

SERIAL CXXX

**CROWN EMPLOYEES (OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS,
FLEXIBLE WORKING HOURS) LEGAL OFFICERS AWARD 2023**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Service Association and Professional Officers' Association Amalgamated Union
of New South Wales
(Case No...112772..... of 2022)

Before Commissioner

[DATE]

AWARD

PART A – GENERAL

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Clause No. Subject Matter

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2. Title

This Award shall be known as the *Crown Employees (Office of the Director of Public Prosecutions, Flexible Working Hours) Legal Officers Award 2023*.

3. Definitions

- 3.1 *Accrued Work Time (AWT)*** is all time worked by Legal Officers within the Bandwidth during a Settlement Period.
- 3.2 *Bandwidth*** is the period during the working day when Legal Officers may work, record and accrue credit for time worked in accordance with clause 6.
- 3.3 *Conditions Award*** means the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009* as amended from time to time.
- 3.4 *Contract Hours*** for a Settlement Period shall be calculated by multiplying the Legal Officer's weekly contract hours by the number of weeks in the Settlement Period. Legal Officers working full-time are contracted to work 35 hours per week.
- 3.5 *Core Time*** is the period during the day when a Legal Officer may be required to be on duty.
- 3.6 *Director*** means the Director of Public Prosecutions (NSW).
- 3.7 *Executive*** means the Public Service Senior Executives and Statutory Officers with managerial responsibility over Legal Officers.
- 3.8 *Flexible Working Hours Credit*** means the time which exceeds the contract hours for a Settlement Period.
- 3.9 *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.
- 3.10 *Flex Leave*** means those periods of time that Legal Officers may, subject to the approval of the Legal Officer's Manager and the principles of the Award absent themselves from work by using Flexible Working Hours Credit.
- 3.11 *Flex Year*** means the 12 month period commencing from the Settlement Period ending in February each year.
- 3.12 *Legal Officer*** means every non-executive employee employed at the ODPP as a lawyer, legal officer, or solicitor (however described) under the *Crown Employees-Legal Officers (Crown Solicitor's Office, Legal Aid Commission Staff Agency, Office of the Director of Public Prosecutions and Parliamentary Counsel's Office) Reviewed Award* and the Office of the Director of Public Prosecutions NSW Prosecution Officer (Lawyer) Level 5 – Step 1 and Prosecution Officer (Lawyer) Level 4 – Step 3 – Section 52(1) Determination No. 2 of 2023.
- 3.13 *Manager*** means the supervisor or Manager of the Legal Officer with responsibility of approving time sheets.
- 3.14 *Minimum Daily Contract Hours*** for full-time staff means 7 hours of work, excluding meal breaks.
- 3.15 *ODPP*** means the Office of the Director of Public Prosecutions (NSW).
- 3.16 *Overtime*** has the meaning set out in Clause 12 below.

- 3.17** *PSA* means the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales
- 3.18** *Settlement Period* refers to each six-week period commencing from 4 December 2023.
- 3.19** *Standard Hours* are from 9:00 am to 5:00 pm, Monday to Friday, with a lunch break of up to 1 hour or any 8 consecutive hours within the Bandwidth with up to an hour for lunch as agreed by Legal Officer and their Manager.

4. Parties

- 4.1** The parties to this Award are the PSA and the Director.

5. Coverage

- 5.1** This Award applies to all Legal Officers employed by the ODPP.
- 5.2** Legal Officers are entitled to the conditions of employment as set out in this Award and, except where inconsistent with this Award the conditions provided for under the Conditions Award.
- 5.3** This Award prevails over the Flexible Work Hours Agreement 2015.

6. Bandwidth

- 6.1** The Bandwidth is from 7.30 am to 6:30 pm, Monday to Friday.
- 6.2** For the purposes of accrual under Clause 9, time will not be credited to Legal Officers for attendance outside the Bandwidth.

7. Daily Hours Worked

- 7.1** The standard core time is 9:30 am to 3:30 pm.
- 7.2** The standard core time may be varied by mutual agreement between a Legal Officer and their Manager.
- 7.3** With the prior approval of their Manager, Legal Officers may commence work after the standard core start time or leave work before the standard core finish time.
- 7.4** Subject to clause 11.5, Legal Officers are entitled to work their Minimum Daily Contract Hours on any normal working day. A Legal Officer cannot be directed to work less than the Minimum Daily Contract Hours on any normal working day. However, depending on the operational requirements of the unit, a Manager may require Legal Officers to work at least their Minimum Daily Contract Hours.
- 7.5** A Legal Officer may, subject to the approval of their Manager, elect to work Standard Hours or Minimum Daily Contract Hours with fixed starting and finishing times.
- 7.6** A Legal Officer may vary their working hours at any time, subject to the approval of the Manager and in accordance with the provisions of this Award.

