

## Flexible Work Practices

**Policy Number** 3.070

**Policy Function** Human Resources

**Issue Date** 26 February 2020

**Summary** This policy outlines a range of flexible work practices that may be initiated either by employees or the employer, subject to mutual agreement.

**Responsible Officer** Executive Director Corporate Services

**Applicable Sites**

- Administration Centres
- Community Sites (e.g. Court Liaison Service, Community Integration Team, etc.)
- Health Centres (Adult Correctional Centres or Police Cells)
- Health Centres (Youth Justice Centres)
- Long Bay Hospital
- The Forensic Hospital

**Previous Issue(s)** Policy 3.070 (July 2011; June 2014)

**Change Summary**

- Deletion of NSW Health PD2007\_042 Career Break Scheme for Public Health System Nurses and Midwives, as policy has become obsolete.
- Inclusion of links to Public Service Commission (PSC) Make Flexibility Count Strategic Framework for NSW Government sector and PSC policy guide.
- Deletion of NSW PSC's Flexible Work Practices Policy G1995\_001, as policy has become obsolete.
- Alteration of notification period for cessation of flexible work practice.
- Inclusion of need to gain approval to undertake Time In Lieu (TIL) work arrangement.
- Inclusion reference to support for employees experiencing

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domestic and family violence.

- Additional information in relation to Working from Home arrangements.
- Included information on job sharing arrangements.
- Corrected reference to Working Off Site application form EMP116.

**TRIM Reference** POLJH/3070

**Authorised by** Chief Executive, Justice Health and Forensic Mental Health Network

# 1. Preface

Justice Health and Forensic Mental Health Network (the Network) recognises the provision of flexible work practices may lead to a diverse, skilled and motivated workforce capable of delivering quality and efficient services to the wider community. It is important to recognise that employees value the opportunity to work in an environment that understands they may need to vary their working arrangements in order to meet their family and/or personal obligations. The effective introduction of flexible work practices may also assist the Network to become a preferred employer, which over time may assist to improve staff satisfaction, attraction, recruitment and retention.

This policy provides guidance for Network employees and managers to implement flexible work arrangements that are realistic, operationally manageable and of mutual benefit to the Network and its staff. Flexible Work Practices are not an entitlement for staff, but are a potential benefit to both staff and the Network. No flexible work agreement is to negatively impact on the rest of the employees or service provision.

## 2. Policy Content

### 2.1 Mandatory Requirements

- The required level of health care services must be maintained as determined by Operational, Service or Executive Directors. The Network acknowledges, and employees must understand, not all employees are able to participate in flexible work practices due to limitations such as; the nature of their employment, their physical work location, their role and tasks.
- Approved flexible work practices must be consistent with the provisions of any applicable Industrial Award (includes Agreement or Determination). Many current Industrial Awards provide provisions to enable the types of practices included in this policy to be implemented, with the agreement of employees and/or the Industrial Associations and relevant Health unions.
- Managers are expected to consider the following matters when assessing the suitability of a Flexible Work Arrangement (FWA) Application;
  - Is this a stand-alone or direct customer patient facing role?
  - Team cohesion and the impact on the broader team dynamics
  - Work arrangements outcomes and the allocation of duties, including to other staff members
  - The maintenance and/or enhancement or communication and engagement.
- Approved flexible work practices must be within existing budget provisions. It is the Network's view that any change in working hours requested by employees that result in an increase in the payment of penalty rates or overtime will not be approved.
- The Network reserves the right to approve or not approve applications.

