinations of either.
- 5.9.3. 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 flex sheet.

5.10. Flex Leave

- 5.10.1. An employee may apply to absent themselves from work with reasonable notice by using approved Flex leave.
- 5.10.2. A manager will reasonably approve an employee taking Flex leave, subject to clause 5.10.3.
- 5.10.3. The manager is responsible for ensuring that operational requirements are maintained by the team and will take this into account when considering an employee's request for Flex leave.
- 5.10.4. An employee can take no more than six (6) consecutive Flex leave days at any one time regardless of the settlement periods.
- 5.10.5. When considering the Flex leave entitlements of this Flex Agreement, employees and managers are to do so in accordance with clause 77 of the Conditions Award, including provisions concerning the accrual, limits on accumulation and direction to take Recreation leave.
- 5.10.6. Should an employee have an accrual of Recreation leave of 30 days or more, Flex leave will not be approved to be taken. A manager may instead approve Recreation leave and access to Flex leave will be reinstated once the employee's Recreation leave balance is brought down to below 30 days.
- 5.10.7. 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 at or less than 30 days, then Flex leave may be taken.
- 5.10.8. Nothing in clauses 5.10.6 or 5.10.7 changes the limits on the accrual and carrying forward of flex credit set out in clause 5.7.4. Employees and their managers must monitor and actively manage Accrued Work Time throughout the settlement period, in accordance with sections 5.7 and 5.8, to ensure that no accrued hours are forfeited and that no more than 42 credit hours are carried forward into the next settlement period.

6. Additional flex parameters

6.1. Part-time Employees

- 6.1.1. All part-time employees, unless they are engaged in a fixed hours arrangement, have the same rights to flexible working hours as full-time employees. Flexible working hours credit and debit limits and the period of Flex leave permitted, will be the same as for a full-time employee.
- 6.1.2. Part-time employees may not be directed to work more than their pro-rata contract hours.
- 6.1.3. All other provisions of this Flex Agreement apply to part-time employees.

6.2. Overtime

- 6.2.1. Overtime, as defined at clause 4.1.16, is approved work, directed by an employee's manager, that is performed outside the Award Bandwidth.
- 6.2.2. Overtime rates and applicable allowances will apply where an employee is directed to work before 7.30am or after 6.00pm, Monday to Friday or for any work directed on a Saturday, Sunday or Public Holiday.
- 6.2.3. Payment for overtime will be made only where the employee works directed/approved overtime.
- 6.2.4. All overtime provisions contained in the Conditions Award will apply.
- 6.2.5. As per clause 96 of the Conditions Award, an employee who works overtime can elect monetary payment or to take the accrued equivalent time as Time Off in Lieu (TOIL). TOIL will be recorded as an adjustment on an employee's flex sheet and will not reduce the employee's flex credit balance.

6.3. Travelling on Official Business

- 6.3.1. Any travel on official business during the ordinary hours on a working day is treated as time worked for the purposes of this Flex Agreement, except where travel is covered under clause 6.3.3.
- 6.3.2. Employees will be compensated for travelling time outside ordinary hours in accordance with the Conditions Award.
- 6.3.3. 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 Flexible Working Bandwidth will be treated as time worked for the purposes of this Flex Agreement.

6.4. Natural emergencies and major transport disruption

- 6.4.1. An employee delayed or prevented from attending the workplace by a natural emergency or major transport disruption may:
 - a. Negotiate a temporary alternative working location such as working from home, and/or
 - b. With their manager's approval, vary their working hours as provided in clause 16 of the Conditions Award, and/or

- c. Take available Family and Community Service, Flex, Recreation or Extended leave or Leave Without Pay according to the provisions of the Conditions Award to cover the period concerned.

6.5. Absences from Duty

- 6.5.1. Approved Flex leave can be used with other forms of approved leave to cover a full day's absence from duty. A full day absence is equivalent to seven (7) hours.
- 6.5.2. Absences on approved leave, other than Flex leave, will be recorded on the employee's flex sheet as an adjustment to the employee's Accrued Work Time (AWT). Such leave may be taken in hours and minutes (actuals) for public service employees. Where this occurs, the employee's leave balance for the relevant leave type (other than Flex leave) will be debited accordingly.
- 6.5.3. 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 not exceed 10 hours of flex debit at the end of the settlement period.

