

LEGAL AID COMMISSION (ACT)

GUIDELINE - FLEXIBLE WORKING ARRANGEMENTS

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1.0 INTRODUCTION

This Guideline is intended to assist in understanding the ways Legal Aid can support flexible working arrangements.

It is also intended that this Guideline will enable consistent implementation of flexible working arrangements for employees of Legal Aid.

Legal Aid recognises the need to provide sufficient support and flexibility at the workplace to support employees in achieving work and life balance. Flexible working arrangements generally cover:

- changes in hours of work, and/or
- changes in patterns of work and/or
- changes in location of work.

Arrangements for flexible work, whether ad-hoc, short-term or long-term, are intended to support employees in achieving work and life balance while meeting Legal Aid's operational demands. Importantly, any arrangement for flexible work is to be agreed within the context of Legal Aid as a front-line provider of essential services in courts and tribunals, where the operational requirements can vary in response to changes in the operating environment and increases in the demand for services. Similarly, the personal circumstances of employees will change over time.

Flexible working arrangements for Legal Aid include:

- ✓ flexible regular hours (pattern of attendance)
- ✓ flexible starting and finishing times such as taking a few hours off work and making it up later
- ✓ job sharing
- ✓ home-based work arrangements
- ✓ part-time hours and
- ✓ leave options

This Guideline is aligned with the *Legal Aid Commission (ACT) Enterprise Agreement 2023-2026*.

2.0 IMPLEMENTING FLEXIBLE WORKING ARRANGEMENTS

2.1 Eligibility

The following circumstances will mean an employee is not eligible to request a regular flexible work arrangement (however an ad-hoc arrangement may be requested):

- (a) where an employee has not completed probation; or
- (b) where a performance action plan has been implemented under clause 102 of the Agreement.

2.2 Parameters

It is a principle of flexible work that productivity and performance are not compromised. While there are a range of flexible work options available, not all options are suitable in all circumstances:

Employees and managers need to work closely when exploring flexible work arrangements to ensure that performance and productivity remains satisfactory, and the needs and operational requirements of the organisation are balanced with the needs of individuals.

Flexible working is not suitable to all positions and is not available to all employees, nor does it form part of an employee's contract of employment.

The availability of flexible working arrangements will depend on position and practice/section requirements, delivery of services to the public, and the ability to access technology and information remotely. Employees will not be approved for flexible working arrangements if the job, or parts of the job cannot be performed outside the workplace or if the employee is needed at the workplace to perform essential work.

Legal Aid reserves the right to decide which positions or employees can have approved flexible working arrangements and in what circumstances.

2.2 Reasons for Seeking Flexible Working Arrangements

An employee may request flexible working arrangements, in accordance with the FW Act, if the employee:

- a) seeks working arrangements to suit their personal circumstances; or
- b) is pregnant; or
- c) has a parental or other caring responsibility for a child of school age or younger; or
- d) has a caring responsibility for an individual with a disability, a terminal or chronic medical condition, mental illness or is frail and aged; or
- e) has a disability; or
- f) is over the age of 55; or
- g) is experiencing family violence; or
- h) is providing personal care, support and assistance to a member of their immediate family or household because they are experiencing family violence.

If you:	Your options include
Are seeking working arrangements to suit your personal circumstances, including if you are pregnant	<ul style="list-style-type: none"> • flexible pattern of attendance on an ad-hoc, short or long term basis • home-based work on an ad-hoc, short or long term basis • part-time work • job sharing • annual leave, long service leave, purchased leave • leave without pay
Have parental or other caring responsibilities for a child of school age or younger	<ul style="list-style-type: none"> • flexible pattern of attendance on an ad-hoc, short or long term basis • part-time work • job sharing • annual leave, long service leave, purchased leave • leave without pay
Have caring responsibilities for an individual with a disability, a terminal or chronic medical condition, mental illness or is frail and aged	<ul style="list-style-type: none"> • flexible pattern of attendance on an ad-hoc, short or long term basis • part-time work • job sharing • annual leave, long service leave, purchased leave • leave without pay
Have a disability	<ul style="list-style-type: none"> • flexible pattern of attendance on an ad-hoc, short or long term basis • home-based work on an ad-hoc • part-time work • job sharing • annual leave, long service leave, purchased leave • leave without pay
Are over the age of 55	<ul style="list-style-type: none"> • flexible pattern of attendance on an ad-hoc, short or long term basis • home-based work on an ad-hoc, short or long term basis • part-time work • job sharing • annual leave, long service leave, purchased leave • leave without pay
Are experiencing family violence	<ul style="list-style-type: none"> • flexible pattern of attendance on an ad-hoc, short or long term basis • part-time work • job sharing • annual leave, long service leave, purchased leave • leave without pay
Are providing personal care, support and assistance to a member of your immediate family or household because they are experiencing family violence	<ul style="list-style-type: none"> • flexible pattern of attendance on an ad-hoc, short or long term basis • part-time work • job sharing • annual leave, long service leave, purchased leave • leave without pay

2.3 Consideration Factors: Roles, Duties, WHS, Service Delivery, IT Security

In assessing flexible work applications, the Chief Executive Officer will consider a range of factors, including (but not limited to) the following:

- the reason for the request
- whether any other form of flexible working arrangement is more appropriate
- the need for timely availability in courts and tribunals
- supervisory or training responsibilities or other workplace responsibilities (e.g. first aid officer, health and safety representative, fire warden)
- the impact on supervision and rostering of other employees
- the impact on professional development of supervised staff, team members, team collaboration and business deliverables
- the number, nature and spread of flexible working arrangements across the team and/or Practice/Section
- whether the flexible working arrangements for individuals will impact overall service delivery
- whether knowledge can be adequately and reasonably shared amongst employees to ensure continuity in service delivery

2.4 Approval and Review of Arrangements

All requests for flexible arrangements must be made in writing, with subsequent approval or refusal confirmed in writing.