- Each application is considered on its own merit and approval must be based on mutual benefit to the Network, the local workplace and employees, embodying fair, safe, and equitable practices. The impact on the service provision takes priority above all other considerations.
- Participation in flexible work practices must be recommended by a manager, director, Co-Director or Service Director and approved by the Executive Director as per policy [2.022 Delegations Authority](#). Working from Home Arrangements and Career Breaks under the Career Break Scheme (for nursing staff only) must be approved by the Executive Director (ED).
- All flexible work practices must be documented including the details of the issues and conditions with the employee signing the document to record their agreement prior to the flexible work practice commencing. In some cases evidence or supporting information such as a medical certificate, or other documentation may be required.
- This policy provides staff with the opportunity to balance their work commitments with their personal circumstances and therefore, it is expected that sick leave occurrences should not increase. Where instances have been observed of sick leave increasing at any time throughout the duration of the FWA, the manager may undertake a review of the feasibility of the FWA.
- Workforce must be consulted during the development of any practices to ensure that staff will have their work pattern correctly recorded. Without this, there is a risk that staff may be incorrectly paid and their leave accruals incorrectly recorded.
- The Network reserves the right to re-consider and revoke the arrangements, where they are shown to be not in the best interests of the organisation, or the provision of quality and safe services.
- The employee must ensure that all compliance requirements are met when undertaking a Flexible Work Arrangement.
- The employee and manager must complete the *Flexible Work Arrangement Application* and seek approval from the Executive Director ([Form EMP217](#)).
- The employee must complete the *Work Offsite/at a Home Based Location Application* and seek approval from their Executive Director ([Form EMP116](#)).

## 2.2 Request for a Review

Instances where a request for a Flexible Work Arrangement has not been approved by the manager or Executive Director, a review of an outcome may be requested where there are grounds to do so. For example, where new information has become available that may change the outcome. Dissatisfaction with an outcome is not on its own a ground for a review. Where a review is appropriate, it will be undertaken by a member of Workforce or a senior member of management who was not involved in the original decision. This identified reviewer will consider the request raised, along with all relevant information provided in the request.

## 3. Procedure Content

### 3.1 Flexible Work Practice Options

The following is a summary of the flexible work practice options that are available for consideration.

- **Working from Home (see 3.2)** This involves establishing a staff member's place of work at their residence for a defined number of days each week or hours in a work day.
- **Varying Work Hours (see 3.3)** This option enables staff to start and finish outside the traditional start and finish times (i.e. early start – early finish, late start - late finish).
- **Working an Increased Number of Hours per Day but on Fewer Days per Week (see 3.4)** A version of this option is a nine day fortnight.
- **Utilisation of Accrued Additional Days Off (ADO) and Time In Lieu (TIL) (see 3.5)** Certain awards enable staff with approval from their manager, to accrue a number of ADO and TIL.
- **Part Time Leave (see 3.6)** Reducing the number of hours worked by taking leave (including Leave Without Pay).
- **Other Arrangements (see 3.7)** Other arrangements (for example, job sharing) not specifically covered but which are approved by the Network. This recognises that managers and staff may identify a safe work practice that suits their local needs and/or operational service requirements of the Network and/or specific work area.
- **Career Break (see 3.8)** for nursing staff only. This scheme allows nursing staff to have 20% of their net pay deferred over 4 years – allowing them to take the 5<sup>th</sup> year off work and be paid the accumulation of the deferred pay. Refer to [Public Health System Nurses' and Midwives' \(State\) Award](#), clause 56.

Managers and staff should discuss the suitability of implementing one or more of the flexible work practice options. Where agreement is reached in principle, a proposal should be developed by a manager, director, Co-Director or Service Director and approved by the appropriate delegated officer as per policy [2.022 Delegations Authority](#). Career Breaks under the Career Break Scheme (for nursing staff only) must be approved by the CE.

The proposal should include:

- The department and staff involved;
- Consideration of the need to conduct a pilot, or trial over an agreed period of time. The pilot or trial should be documented and used as an evaluation tool to determine the feasibility and/or continuation of the FWA. There should be no agreement to introduce a flexible work practice on a permanent, ongoing basis unless an Industrial / Employment Award / Determination allows for it. These flexible work practices should be reviewed at least annually in conjunction with the performance development and review.
- Acknowledgement that the Network reserves the right to cease the flexible work practice with at least 28 days' notice;
- Comment on consultation and agreement where necessary with staff, including comment on whether all staff will be involved in the arrangement. When not all staff will be involved, the

manager should consider and comment on the issue of equity and any adverse effect on those staff not participating in flexible work practices. It is not necessary for all staff within a work location to be required to participate in flexible work practices;

- Assurances from the manager that the flexible working practice will not incur any additional costs to the Network;
- Proposed roster or working arrangement;
- Agreement between the manager and employee regarding service delivery timeframes and assurances that service delivery will not be adversely affected or impacted;
- Milestones and Key Performance Indicators / Agreements (KPIs);
- a current and ongoing annual performance reviews where the employee must be rated as meeting or exceeding expectations.
- Comment on the benefits to the Service;
- Comment from Workforce.