6.6. Temporary Assignment and Temporary Assignment Allowance

- 6.6.1. 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.
- 6.6.2. For employees in receipt of an above level temporary assignment allowance, the allowance is payable for any periods of leave that is less than five (5) ordinary (consecutive) working days. For above-level temporary assignments or secondments of more than three (3) months duration, the above-level allowance is payable for all periods of leave.

6.7. Easter concessional half day

- 6.7.1. An employee working under the provisions of this Flex Agreement may be granted, subject to operational requirements, an additional half day Flex leave on the Thursday preceding the Good Friday public holiday or as determined by Public Service Industrial Relations, and/or any appropriate Circulars or other determinations subject to clause 6.7.4.
- 6.7.2. 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 3.5 hours on that day.
- 6.7.3. 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.
- 6.7.4. All other provisions of this Flex Agreement are to apply including limits on the carryover at the end of the settlement period.

6.8. Separation from NESAs

- 6.8.1. Where an employee gives notice of resignation, retirement or transfer to another agency, the manager and employee will work together during the period of notice to take all reasonable steps to eliminate any accumulated credit or debit hours.
- 6.8.2. Managers will, facilitate the elimination of accumulated credit or debit hours by such employees so that the flex balance is a zero-flex balance on the employee's last day at NESAs.

- 6.8.3. This may include supporting the employee to take accrued Flex leave before their separation date. Where appropriate this may also include an extension of the separation date to allow for the accumulated Flex leave to be taken, subject to the agreement of the employer and the employee, and, where applicable, the consent of the agency with which the employee will commence employment.
- 6.8.4. 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.
- 6.8.5. Any residual credit hours will not be paid out upon separation from NESAs.

7. Flex Agreement Terms

7.1. Duration

- 7.1.1. This Flex Agreement will operate for a period of three (3) years from 18 May 2026 or after the date the Flex Agreement is made by the parties, whichever is later.
- 7.1.2. Twelve (12) months prior and no later than six (6) months prior to the end of the nominal term, all parties will review the operations of the Flex Agreement in relation to its suitability to continue, to be amended or to be terminated.

7.2. Grievances and Dispute Resolution

- 7.2.1. Grievances and disputes regarding the implementation, operation or administration of any aspect of this Flex Agreement will be dealt with in accordance with the Grievance and Dispute Settlement Procedures in clause 9 of the Conditions Award, or the relevant provision in any replacement Award.
- 7.2.2. 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.

7.3. Amendment and Termination provisions

- 7.3.1. Should a Machinery of Government change make it necessary to adjust existing terms or accommodate new terms, a new Flexible Working Hours Agreement will be made within three (3) months of those required changes.
- 7.3.2. At the end of those three (3) months if there is no agreement between the parties for a new Flexible Working Hours Agreement, the prevailing provisions of flexible working hours contained within clause 21 of the Conditions Award, or its replacement will apply.
- 7.3.3. 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 Flex Agreement and revert to the prevailing Conditions Award provision of flexible working hours at the end of the notice period.

7.4. Changes to NESAs

- 7.4.1. The parties recognise that changes to the makeup of NESAs will occur from time to time. New divisions and/or agencies will transition into NESAs whether by machinery of government or other mechanisms, and some will leave NESAs to reside elsewhere with the NSW Public Sector.
- 7.4.2. When other divisions or agencies come into NESAs a transition plan will need to be agreed between the parties to ensure that all employees who have joined as part of

these changes, are covered by this Flex Agreement within three (3) months of the transition occurring.

8. Endorsement

This Flex Agreement was made between the Chief Executive Officer, NSW Education Standards Authority and the General Secretary, Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales.

SIGNED BY

Paul Martin
Chief Executive Officer
NSW Education Standards Authority

(Signature)

(Date)

In the presence of:

(Witness Name)

(Witness Signature)

Stewart Little
General Secretary
Public Service Association of NSW

(Signature)

(Date)

In the presence of:

(Witness Name)

(Witness Signature)