Questions Raised During Information Sessions on the

ACT Public Sector Legal Professionals Enterprise Agreement 2018-2021

During the information sessions on the proposed ACT Public Sector Legal Professionals Enterprise Agreement 2018-2021 (the Agreement) several questions have been raised. For the benefit of those staff members not able to attend they are covered below.

*Will the details of how a particular work area votes be able to be identified?*

* No. The ballot is returned as an overall figure for the whole agreement. Individual ballots are not known nor are they collated to identify the ballot outcome at any level lower than for the Agreement as a whole.

*How does an Agreement ballot work?*

* The Fair Work Act 2009 requires a relative majority – 50% + 1 of those people who vote.
* We will know the outcome on the day the ballot closes (10 December) or at the latest, the next day.

*What is the Classification Review?*

* The Government has agreed to conduct a whole of government review of the classifications used in the ACTPS to assess:
  + impact of historic percentage-based pay increases on low paid workers;
  + efficacy of some shared salary spines;
  + changes over time in relative work value of certain classifications;
  + market competitiveness (to inform future pay strategies); and
  + codification of work levels within Work Level Standards or Descriptors based on work value
* The whole of government review will look at the overall structures.
* Applications for individual classification reviews, and reviews for groups of classifications, are still able to be made at any time through the existing framework in clause D3 of the Agreement.

*What happens if a ‘no’ vote is recorded?*

* The parties return to the bargaining table. How long it would take to reballot the Agreement is not known as it would depend on the success of the negotiations.

*Why are some conditions of employment different between some agreements and even within agreements?*

* The ACTPS employment framework provides a common base of employment conditions negotiated centrally, but with the flexibility to negotiate different outcomes through the schedules based on the needs of particular workplaces. This is in recognition of the fact that the ACTPS covers a wide range of functions and work, which don’t all fit neatly into the same employment framework.
* Enterprise Agreements used to be negotiated on a directorate basis, but were brought into the current framework of 18 ACTPS enterprise agreements in 2013. While this has provided for greater consistency, there are still historical differences that continue to be applied in some areas.

*The CPSU is seeking to introduce flextime for Prosecutor 1 and 2 in the DPP to deal with the additional hours worked by Prosecutors from time to time. What was flextime designed for?*

* Flextime was not designed for short periods of longer hours. It was designed to replace rigid standardised start/finish times with the ability to start/finish at different times to accommodate lifestyle and other needs. The intention was to provide flexibility to move working hours over the course of the week, but still average the same number of hours over time.
* Further, flextime only measures hours in the office – it does not measure the nature of the work, how the work is done, nor the effect of the work on the individual.
* In addition, while flextime provides flexibility to take short term periods of time off (for example to attend a school event), every minute must be recorded on a flex sheet which creates a rigid accounting system. Workplaces have over time become significantly more flexible and short term flexibility for workers not on flextime is managed locally without recourse to time sheets. This is also the case in the DPP.

*How does the DPP propose to address additional hours worked?*

* The DPP recognises that the hours worked by Prosecutors can at times be long and has proposed an approach tailored to its needs. The disagreement in this matter is not about whether Prosecutors work additional hours from time to time – it is about the best way to address and mitigate those hours.
* Clause N11 provides provisions which set up a scheme where Prosecutors will notify the details of additional hours worked. This will prompt a discussion aimed at examining why the hours have been worked and how that may be avoided or mitigated. In addition, the effect the work might have on the individual’s health and wellbeing will also be discussed. From that an allocation of hours will be credited to the employee to be taken when convenient.

*Is there discretion for the DPP to refuse to recognise hours worked?*

* Where the hours worked are requested by a manager supervisor for the purpose of the job, there is no discretion on granting 1:1 Time Off in Lieu. In addition, time off granted may exceed that claimed – in particular, where the subject matter of a case may have a detrimental effect on an individual.
* Where additional hours are worked that are not requested by a manager, the reasons are examined and a remedy consisting of time of in lieu, analysis of preparation and analysis of work allocations are collectively applied.