## 3.2 Working from Home

Working from home may suit some work areas and employees as a short, medium or longer term option. It is acknowledged that not all roles can be undertaken at home, as they may involve direct interface with stakeholders, eg, patients settings, courts, police cells and youth justice centres. It may allow employees to continue their employment during some temporary, unforeseen circumstance which prevents their attending the workplace. It also allows employees to work at home on an ad hoc basis such as when the manager and the employee are in agreement that a certain piece of work can be completed efficiently in this manner. Employees could also use this provision with a temporary disability, or whose disability fluctuates, which prevents their attendance at the workplace.

### 3.2.1 Health and Safety

Under the [Work Health and Safety Act 2011](#), and [Work Health and Safety Regulations 2017](#) the Network is responsible for the health, safety and welfare of a staff member at work and while at the home-based work site.

The entire Network's governing documents, including the Network policy [5.110 Work Health and Safety](#), which apply at the staff member's usual place of work shall, as far as practicable, apply in carrying out work at the homebased work site.

Staff members will be responsible for any and all costs associated with compliance, unless otherwise agreed to, by the Network, in writing. Staff members may seek further advice from the Australian Taxation Office or their tax advisor on claimable items.

Staff members seeking a working from home arrangement must complete a *Work Offsite/at a Home Based Location Application* ([Form EMP116](#)) and seek approval, accurately recording and identifying the area of the private dwelling to be used as the home-based work site and declaring that the home-based work site:

- Conforms to the required Work Health and Safety (WHS) standards;
- Is kept in a clean, professional and safe condition; and

- Has a suitable first aid kit (at the staff member's expense).

The senior manager must review the completed *Work Offsite/at a Home Base Location Application* form ([Form EMP116](#)) with the staff member and assess compliance with the [Work Health and Safety Act 2011](#), and [NSW Work Health and Safety Regulation 2017](#) and associated legislation. The Network will not approve a working from home request in circumstances where acceptable WHS standards are not met. The senior manager together with the staff member must monitor the home-based work site, associated equipment to be used and activities to be undertaken, in accordance with the provisions of the relevant legislation.

### 3.2.2 Points for Consideration

In addition to the principles and procedures previously detailed, the following should also be considered when introducing working from home arrangements:

- The manager and employee need to agree on a work schedule that details how often and on what days of the week, the employee will work from home;
- Whether the duties are suitable for work at home, including the type of work and the amount of work that can be performed at home, and that this work can be completed without direct supervision;
- Working from home whilst providing childcare, including new parents, should only be considered in exceptional circumstances, and on a temporary, short-term basis, where permanent child care arrangements have suddenly changed/ceased. For child care arrangements that are more permanent in nature, alternate flexible work arrangements must be considered which may include; annual leave, leave without pay, change in start finish times, temporary or permanent reduction in hours (for eligible employees).
- Executive Directors are responsible for ensuring that the individual *Application to Work Offsite / at a Home Based Location* form [EMP116](#) is signed prior to employees commencing to work from home. A WH&S assessment is required as part of this agreement. This assessment is to be completed in the first instance by the manager and / or by the employee. *The Application to Work Offsite / at a Home Based Location* form [EMP116](#) completed and returned to the employee's manager;
- Necessary equipment for an employee to safely undertake work at home must be available. The Network will not routinely purchase or provide any additional equipment specifically to support this option other than remote access to the Network's IT network. Office equipment already available may be used. The Network will provide a Network mobile phone if necessary as per the Network policy [2.090 Mobile Telephones, Pagers and Messaging Services](#);
- The need to establish that the person working from home is familiar with safe working practices (SWP) and has the information and/or training necessary to perform the work safely.
- Quality customer/patient services and the need for employees and supervisors/managers to take action to maintain services, e.g. diverting telephones to the home. Client visits at residential addresses will not be supported or encouraged.
- Establishment of communication processes to ensure that employees are aware of developments, milestones and KPIs during the time when they are not at the workplace;

- The implementation of arrangements to manage performance including a current performance development review and performance plan.
- The requirement by the staff member to be flexible and vary their days to attend their usual work location in the event of team meetings, attend conferences, team absences, emergency situations etc. The staff member will be required to maintain/use their usual form of transport to attend their usual work location at short notice/when required.