7.7 Nothing in this Award shall prevent the ODPP from requiring a Legal Officer to work Standard Hours or limit flexible working hours arrangements where:

7.7.1 operational demands so require (eg. if work is unavailable before 9:00 am, a Legal Officer may be directed to commence work from that time); or

7.7.2 repeated breaches of the provisions of this Award occur (eg late arrivals, extended lunch periods, flex debits); or

7.7.3 the Director finds the Legal Officer is not observing the terms of this Award.

8. Lunch and meal breaks

8.1 A Legal Officer must take a meal break of at least 30 minutes, after no more than 5 hours of continuous work.

8.2 The standard entitlement for a lunch break is 1 hour, and with approval of the Legal Officer's Manager may be extended up to 2.5 hours and shall be taken between 11:30 am to 2:30 pm.

8.3 The scheduling and duration of lunch breaks are subject to the operational requirements of the work unit, the needs of the Legal Officer, and the approval of the Legal Officer's Manager.

9. Accrual of work time within the Settlement Period

9.1 A Legal Officer may only accumulate Flexible Working Hours Credit in excess of the Minimum Daily Contract Hours where a Manager is satisfied that work is available.

9.2 Legal Officers must record their hours worked in the flex system daily, or as soon as reasonably practicable. Unless there are exceptional or unforeseen circumstances, Legal Officers must submit their completed flex sheets for approval within 3 working days of the end of each Settlement Period. In addition, all leave sought to be taken in a Settlement Period must be applied for and approved by a Legal Officer's Manager before the end of that Settlement Period, unless there are exceptional or unforeseen circumstances.

9.3 Managers are responsible for approving flex sheets within 3 working days after the flex sheet has been submitted in accordance with clause 9.2.

9.4 All time worked during the Settlement Period in accordance with this Award (except paid overtime, but including accrued flex leave that is paid as overtime in accordance with clause 9.10) will count towards the Legal Officer's AWT.

9.5 A Legal Officer cannot have in excess of 10 hours Flexible Working Hours Debit at the conclusion of any Settlement Period. The 10 Flexible Working Hours Debit includes all credited AWT and all approved leave. Where Flexible Working Hours Debit is greater than 10 hours at the end of the Settlement Period, the Legal Officer will be required to utilise recreation leave to cover the shortfall in hours. If the Legal Officer has no leave available, leave without pay (LWOP) will apply for the greater than 10 Flexible Working Hours Debit, and the LWOP is credited to the AWT total. Legal Officers with greater than 10 Flexible Working Hours Debit over 2 Settlement Periods will be monitored and may be directed to work Standard Hours.

- 9.6** Subject to clauses 9.8 and 9.9, a Legal Officer is entitled to carry forward up to a maximum of 50 Flexible Working Hours Credit into a Settlement Period.
- 9.7** Hours worked are to be monitored by the Legal Officer and Manager throughout each Settlement Period, through the use of flexitime records and time sheets, and Managers and Legal Officers will work together to ensure that Legal Officers do not accrue more than 50 Flexible Working Hours Credit in a Settlement Period.
- 9.8** If it is likely that at the end of the Settlement Period the Legal Officer will have more than 50 Flexible Working Hours Credit, the Manager and Legal Officer must devise a strategy in writing to ensure that the Legal Officer is able to use the Flexible Working Hours Credit as Flex Leave so as to avoid the Legal Officer accruing more than 50 Flexible Working Hours Credit.
- 9.9** If, notwithstanding clause 9.7 and 9.8, the Legal Officer has more than 50 Flexible Working Hours Credit at the end of any Settlement Period, the Manager and the Legal Officer are to have a discussion as to whether there are half days or days in the following Settlement Period that can be taken as Flex Leave that will have the effect of reducing the total Flexible Working Hours Credit to fewer than 50 hours.
- 9.10** If the Manager and the Legal Officer cannot, or do not, agree on half days or days that can be taken as Flex Leave in the next Settlement Period in accordance with clause 9.9, then any Flexible Working Hours Credit over 50 hours will be paid as overtime and removed from accrued Flexible Working Hours Credit.
- 9.11** The identified strategy in clause 9.8 and/or the written record in clause 9.8 must be reported to and authorised by the relevant Executive. Authorisation can occur after the strategy or the choice recorded in writing has been implemented.
- 9.12** For the purpose of this clause, any Flexible Working Hours Credit over 50 hours to be paid as overtime is to be paid at the rate of time and one-half at the Legal Officer's salary (including any Temporary Assignment Allowance) as at the date the Flexible Working Hours Credit is accrued.

