

WORKPLACE FLEXIBILITY ARRANGEMENT

SUPREME COURT OF TASMANIA

1. Overview

This agreement provides Workplace Flexibility Arrangements in accordance with Part V, Clause 3 of the Tasmanian State Service Award (TSS Award).

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3. Purpose

The purpose of this Workforce Flexibility Arrangement is to provide working conditions that accommodate the fluctuating requirements of the Supreme Court operations whilst providing employees with reasonable certainty regarding their working arrangements and the capacity to flexibly manage their hours against operational requirements.

These Workplace Flexibility Arrangements also serve to clearly outline the processes for the management of the actual hours worked per fortnight for employees covered under the scope of this agreement.

These Workforce Flexibility Arrangements do not seek to change the operations of the Court as the arrangements contained within have been in place for many years. The TSS Award already provides for circumstances where the ordinary hours of work are not able to be specified at Part (VI)(1)(c). These arrangements now define the mechanism for the allocation and management of hours within those TSS Award provisions.

3. Scope of Workplace Flexibility Arrangement

This agreement is made in respect of employees employed in the Tasmanian Supreme Court (The Court) and who are employed under the TSS Award on a permanent part-time or fixed-term part-time basis as Judges Attendants.

This Workplace Flexibility Arrangement does not apply to staff employed on a full-time or casual basis as Judges Attendants.

4. Period of Agreement

The Agreement will be for the period commencing on (**Date contract commences**) and shall apply until 26th October 2017. The Agreement remains in force post expiry unless terminated by either party.

5. Background

The staffing requirements and operating hours of the Supreme Court varies considerably on a daily basis subject to court listings, the type and length of sitting days and the potential for matters to be resolved prior to Court attendance. Whilst there is some predictability due to well-established sitting periods and terms there is no certainty of key operational matters such as:

- The length of a trial,
- Whether a trial proceeds or not, and
- The requirements of the Court during term.

As a consequence, flexibility is required in managing the work pattern of those staff employed in the Supreme Court and in particular those engaged in roles that provide direct support during Court sittings. This supports the matching of the hours of attendance of staff with the periods and duration of Court activities, such as Court sittings, terms and vacations.

6. Relevant Terms and Conditions of Employment

This Workplace Flexibility Arrangement deals with the following terms and conditions of employment, as provided for in Part V (3) (a) of the Award:

- Hours of work and arrangements for when work is performed, and
- Overtime Rates.

7. Workplace Flexibility Arrangements

The following Workplace Flexibility Arrangements are to apply:

7.1. Hours of work

Employees will be paid their fortnightly normal pro-rata part-time salary irrespective of how many hours they have worked during that fortnight. The allocation and performance of ordinary hours of work are subject to operational requirements and will be during periods of, and for the duration of, Court activities including Court sittings, terms and vacations. The employer will manage the allocation of hours.

Relevant Award Clause:

The current wording of Part VI clause 1(c) is as follows:

The ordinary hours for a part-time employee are to be specified in the employee's instrument of appointment. The instrument may also specify a maximum number of additional ordinary hours that may be worked by mutual agreement, so long as those hours are not more than are 36 hours and 45 minutes per week. Where the number of ordinary hours required to be worked exceeds the agreed maximum, the excess hours are to be regarded as authorised overtime and paid at the applicable rates for overtime as specified in Clause 3 - Overtime for Day Work - of Part VI – Hours of Work.

PROVIDED that, where the ordinary hours of work are not able to be specified, the instrument of appointment will outline the terms and conditions associated with the hours to be worked.

Proposed Variation

For the purposes of this agreement, the wording of the above clause is amended to read as follows:

The ordinary hours for part-time employee are to be determined and performed in accordance with the following terms and conditions:

- (i) *The ordinary hours for a part-time employee are to be specified in the employee's instrument of appointment. This establishes the employee's Full-Time Equivalent (FTE) and the number of hours for which the employee will be remunerated on a fortnightly basis.*

The allocation of ordinary hours is to be managed by the employer and will be done in accordance with the operational requirements of the Court. The Court will provide reasonable notice of periods during which hours may be available to be worked and where an employee is unable to attend on the hours requested by the Court then they are entitled to not attend without penalty.

- (ii) Ordinary hours are to be worked between 7:00am and 7:00pm on any day between Monday and Friday.*
- (iii) Up to 10 hours may be worked as ordinary time on any given day between Monday and Friday.*
- (iv) Any hours worked outside the span of hours of 7:00am to 7:00pm, or beyond 10 hours in any day, between Monday and Friday will be treated as additional ordinary hours unless an employee wishes to receive payment for them as overtime.*

If the employee elects to receive payment for them as overtime, such payment will be at the rate of time and a half for the first 3 hours and double time thereafter.

- (vi) The ordinary hours worked by each employee are to be monitored fortnightly and reconciled every six weeks.*
- (vii) If an employee has worked hours in excess of their specified FTE during each six week period then this is managed at the employer's discretion by either:
 - a. the employee being allocated less hours over the subsequent six week period to realign their hours with their specified FTE; or*
 - b. Payment of the excess hours at the appropriate Award rate of the employee. This will only occur if there is no reasonable prospect of the employees hours trending to their specified FTE over a reasonable timeframe**
- (viii) If an employee has worked less hours than their specified FTE during each six week period then this is managed by the employee being allocated additional hours if possible over the forthcoming six week period to realign their hours with their specified FTE:*
- (ix) Additional ordinary hours may be worked by an employee by the mutual agreement of the employee and the employer, so long as those hours are not more than an average of 36 hours and 45 minutes per week over the course of a 52 week cycle.*
- (x) Any ordinary hours worked in excess of 1911 hours per year are to be paid as overtime, with 50% of the excess hours paid at the rate of time and a half and 50% of the excess hours paid at the rate of double time.*

7.2 Overtime

The allocation of hours and associated reconciliation every six weeks as outlined above necessitates variations to the overtime provisions of the Award. As indicated, employees can elect to receive payment at overtime rates for hours worked outside the span of hours of 7:00am to 7:00pm or where they have worked in excess of 10 hours on any given day between Monday to Friday.