Staff must be aware of their obligations with regard to the use of the Network Corporate Records when working from home. Refer to the Network policy [2.014 Corporate Records Management](#).

### 3.2.3 Requirements

Working from home agreements must comply with the following requirements:

- There is a designated work area in the home. This is to ensure confidentiality of the work being performed in the home environment is maintained;
- The employee has provided consent for the employer or employer's representative to access (with prior notice) the home based work site if the employee working from home submits a Workers Compensation claim;
- The employee consents for SafeWork NSW inspectors to access the home based work site;
- Compliance with SafeWork NSW requirements;
- Compliance with the statutory obligations of the employer (in regard to WHS, Workers Compensation, Rehabilitation, etc.) for the employee while working from home;
- The employee must have the right to have a union representative or third party present during visits from the employer, appropriately qualified person or WorkCover inspector at the home based work site;
- The Network must be notified within 24 hours or when reasonably practical, of any work related accident, injury, illness or disease arising out of home based work which occurs at the home based work site;
- There must be agreement on the ownership, maintenance and security of any Network equipment, corporate and patient information;
- The employee's conditions of employment remain the same;
- The employee must complete *Application to Work Offsite / at a Home Based Location* form ([EMP116](#)).

## 3.3 The Introduction of Flexible Working Hours

This option creates flexibility in employee commencement and finishing times which may avoid peak traffic periods and provide opportunities to enable employees to meet personal needs.

### 3.3.1 Points for Consideration

In addition to the principles and procedures previously detailed, the following should also be considered when introducing flexible working hours' arrangements:

- Any possible increased costs that may arise, such as increased penalty rates, overtime payments, e-tag costs during peak hours and/or security costs;



- The availability of work that can be performed during the varied hours given access to patients/clients, the restriction on clients visiting residential addresses, the need for supervision, and to work with, or in consultation with, other staff from the Network or agencies. ;
- The need to ensure that a meal break can be taken in accordance with the industrial instrument (usually after five hours);
- Staffing levels necessary to maintain the provision of quality and safe service delivery.
- The requirement by the staff member to be flexible and vary their days to attend their usual work location in the event of team meetings, attend conferences, team absences, emergency situations etc. The staff member will be required to maintain/use their usual form of transport to attend their usual work location at short notice/when required.

### **3.4 Employees Working Compressed Week/fortnight.**

This approach may be considered in a similar way to the introduction of flexible working hours' option explored above. This option allows the employee to work longer hours over less days per week. An example of this is when an employee may work a nine (9) day fortnight.

#### **3.4.1 Points for Consideration**

In addition to the principles and procedures previously detailed, the following should also be considered when introducing increased number of hours worked in a day:

- Any increased costs that may arise, such as increased penalty rates, overtime payments and/or security costs;
- The availability of work that can be performed during the varied hours;
- The need to ensure that appropriate meal breaks can be taken in accordance with the industrial instrument (usually after five hours);
- Staff must not accrue hours towards taking an Additional Day Off (ADO) when working a compressed week/fortnight. The total number of working hours for employees working a compressed week is 38hours and for a compressed fortnight 76hours.
- Fixed rosters such as the ten hours shift patterns worked by nurses are not included under flexible arrangements and continue to participate in ADO cycle;
- Staffing levels necessary to maintain service provision.

### **3.5 Utilisation of Accrued ADOs and Time in Lieu**

#### **3.5.1 Additional Days Off (ADO)**

Staff eligible to take an ADO may, by agreement with their manager, accrue up to three (3) ADOs. These accrued ADOs can be taken at a time agreeable to both the staff member and their manager in line with operational requirements and needs. Award provisions should be followed when accrued ADOs aren't taken.