10. Flex leave entitlements

- 10.1** Except as provided for in clause 10.5 below, subject to the convenience of the ODP, Legal Officers can take up to a maximum of 5 Flex Leave days in any Settlement Period. This time may be taken together with other forms of leave. The issue of when Flex Leave is taken should be agreed between the Legal Officer and the Manager to ensure service is maintained. The 5 Flex Leave days may be taken as either full days or half days or combinations of either. A Legal Officer does not receive any credit towards their accrued work time when taking Flex Leave.
- 10.2** Except as provided for in clause 10.5 below, the maximum number of Flex Leave days that can be taken consecutively is 5 working days subject to:
- 10.2.1** Where a Legal Officer's recreation leave balance is in excess of the maximum accrued limits as specified in Premier's Memorandum 2012-07 (or any subsequent determination related to excess recreation leave accrual) no Flex Leave days may be taken.
- 10.3** The maximum number of Flex Leave days that can be taken over a Flex Year is 30 days.

10.4 Legal Officers are permitted to carry up to a maximum of 50 Flexible Working Hours Credit throughout the Flex Year. In accordance with clause 9.10, any Flexible Working Hours Credit above 50 at the end of a Settlement Period will be paid as overtime.

10.5 The restrictions on the taking of Flex Leave in clauses 10.1, 10.2, 10.3 and 10.4 will not apply in circumstances when it would result in a Legal Officer accruing more than 50 Flexible Working Hours Credit in a Settlement Period. This includes Flex Leave taken either at the request of the Legal Officer or as directed by their Manager. This clause is subject to clause 9.

11. Scheduling flex leave

11.1 The taking and scheduling of Flex Leave will be made in an equitable, transparent and fair manner that takes into account its impact on co-workers.

11.2 The scheduling of Flex Leave is to be agreed between the Legal Officer and their Manager.

11.3 Subject to the operational requirements of the group/office/unit, a Legal Officer may vary working hours to suit their particular needs or absent themselves from work using Flex Leave. Subject to the operational requirements of their work unit, a Legal Officer may schedule their approved Flex Leave as consecutive single days, single days or half days, up to a total of 5 days at any one time (consecutive or otherwise).

11.4 Flex Leave can be taken with other forms of leave. Flex Leave can be taken before or after paid leave but may not be taken at the end of a period of unpaid leave.

11.5 A Manager can direct a Legal Officer to take Flex Leave and a Legal Officer cannot refuse a reasonable request.

11.6 A Manager can refuse Flex Leave for operational reasons or if it is likely to lead to more than 10 Flexible Working Hours Debit.

11.7 To assist with planning, reasonable notice must be given of the Legal Officer's intention to take Flex Leave. If Flex Leave requests cannot be accommodated, alternative arrangements should be agreed between the Legal Officer and their Manager. Approval in the ODPP's applicable Human Resources management system must be obtained from the appropriate Manager as soon as practical.

12. Overtime

12.1 The rate of Overtime will be paid in accordance with clause 90.2 and 95 of the Conditions Award.

12.2 All hours worked outside the Bandwidth will be paid as Overtime subject to the following:

12.2.1 The hours worked outside of the Bandwidth must be reasonable and necessary for the proper performance of the Legal Officer's duties.

12.2.2 A Legal Officer must take all reasonable steps to obtain prior approval from their Manager to work overtime. Approval to work overtime will not unreasonably be withheld. A failure by a Manager to respond to a request for approval, provided that the request has been made in a timely manner, will be taken to be approval. A Manager must provide written reasons for any refusal to approve overtime.

12.2.3 Prior approval to work overtime will not be required in the case of unforeseen or exceptional circumstances, that preclude a Legal Officer seeking such approval. In that case, the Legal Officer must endeavour to notify their Manager that they worked overtime as soon as practicable after having done so and explain to their Manager why it was not possible to obtain prior approval.

12.2.4 If a Legal Officer routinely seeks approval to work overtime, their Manager should meet with them to discuss their workload and why their work is unable to be performed during contract hours.

13. Separation from the Office

13.1 Where a Legal Officer gives notice of resignation, retirement or transfer to another government department, the Manager and the Legal Officer will, during the period of notice take all necessary steps to eliminate any Flexible Working Hours Credit or Debit.