*Will flextime serve this purpose?*

* No. Flextime was not designed for this circumstance.
  + Prosecutors have a burst of additional hours around each court sitting period and work to external times and deadlines. Flextime is predicated on employees having work which is not driven by external influences.
  + Flextime records hours in the office – it does not record hours worked, or how those hours are worked and might be avoided, nor does it recognise the effect the work may be having on an individual person.
  + For employees not on flextime, ACTPS workplaces have many options for flexible work through informal flexible working arrangements for short periods, and Section E of the Agreement provides the scope to seek longer term flexible working arrangements.

*Will superannuation be back paid?*

* Yes, superannuation will be back paid, in the manner that the individual schemes allow.

*If there is a yes vote, when will the new payments be made?*

* The new rates will be paid from 9 January 2020, and the back pay in the next pay (23 January 2020).

**Previous Information Provided:**

**PURPOSE**

The purpose of this document is to explain the proposed main amendments to the ACT Public Sector Legal Professionals Enterprise Agreement 2018-2021 (“the Agreement”), to ensure that employees have a good understanding of the outcomes negotiated with unions and other representatives.

**GENERAL**

A number of changes to the proposed Agreement have sought to clarify minor technical and operational requirements relating to existing entitlements and processes. Among these are important changes that ensure consistency with legislation, and changes which are aimed at consistency within the Agreement itself.

**MAJOR AMENDMENTS: COMMON TERMS AND CONDITIONS**

**Duration**

The nominal expiry date is proposed to be 31 October 2021.

**Remuneration**

*PAY OFFER*

The Government’s pay offer covers a period of four years duration with percentage increases being provided at regular intervals. The first pay increase is to be back-paid to the first full pay period on or after 1 October 2017, with the second pay increase back-paid to the first full pay-period on or after 1 June 2018.

The full offer is:

* 2.25% from the first full pay period on or after 1 October 2017;
* 0.5% from the first full pay period on or after 1 June 2018;
* 1.35% from the first full pay period on or after 1 December 2018;
* 1.35% from the first full pay period on or after 1 June 2019;
* 1.35% from the first full pay period on or after 1 December 2019;
* 1.35% from the first full pay period on or after 1 June 2020;
* 1.35% from the first full pay period on or after 1 December 2020; and
* 1.35% from the first full pay period on or after 1 June 2021.

**Allowances**

All allowances in Annex C will be increased by the same percentage amounts as the pay increases outlined above.

**Superannuation**

For the first time, superannuation entitlements will be included in the Agreement in full.

Members of preserved schemes like the CSS and PSS will continue to receive the contributions they do currently.

Members of Superannuation Guarantee Funds are currently receiving 10.5% (9.5% Super guarantee + the current additional employer contribution of 1%). This will increase to:

* 10.75% on 1 July 2018;
* 11% on 1 July 2019; and
* 11.5 % on 1 July 2020.

The Government will continue to offer 1% additional employer contribution for members of Superannuation Guarantee Funds who choose to contribute at least 3% of their salary to their superannuation.

*SUPERANNUATION ON PARENTAL LEAVE*

The Government offer will extend superannuation contributions to the unpaid portion of the first 12 months of parental leave. This includes birth leave (aka maternity leave) and unpaid parental and grandparental leave.

**Employment**

The Government remains committed to providing job security for employees as far as possible. Several amendments in the proposed Agreement are aimed at strengthening this commitment.

*TASKFORCE*

A joint Government-Union Taskforce is being established to review existing casual and temporary employment with the view to converting such employment to permanency where appropriate.

The amendments to the Agreement will ensure that such conversion can be achieved without further merit processes.

*REVIEW OF EMPLOYMENT STATUS*

The right in the current Agreement for casuals to request a review of their employment status is being extended to temporary employees as well.

*SEASONAL WORKERS*

Clauses are proposed which will enable seasonal workers to be given contracts of up to five years, to ensure that they have job security that extends beyond each individual season.

**Salary Related matters**

*CLASSIFICATION/WORK VALUE REVIEW*

The clause dealing with an employee’s or group of employees’ right to request a review of their classification and the work value of their position(s), is being strengthened to ensure that genuine reviews will be undertaken where warranted.

