

Epiq:DAT

IN THE INDUSTRIAL RELATIONS COMMISSION  
OF NEW SOUTH WALES  
FULL BENCH

CHIEF COMMISSIONER CONSTANT  
COMMISSIONER SLOAN  
COMMISSIONER MUIR

PARRAMATTA: WEDNESDAY 14 JUNE 2023

**2022/00112772 - CROWN EMPLOYEES (OFFICE OF THE DIRECTOR OF  
PUBLIC PROSECUTIONS, FLEXIBLE WORKING HOURS) AWARD 2022**

Awards, new award application, s 10

**DECISION**

SLOAN C: The Full Bench has determined to refuse the applicant leave to re-open its case.

Before coming onto the bench today, the members of the Full Bench had the opportunity to consider the written submissions which had been filed by the parties as well as the two further affidavits which the applicant seeks to read. We have been further assisted by oral submissions from counsel for the parties today. We are not persuaded that the additional evidence on which the applicant seeks to rely has any significant relevance and probative value to the questions requiring determination by the Commission in these proceedings.

The applicant seeks that the Commission make an award that would prevent solicitors in the Office of the Director of Public Prosecutions forfeiting flex leave. It has adduced a significant amount of evidence which, it submits, demonstrates that the forfeiture of flex leave is of such magnitude across the ODPP as to warrant the Commission's intervention. We do not consider that further evidence as to concerns more broadly about "workload issues" in the ODPP, limited as it is, will further assist the Commission in its task.

The applicant contends that the new evidence is responsive to the

Epiq:DAT

respondent's case theory which, it is said, is to deny the existence of work overload issues. It is further contended that the Director of Public Prosecutions has made public statements which are inconsistent with the position taken in these proceedings. Even if the applicant's description of the respondent's case theory is correct and its assertions as to the conduct of the Director of Public Prosecutions outside this Commission are correct, it will do little to advance the case put by the applicant.

Rather, allowing the applicant to adduce the evidence, runs a very real risk of the parties and of the Commission becoming embroiled in potentially fruitless debate as to whether the parties mean the same thing when the applicant refers to "work overload" and the respondent refers to "workload issues" and whether any steps taken by the respondent in respect of workload issues are germane to the question as to whether or not the Commission ought to make the award sought by the applicant.

That is our decision.