Where the employee does not elect to receive payment at overtime rates for these hours then they are treated as ordinary hours and included in the six week reconciliation of ordinary hours.

An employee may also receive payment for overtime at the appropriate overtime rate for any work performed on a Saturday, Sunday or public holiday. On such occasions payment as overtime must occur and the time cannot be treated as ordinary hours.

For the purposes of this agreement clause 3(b) of Part VI of the TSS Award will be modified.

Relevant Provision

- The current wording of Part VI clause 3(b) is as follows:

Overtime means all time worked in excess and outside of an employee's normal ordinary hours of duty which includes:

- (i) time worked in excess of 7 hours and 21 minutes on any one day Monday to Friday inclusive; or*
- (ii) Time worked outside the span of hours of 7.00am to 7.00pm; or*
- (iii) Any time worked on a Saturday, Sunday or Holiday with Pay.*

Proposed Variation

- The wording of Part VI clause 3(b) is amended to read as follows:

Overtime means all time worked in excess and outside of an employee's normal ordinary hours of duty which includes:

- (i) time worked in excess of 10 hours on any one day Monday to Friday inclusive; or*
- (ii) Time worked outside the span of hours of 7.00am to 7.00pm; or*
- (iii) Any time worked on a Saturday, Sunday or Holiday with Pay.*

Provided that unless an employee elect for any time worked in accordance with (i) or (ii) above to be paid as overtime then such hours shall be treated as ordinary time.

7.3 Varying Work Pattern - Additional Leave

It is acknowledged that the operations of the Court necessitate work patterns that are flexible and subject to fluctuation. In recognition of this, employees covered by this Workplace Flexibility Arrangement will receive an allocation of additional recreation leave of 10 days pro-rata based on their contracted FTE. For example, an employee on 0.5 FTE would be entitled to 5 days leave per annum.

- **Proposed Provision**

For the purposes of this agreement, the following clause is to apply:

In recognition of the patterns of work necessary to meet the fluctuating requirements of the Supreme Court employees will be credited with an additional 10 days leave [pro-rata part time] for each completed year of continuous service.

8. Separation Arrangements

If the employment of an employee covered by these Workplace Flexibility Arrangement ceases and they owe the Court time for hours paid but not worked then this will be deducted from entitlements due and/or become a debt to the State. Additionally any recreation leave accrued in lieu of public holidays will be calculated and paid on a pro-rata basis for that year.

9. Benefits of the Workplace Flexibility Arrangements

There are a number of benefits to the employer and employees arising from this agreement including:

- **Employer** – this Workplace Flexibility Arrangement provides flexibility with the allocation and management of working hours to support the variations in court sitting periods.
- **Employees** – these Workplace Flexibility Arrangements provide flexibility to employees in balancing the hours they attend for work with other commitments they may have.
- These Workplace Flexibility Arrangements also provide a mechanism for the reconciliation and payment of additional hours worked where they are undertaken above those stipulated in their part-time hours.
- These Workplace Flexibility Arrangements also provide financial benefit for public holidays that employees would not otherwise be rostered to work.

10. Relationship with other Terms and Conditions

This Workplace Flexibility Arrangement does not conflict with other terms and conditions in the TSS Award. Particular consideration is provided to the provisions regarding availability and recall and it is noted that those provisions are not relevant to these arrangements as employees covered by this agreement are not recalled to be available for recall to duties, where notice of potential periods of work is provided by the employer, the employee can elect not to undertake duties during those times.

11. No Disadvantage

These Workplace Flexibility Arrangements do not disadvantage either party. Whilst there is a greater flexibility for either party in relation to the allocation and performance of hours of work, they provide part-time employees certainty regarding the regularity of their remuneration and access to additional recreation leave that they would not normally receive due to their working arrangements.

The capacity of employees to work up to 10 hours per day as ordinary hours is consistent with the existing capacity of employees to work ordinary hours of 10 hours per day under flextime arrangements. Consequently, this is not an unusual feature and is offset by the capacity of the employee to have considerable periods away from the workplace whilst retaining guaranteed fortnightly remuneration for their FTE hours.

Employees retain their capacity to receive overtime payments under those circumstances currently detailed in the TSS Award and whilst inclusion of the capacity for those hours to be treated as ordinary hours is a new feature it relies upon employee choice and is not inconsistent with the time for time treatment of TOIL.

The provision of additional recreation leave on a pro-rata basis is a clear benefit for employees and provides additional offset against the flexibility of the arrangements for allocating hours to be worked.

It is a term of this Flexible Workplace Agreement that no employee is to be disadvantaged by the making of this agreement or by its implementation.

12. Termination of Agreement

This Workplace Flexibility Arrangement may be terminated:

- (i) By the employees or the Department (i) by giving a minimum of four weeks' notice of termination, in writing, to the other party; or

(ii) At any time, by written agreement between the Department and the employees.

13. Signatures

..... Date

Simon Overland
Head of Agency
Department of Justice

..... Date

Employee Name