The ACT Government is committed to employees being classified appropriately, and is also intending to undertake a larger scale classification review, outside of the Agreement process, to identify categories of classifications that may need to be adjusted based on work value changes.

**Workplace Flexibility**

The proposed Agreement significantly simplifies and strengthens the ability for employees to

access a range of entitlements in the Agreement to ensure they can balance their work and personal commitments. The proposed clauses provide flexibility well above the minimum requirements of the Fair Work Act, while incorporating the concept of ‘Reasonable Business Grounds’ into the Agreement to allow any disputes to be raised through the Dispute Avoidance/ Settlement Procedures of the Agreement, an avenue currently more restricted in the existing Agreement.

In summary – any employee, may for any reasons request a Flexible Working Arrangement. This may be a part-time or job-sharing arrangement, or varied start and finish times, flexible access to leave and any number of other arrangements.

Any such request can only be refused on reasonable business grounds, and those business grounds are listed in the Agreement, and are more restrictive than those under the Fair Work Act.

These arrangements will be recorded in writing and can be for a period of up to three years, at which they will be reviewed. If the employee so requests, a new arrangement can then be entered into unless there are reasonable business grounds for refusing the request.

**Leave**

*NAIDOC LEAVE*

Leave for the purpose of attending NAIDOC week activities is currently only available to employees of Aboriginal and Torres Strait Islander decent. The leave entitlement is being extended to everyone, other than casual employees.

That means that any employee who wishes to attend NAIDOC week activities will be able to access up to one day’s paid leave, subject to operational requirements.

*BONDING LEAVE*

The new Agreement provides more flexibility for the taking of Bonding Leave.

Currently, an employee may access two weeks (10 working days) of Bonding leave, followed by one week of Personal Leave for bonding purposes.

The initial two weeks, need to be accessed as a single block and the additional Personal Leave must be taken within the first 14 weeks from the birth of the child.

The new Agreement will allow the employee to access the leave at any stage within the 14 weeks, as one block or broken in to smaller blocks. There is also an added provision which allows for the 14 week limit to be extended in exceptional circumstances.

*CONCURRENCY CARE*

The proposed Agreement introduces a new concept of Concurrency Care, to ensure that Adoption and Permanent Care Leave, as well as Foster and Short Term Care Leave, can be accessed in cases where an employee is providing concurrency care through a registered Community Organisation.

*PUBLIC HOLIDAY PAY IN LIEU FOR SHIFTWORKERS ROSTERED OFF ON A PUBLIC HOLIDAY*

Currently, if a shift worker is rostered off on a Public Holiday, they are entitled to an additional day off. If they cannot access the additional day off, they can instead receive a day’s pay. That day is currently calculated based on a standard day, rather than the length of the shift. The Government has agreed to extend this to the length of the shift for non-standard shifts in circumstances where the difference between the shift length and the standard day is not otherwise compensated by, for example, additional Annual Leave, Composite Pay Rate or Accrued Days Off.

*FAMILY VIOLENCE LEAVE*

The Family Violence Leave provisions have been clarified to ensure better access for employees. This includes expanding the list of examples of the purpose for which leave can be taken and including clarification that leave may also be needed for travel and recovery after appointments etc.

**Communication, Consultation and Union Representation**

Both in and out of the Agreement the Government is putting effort into improving consultation processes to ensure that employees and their representatives have a genuine opportunity to influence decisions prior to them being made. The proposed Agreement includes improved processes around Consultation and Consultative Committees and includes better articulated rights for union delegates.

**Workplace Values and Behaviours**

The sections of the Agreement that deal with Misconduct and Underperformance have been significantly rewritten. The purpose is to ensure that Procedural Fairness and Natural Justice Principles are enshrined throughout these sections.

Transparency and fairness are integral to any misconduct and underperformance process.