13.2 On resignation or separation from the Office, the notice period may be increased by the number of Flexible Working Hours Credit held by the Legal Officer, up to 50 hours, to ensure credits are reduced by the last day of duty.

13.3 Where a Legal Officer has Flexible Working Hours Debit at the completion of the last day of service, the accumulated recreation leave or monies owing to that Legal Officer will be adjusted accordingly.

13.4 A Legal Officer will receive payment for Flexible Working Hours Credit accrued and remaining untaken on the last day of service:

13.4.1. Where the Legal Officers services terminate without a period of notice for reasons other than misconduct; or

13.4.1 Where Flex Leave was not able to be used by the Legal Officer to reduce the Flexible Working Hours Credit to zero.

13.5 Where it is requested by the Legal Officer and agreed by the new agency, the Legal Officer's Flexible Working Hours Credit may be carried forward to the new agency.

14. Legal Officers transferring to the Office

14.1 Individuals transferring or returning to the ODPP from another agency cannot transfer Flexible Working Hours Credit or Debit to the ODPP.

15. Part-time staff

15.1 Part-time Legal Officers, including those in job sharing arrangements, may have access to flexible working hours arrangements where appropriate. Where flexible working hours are appropriate working hours credit and debit limits and the periods of flex leave permitted, will be the same as for a full-time Legal Officer.

15.2 Part-time Legal Officers may not be directed to work more than their pro rata contract hours.

15.3 All other provisions of this Award apply to part-time Legal Officers.

16. Consultative Committee

16.1 A consultative committee comprising an equal number of representatives from the ODPP and PSA will be formed. The consultative committee will meet at least twice a year to review the impact of the Award on the hours of work and workload of Legal Officers.

17. Monitoring and varying the Award

17.1 The parties shall co-operate in the monitoring and operation of the Award.

Statistics on working hours are to be provided in writing to both management and the Consultative Committee, and the Public Service Association delegates and representatives, including but not limited to:

17.1.1 Identifying the number of Legal Officers who have 50 Flexible Working Hours Credit during the Settlement Period.

17.1.2 Confirming whether or not a written strategy was put in place for each of the said Legal Officers.

18. Grievance and Dispute Settling Procedures

18.1 All grievances and disputes relating to the provisions of this Award shall 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 the appropriate department, if required.

18.2 A Legal Officer is required to notify in writing their immediate Manager, as to the substance of the grievance, dispute or difficulty, request a meeting to discuss the matter, and if possible, state the remedy sought.

18.3 Where the grievance or dispute involves confidential or other sensitive material (including issues of harassment or discrimination under the Anti Discrimination Act, 1977) that makes it impractical for the Legal Officer to advise their immediate Manager the notification may occur to the next appropriate level of management, including where required, to the Division Head or delegate.

18.4 The immediate Manager, or other appropriate officer, shall convene a meeting in order to resolve the grievance, dispute or difficulty within two (2) working days, or as soon as practicable, of the matter being brought to attention.

18.5 If the matter remains unresolved with the immediate Manager, the Legal Officer may request to meet the appropriate person at the next level of management in order to resolve the matter. This Manager shall respond within two (2) working days, or as soon as practicable. This sequence of reference to successive levels of management may be pursued by the Legal Officer until the matter is referred to the Division Head.

18.6 The Division Head may refer the matter to the Secretary of the Premier's Department for consideration.

18.7 If the matter remains unresolved, the Division Head shall provide a written response to the Legal Officer and any other party involved in the grievance, dispute or difficulty, concerning action to be taken, or the reason for not taking action, in relation to the matter.

18.8 A Legal Officer, at any stage, may request to be represented by the PSA.

18.9 The Legal Officer or the PSA on their behalf, or the Division Head may refer the matter to the New South Wales Industrial Relations Commission if the matter is unresolved following the use of these procedures.

18.10 The Legal Officer, PSA, and Secretary of the Premier's Department shall agree to be bound by any order or determination by the New South Wales Industrial Relations Commission in relation to the dispute.

18.11 Whilst the procedures outlined in clauses 18.1 to 18.10 of this clause are being followed, normal work undertaken prior to notification of the dispute or difficulty shall continue unless otherwise agreed between the parties, or, in the case involving occupational health and safety, if practicable, normal work shall proceed in a manner which avoids any risk to the health and safety of any Legal Officer or member of the public.

19. Incidence and Duration

19.1 The Award takes effect from 4 December 2023 and will remain in force for a period of three years.