#### **3.5.2 Time in Lieu (TIL)**

Staff who are eligible for and request accrual of TIL on ad hoc occasions are normally required to take the time off as soon as practicable and with the agreement of their manager. An example of

TIL is when an employee will request to leave one hour early from work, and will agree to make up this time the following day.

Employees must seek manager or higher approval prior to the accrual of TIL.

### 3.5.3 Time in Lieu (TIL) of Payment of Overtime

All overtime and TIL must be approved prior to it being worked and should be fairly distributed among all staff. In emergent situations, prior approval may not always be possible and should be discussed with the delegated manager as soon as practicable. For all overtime approval delegations refer to the Network Policy [2.022 Delegations Authority](#).

The option of taking TIL will not be possible in all settings and circumstances. Manager approval for accruing and taking of TIL requires prior mutual agreement of the staff member and manager. All effort must be made to ensure the TIL is taken within the pay period in which it occurred. In cases where this is not possible it must then be taken within three months via a roster adjustment form. For further information about TIL please refer to [PD2019\\_010 Leave Matters for NSW Health Service](#).

The minimum amount of TIL that can be accrued is 30 minutes. The maximum total amount of TIL that can be accrued is one shift of standard length for any employee.

Roster managers are required to document and review TIL balances on a weekly basis in order to monitor and manage TIL balances.

Managers must roster any accrued TIL within three months. Staff requesting to take accrued TIL must seek approval from the manager or delegate who has the appropriate approval authority.

All TIL is subject to the following requirements:

- Roster managers are responsible for managing and recording TIL balances;
- TIL must be taken within three months of it being accrued at ordinary rates;
- Where a staff member cannot take the TIL within three months it will be paid out at the overtime rate via the roster adjustment form;
- Staff members cannot be forced to take time off in lieu of overtime;
- Taking of TIL should not impact on service delivery;
- TIL is taken by way of equal time off in lieu of actual overtime hours worked, i.e. one hour off for one hour overtime worked, regardless of penalty rates when the time was accrued;
- For TIL to be taken as a full shift this needs to be submitted / requested via the Network leave form.

### 3.5.4 Points for Consideration

In addition to the principles and procedures previously detailed, the following must also be considered when using accrued ADO and/or TIL arrangements:

- The need for employees to be available to cover the entire operational period of the work unit;
- Certain employee classifications are not entitled to ADO or TIL;
- Staffing levels necessary to maintain service provision;

- [2.022](#) *Delegations Authority, 5.13 Flexible Work Practices* should be consulted by the manager.

### 3.6 Part Time Leave (including leave without pay)

This provision would enable employees to work a reduced portion of a day and/or a reduced number of days. Using available leave or taking leave without pay could cover the period of time not worked.

#### 3.6.1 Points for Consideration

In addition to the principles and procedures previously detailed, the following must also be considered when introducing part time leave arrangements:

- The need for employees to be available to cover the entire operational period of the work unit;
- The effect on staff salary and leave accruals when leave without pay is taken;
- Staff should seek independent financial advice in relation to impacts on their superannuation.

### 3.7 Other Arrangements

This provision is meant to cover initiatives not specifically addressed above, which may be mutually beneficial for the Network and employees. These arrangements may be ad hoc and include varying work locations (agile working) that might better suit employees travel arrangements or varying start and finish hours providing better work life balance. In a memorandum ([M2018-03-Support for Employees Experiencing Domestic and Family Violence](#)) issued by the department of Premier & Cabinet in December 2018, it advised that work place flexibility arrangements can be utilised to support employees experiencing domestic and family violence.

#### 3.7.1 Points for Consideration

In addition to the principles and procedures previously detailed, the following should also be considered when introducing other arrangements:

- Advice should be sought from Workforce;
- The manager and employee need to agree on a work schedule that details how often and on what days of the week, the employee will work at various locations;
- Whether the duties are suitable for work at various locations, including the type of work and the amount of work that can be performed, and that this work can be completed without direct supervision;
- Where duties are suitable for work at various locations (agile working), suitable provisions are made, including ensuring that a desk and equipment are available;
- When used to support employees experiencing domestic or family violence some supporting requirements need to be met such as, court, police or legal service documents. In cases where the matter is not known to court or police a medical certificate from a treating practitioner can be provided;
- Ensure management and communication considerations can be met;
- Staffing levels necessary to maintain service provision.