Key changes include:

* A re-focussed preliminary assessment process, which seeks to move away from an automatic assumption that there is an adversarial relationship between a victim and offender, ensuring assessments are conducted swiftly and at a local level as far as possible.
* The introduction into the Agreement of the Public Sector Standards Commissioner (PSSC), an independent office established in the Public Sector Management Act changes in 2016. The PSSC now oversees investigations through the Professional Standards Unit and is responsible for making findings of misconduct.
* Greater clarity around what happens to misconduct processes if an employee leaves the ACTPS while the process in on foot.
* New rights for employees to have input into a decision of finding of misconduct, prior to a final finding and prior to a decision about sanction, to which an employee has a separate right to reply.
* The right for an employee to appeal a finding as well as a sanction. Currently the appeal right is restricted to the sanction itself.

**Internal Reviews and Appeals**

Amendments to these processes are largely aimed at clarifying current processes and to improve transparency, including providing greater independence for appeals.

Key changes include:

* A new section dealing with Reviews and Appeals of certain recruitment processes. These are currently co-located with other Reviews and Appeals, which was considered confusing as the processes are not consistent with those that apply to misconduct, underperformance and other decisions.
* Appeals have been made determinative. Currently, the Appeal Panel makes a recommendation to the Head of Service (or delegate), who then decides whether or not to accept the recommendations. In the new Agreement, the decision of the Appeal Panel stands, but may still be disputed in the Fair Work Commission using the Dispute Avoidance/Settlement Procedures.

**Redeployment and Redundancy**

The Government remains committed to maintaining the size of the ACTPS and stands by its policy that there will be no involuntary redundancies.

However, there are still circumstances where positions become redundant as a result of restructures, changes to technology and the like. In such situations it is important that affected employees have the support necessary to ensure that they can be redeployed, or that there are other solutions where that is not possible, including voluntary redundancy.

Several changes have been made to the current provisions to ensure that redeployment is the genuine aim in all circumstances, where redundancies are unavoidable and where employees want to remain in the ACTPS.

Key changes include:

* Clearer processes that require consultation and that require that an employee has been declared potentially excess before being able to be declared excess.
* The ability to transfer an employee to a lower classification without their agreement has been removed.
* All potentially excess employees, who haven’t been offered a voluntary redundancy, or who have refused a voluntary redundancy, will be placed on a redeployment register and will be considered in isolation for positions.
* Employees may only be declared excess if they have been offered, but have refused voluntary redundancy.
* If an excess employee reaches the end of the retention period, and cannot be transferred to another position at level, the employee can choose to leave the ACTPS with a payment, which equals what they would have received as a voluntary redundancy, less the amount paid in salary during the retention period. This means no-one will be worse off by choosing to seek redeployment by entering a retention period rather than accepting a voluntary redundancy up front.
* The exclusion period, during which an employee who has taken a voluntary redundancy is prevented from re-entering the ACTPS has been reduced from two years, to the time that is equivalent to the redundancy payment they received.

**MAJOR AMENDMENTS: Justice and Community Safety Directorate – Specific Matters**

**Office of the Director of Public Prosecutions (DPP)**

The following has been included in the DPP schedule.

Prosecutor Job titles

New position titles for prosecutors will be introduced. These titles will not change the underlying classification, but will help identify the practice areas of positions.

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| --- | --- |
| New titles | Current titles |
| Prosecutor Grade 1-2 | Prosecutor |
| Prosecutor Grade 3 | Senior Prosecutor |
| Prosecutor Grade 4 | Practice Manager, Supreme Court  Practice Manager, Magistrates Court  Supervising Prosecutor, Family Violence  Supervising Prosecutor, Sex Offences  Supervising Prosecutor Work Safety Unit  Advocate |
| Prosecutor Grade 5 | Crown Advocate |

Introduction of a Prosecutor Associate classification

The agreement also introduces a new classification within the DPP of ‘Prosecutor Associate’ with the work level standards for the role to be developed within 12 months of the Agreement commencing.

Broadbanding of the Prosecutor Grade 1 and Prosecutor Grade 2

The Prosecutor Grade 1 and Grade 2 will be broad-banded with the commencing salary to be based on the occupant’s skills, experience and qualifications. Usual increment provisions apply after commencement.

