

NSW Rural Fire Service Bulletin, March 2021: Consent Award vs Arbitrated Award

The PSA has been negotiating a new Award on your behalf with the Rural Fire Service (RFS) for the past three years. Despite this extensive timeframe, there is still a significant amount of work to be done.

At the last report back to the Industrial Relations Commission (IRC), the Chief Commissioner requested that, in light of the exceptionally long period of negotiations, the PSA advise whether the Award would be arbitrated or whether the parties were content to continue to negotiate a consent Award. The PSA is to advise by 25 March 2021.

For those who don't know, an Award can be created in one of two ways: either by agreement between the PSA and RFS (consent Award), or by order of the Commission (an arbitrated Award).

We request that you read the below overview of the Award and complete the survey [HERE](#) to have your say on how we proceed. The survey will close on the 18th March 2021.

Overview

The PSA and RFS started formal negotiations for a new Award on 11 March 2018. Since that date your delegates have been meeting with the RFS representatives on a regular basis. As a result of these meetings, the following agreed position has been reached:

- A flexible working hour system will be established enabling accrued hours to be taken as flex days.
- A higher accrual rate of flex hours for directed weekend work to recognise the difference between week days and weekends.
- A fair hourly retainer for duty officers.
- A fair hourly rate for incidents (an incident allowance).
- Clarity in regard to incident conditions – further negotiations in relation to the structure of incident conditions and when they apply, are yet to be undertaken and agreed between the parties.
- The ACA – its future ability to equitably and consistently be applied across the organisation have been a particular point of discussion. This has brought into focus the equity and fairness of a revised system based on the principles of the *Crown Employees (Public Service Conditions of Employment) Award 2009* that will compensate staff for activities undertaken.

The PSA and RFS have not been able to reach agreement on the following:

- If overtime is payable within the bandwidth of the flexible working system.
- Trigger points for when incident conditions apply.



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To finalise the Award, the remaining steps are to be completed:

- Obtain bargaining parameters (see below)
- Inform and consult with staff members
- Review feedback
- Draft ICT requirements
- Draft Award and flexible working agreement
- Approval by RFS executive, WPT and PSA (via a ballot of all PSA members in the RFS).
- Final Award lodged by consent of the PSA and RFS with the Commission.

It is the RFS's position that work on these remaining steps cannot commence until bargaining parameters are obtained.

Bargaining parameters are a set of boundaries within which the RFS is permitted by NSW Treasury to negotiate an Award with the PSA. Under Treasury Circular 14/18 'NSW Public Sector Wages Policy 2011' the RFS was required to obtain these parameters before we started negotiations. The RFS failed to do so. As a result of this failure, the remaining steps for the finalisation of a consent Award have waited in abeyance since October 2020.

According to the RFS, the Wages Policy Taskforce (WPT) has committed to determine the application for bargaining parameters in the beginning of the week starting 22 March 2021.

Members should note, the WPT cannot issue bargaining parameters that exceed the NSW Public Sector Wages Policy 2011 and employee related costs increases are capped at 2.5 per cent. The 2.5 per cent is typically reserved for the annual salary increase that the PSA fight for each year. Therefore, changes to Awards must be cost neutral.

Consent v Arbitration: What are the benefits?

The benefit of a consent Award is that the parties decide the Award. In other words, the parties have complete control of how the Award turns out. The downside of a consent Award is that, by its very nature, it requires the parties to agree. If either party is unwilling to move from their respective position, an impasse is created which prevents the progression of the Award.

The benefit of an arbitrated Award is that the Commission, by determining the Award by arbitration, overcomes any impasses between the parties. The downside of an arbitrated Award is that the parties don't determine the Award themselves, the parties simply argue their positions in an attempt to persuade the Commission.



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Our advice

As you will see, the attached survey identifies 4 scenarios and seeks your input on how you would prefer to proceed with the Award in each scenario. The scenarios are based on the likely outcomes in respect to the bargaining parameters, these are:

1. The WPT approves bargaining parameters;
2. The WPT declines bargaining parameters;
3. The WPT approves bargaining parameters which are inconsistent with the Award negotiated thus far;
4. The WPT delays in determining bargaining parameters.

It is the view of your delegates and PSA staff that a consent Award, if obtainable in a reasonable time frame, is preferred. However, if the process to obtain a consent Award becomes too protracted, which will be the case if bargaining parameters are declined or if there are any other unacceptable delays, then it is in our interests to obtain an arbitrated Award which improves conditions and resolves the unfairness of the current Award. This view can be summarised as:

1. Continue to seek a consent Award provided that the WPT approves parameters which are in line with what the PSA and RFS have negotiated thus far and that there are no further delays that hinder the finalisation of the Award by consent.
2. If the WPT declines bargaining parameters or delays providing bargaining parameters, the Award should be arbitrated.

Your say

Please follow the link [HERE](#) to have your say on how we proceed.

The PSA represents the views of our members, so if you are not yet a member but would like to have a say on your pay and conditions, join the PSA today at www.psa.asn.au/join.