### 3.8 Career Break – (for nursing staff only)

This scheme is included in the [Public Health System Nurses' & Midwives' \(State\) Award 2018](#) award and allows nursing staff to have 20% of their net pay deferred over four (4) years – allowing them to take the 5<sup>th</sup> year off work and be paid the accumulation of the deferred pay. The 20% deferred salary will be placed into a bank account managed by the Network. Temporary and casual staff are not eligible to participate in this scheme. Refer to [Career Break Scheme for Public Health System Nurses and Midwives, clause 56](#) for further information.

Staff are unable to access the deferred salary over the four year period unless they choose to withdraw from the scheme.

#### 3.8.1 Points for Consideration

In addition to the principles and procedures previously detailed, the following should also be considered when allowing staff to participate in the career break scheme:

- The Network is able to limit the number of staff participating in the scheme to maintain service delivery;
- The manager supporting the application and the participating employee need to acknowledge they have read and understand the implications detailed in the relevant nurses' award clause;
- In applying to participate in the scheme, staff will need to acknowledge they have considered the financial implications of receiving 20% less net pay over the four year period.

### 3.9 Job Share

A full time role is undertaken by two or more employees who are paid on a part-time basis for the hours they work. Managers and staff may identify a practice that suits their local needs, operational service requirements of the Network and/or specific work area.

#### 3.9.1 Points for Consideration

In addition to the principles and procedures previously detailed, the following must also be considered when introducing part time leave arrangements:

- The need for employees to be available to cover the entire operational period of the work unit;
- Work outcomes and work deadlines are agreed and reviewed on an ongoing basis and are aligned to the Network's and Directorates priorities and strategies;
- Ensure management and communication protocols are established between the parties to the FWA;
- Staffing levels necessary to maintain service provision are assured;
- Increased costs that may arise, such as increased penalty rates, overtime payments and/or security costs;
- The ownership of work and use of shared Network resources documented;
- Employees skills and experiences must align to the role's position description

- Where appropriate, job sharing arrangements must follow procedural guidelines in accordance with NSW Health [PD2017\\_040](#) *Recruitment and selection to staff to the NSW Health Service*.

## 4. Definitions

### Must

Indicates a mandatory action to be complied with.

### Should

Indicates a recommended action to be complied with unless, there are sound reasons for taking a different course of action.

### Stakeholders

Involved direct person to person clinical care in mental and custodial health.

## 5. Legislation and Related Documents

### Legislations

[NSW Health Services Act 1997](#)

[Work Health and Safety Act 2011](#)

[NSW Health Sector Industrial Awards](#)

[Public Health System Nurses' and Midwives \(State\) Award](#)

[Work Health and Safety Regulations 2017](#)

### The Network Policies and Procedures

[2.014](#) *Corporate Records Management*

[2.022](#) *Delegations Authority*

[2.002](#) *Acceptable Use of Communication Systems*

[2.090](#) *Mobile Telephones, Pagers and Messaging Services*

[5.110](#) *Work Health and Safety*

### The Network Forms

[EMP116](#) *Application to Work Offsite / at a Home Based Location*

[EMP217](#) *Flexible Work Arrangement Application*

### NSW Health Policy Directives, and Guidelines

[IB2017\\_040](#) *Leave for Declared Natural Disasters or Emergencies*

[PD2019\\_010](#) *Leave Matters for NSW Health Service*.

### Others

NSW Public Service Commission's *Make Flexibility Count Strategic Framework for NSW Government Sector* contains NSW Public Service Commission's *Flexible Working Policy Guidance document* [PSC Policy guide](#)

NSW Public Service Commission, *Flexible working* [PSC Flexible](#)

[Working Works for Me Works for NSW](#)

NSW Public Service Commission [PSC at a glance No 6 Planning and Arranging Work](#)

Premier & Cabinet, Memorandum [M2018-03-Support for Employees Experiencing Domestic and Family Violence](#)