Workload management

A DPP specific Time of in lieu (TOIL) system will be introduced for staff employed as Prosecutors, Prosecutors Associate and Graduate legal officers.

The system provides for time off where additional hours have been worked, and also allows for time off to be granted for pastoral care purposes. Under the provisions there will be a reporting process for additional hours worked and there is no upper limit on how much time off can be granted per occasion or in total.

Workplace behaviours/ Misconduct and Discipline

Amendments to the core agreement provision for workplace behaviours, including misconduct procedures, are proposed. This reflects the specialised nature of DPP and requires the Public Sector Standards Commissioner to consult with the DPP prior to determining how to proceed with any misconduct investigation in the event that an employee resigns while a misconduct process is underway.

Additionally, the DPP will determine whether or not the matter needs to be investigated and where they determine that an investigation is required, refer the matter to the Public Sector Standards Commissioner for an investigation, except for where the matter relates to alleged professional misconduct of legal staff.

Where the matter relates to alleged professional misconduct, the DPP will take appropriate action as required, including in accordance with the professional conduct requirements outlined in the DPP Prosecution Policy and associated Director’s Directions.

Where the misconduct or discipline issue/s involve matters related to an employee(s) that is the subject of criminal prosecutions being conducted by office of the DPP, the matter will be dealt with by the DPP as head of service, and not referred to the Public Sector Standards Commissioner.

**ACT Courts and Tribunal**

The Agreement introduces Section R – ACT Courts and Tribunal. Most of the provisions in this schedule are identical to those in the current agreement. New provisions are detailed below.

New Associate Classification

A new Associate classification has been established and will become effective upon commencement of the Agreement. Existing staff engaged as an Associate will translate on a point to point basis to the new relevant Associate classification.

This classification is to better reflect the role of the Associates and provides for mandatory legal qualifications.

Court Specific Legal professional classification.

A new classification structure for legal professionals within the ACT Courts and Tribunal, being ACT Courts and Tribunal Legal 1 to Legal 3, is introduced. This classification is for use in ACT Courts and Tribunal only. Salary points for the level 1 and 2 are identical to existing Legal 1 and 2 classifications. The level 3 classification will be used for roles with additional managerial or professional expertise requirements and will be filled on merit.

Upon commencement of the Agreement, existing Legal 1 and Legal 2 employees will translate on a point to point basis to the new ACT Courts and Tribunal Legal 1 and Legal 2 classification.

Work Level Standards for the new ACT Courts and Tribunal Legal 3 classification structure will be developed within twelve months of the date of effect of the Agreement.

Workplace behaviours/ Misconduct and Discipline

Amendments to the core agreement provision for workplace behaviours, including misconduct procedures, are proposed. This reflects the specialised nature of ACTCT and requires the

Public Sector Standards Commissioner to consult with the Principal Registrar prior to determining how to proceed with any misconduct investigation in the event that an employee resigns while a misconduct process is underway.

Where the Public Sector Standards Commissioner determines to investigate alleged misconduct in the absence of a referral, the Public Sector Standards Commissioner will discuss the matter with the Principal Registrar prior to an investigation process being commenced.

If a misconduct process is commenced, the Principal Registrar, having regard to the interests of a Court, ACAT, or the ACTCT, will consider whether am employee continues to have the delegated powers necessary for them to perform the employee’s duties. This is in addition to consideration of whether it is in the public interest, the interests of the ACTPS or the interests of the Directorate to suspend an officer (with or without pay), re-assign or transfer an employee while alleged misconduct is being dealt with.

Where misconduct is found, in determining a sanction the Principal Registrar will also as have regard to the interests of a Court, ACTAT or ACTCT, and consider whether an employee continues to have the delegated powers necessary for them to perform the employee’s duties.

**Parliamentary Counsel Office**

Removal of clauses no longer required

Provisions that related to the introduction of and translation to the then new Assistant Parliamentary Counsel classification have been removed as they are no longer required.

**ACT Government Solicitors**

Removal of clauses no longer required

Provisions that related to the introduction of and translation to the then new Government Solicitor Classification have been removed as they are no longer required.