Long Term Flexible Work Arrangements

Approvals for long term flexible work arrangements are provided on a financial year basis, for a maximum of three years, by the Chief Executive Officer. The arrangement will be reviewed at least twice a year (more often if required) to ensure it is working for all parties and continues to meet the circumstances under which the approval was originally granted.

Ad-hoc or Short Term Flexible Work Arrangements

Approvals for short term flexible work arrangements are for fixed period of time not to exceed four (4) weeks, and can be made by the employee's manager/supervisor.

Requests for ad-hoc flexible work are to be negotiated between the employee and the manager/supervisor. Where such requests are refused, the manager should explain the reasons for refusal to the employee.

2.5 Right to Recall

Employees may be required to attend the workplace at short notice on days where a flexible work arrangement has been approved in circumstances where the manager deems it necessary, including:

- (a) to accommodate business needs
- (b) to cover staff who are away
- (c) to attend meetings or training and/or
- (d) to supervise staff.

2.6 Amending, Ceasing or Terminating an Arrangement

An arrangement can be varied/amended or ceased early by agreement between an employee and the Chief Executive Officer. Written confirmation, clearly outlining the reason for proposing to vary or cease the arrangement should be provided.

Flexible work arrangements may be terminated at any time:

- (a) by the Chief Executive Officer on the basis of operational requirements, inefficiency of the arrangements, or failure of the employee to comply with the arrangements; or
- (b) by an employee by giving reasonable written notice to the Chief Executive Officer.

Prior to termination of a flexible work arrangement, the Chief Executive Officer should discuss the arrangement with the employee and consider whether alternative arrangements may be effective to address the circumstances of the employee and the requirements of their job. Where an arrangement is to be altered, the proposed changes should be discussed with the employee, with reasonable notice provided in writing.

An employee who initiates a move to another position in Legal Aid must seek approval for a continuation of their flexible work arrangement in their new role. If an employee is transferred at the initiation of Legal Aid, the Chief Executive Officer must consider the employee's flexible working arrangement (in consultation with the manager of the new position) and provide opportunity for the arrangement to continue or be varied to suit the new position and the needs of the employee.

2.7 Grounds for Refusal

Reasonable operational and/or business grounds to deny a request may include, but are not limited to:

- where the request is for home-based work, if the request is for the purpose of primary caring responsibilities
- the flexible working arrangements requested by the employee would be too costly to implement, or would likely result in a significant loss in efficiency or productivity, or would likely have a significant negative impact on continuity of service delivery;
- there is no capacity to change the flexible working arrangements of other employees to accommodate the flexible working arrangements requested by the employee;
- it would be impractical to change the flexible working arrangements of other employees or recruit new employees to accommodate the flexible working arrangements requested by the employee;
- where health and safety requirements are unable to be met or it would be a genuine risk to the health and safety of an employee(s); or
- demonstrable exceptional circumstances have arisen that mean the request cannot be approved.

3.0 OPTIONS

3.1 Pattern of Attendance

Hours of work arrangements must be in accordance with operational requirements and workplace health and safety principles. This means that patterns of working hours that have the potential to impact on the health of an employee, such as working long hours in a condensed period or avoiding meal breaks so as to depart early from work, should be avoided.

Managers and employees are mutually responsible for managing hours of work:

- ensuring that the employee is productively engaged, has sufficient work and is appropriately managed and
- ensuring that the employee has opportunity to access accrued flextime within a reasonable timeframe

Examples where flexibility in pattern of attendance might be appropriate include where an employee:

- (a) arranges their working hours in order to facilitate school drop off/pickup and care for their child after school, resuming work when their child no longer requires their primary care; or
- (b) assist a relative to attend an appointment during a pre-arranged break, before returning to work.

Employees are required to complete fortnightly timesheets to reflect hours worked, to accrue flextime.

If timesheets have not been completed, requests to take accrued flextime will not be approved.

Roles where variable hours arrangements may not be appropriate or workable are:

- management roles where reduced hours may be disruptive to the ongoing support of employees and supervision/decision making
- legal roles where a full time legal practice is being managed and is unable to be reduced
- administrative roles where there is insufficient support to manage the role over the absence periods

3.2 Job Sharing

Job sharing is where a role is shared between two or more employees who work part time to cover the full time working hours. Job sharing may be accommodated by separately allocating tasks and responsibilities; by sharing of all tasks and responsibilities with no division of duties over different days; or a combination of these.

Employees working under job sharing arrangements share one job and will be considered to be part-time with each working part-time on a regular basis.

Employees must request in writing permission to work in a job sharing arrangement, with approval subject to operational requirements.

3.3 Part-Time Working Arrangements

An employee may initiate a request to convert from full-time to part-time, or vary an existing part-time employment arrangement, for either an agreed period or ongoing.

Managers will have regard to the personal reasons put by the employee in support of the proposal and to Legal Aid's operational requirements.

The pattern of hours, days and commencement and cessation (if applicable) dates for part-time work will be confirmed in writing.

Employees are able to return to full-time hours by agreement with their manager.

3.4 Leave Options

Employees have access to leave entitlements such as annual leave, long service leave and/or accrued flextime. Applications to use available leave are made via ESS, in agreement with the employee's manager.

Purchased Annual Leave

Purchased annual leave is when an employee reduces the rate of their salary in return for additional periods of annual leave over a specified period of time; the additional periods of annual leave are referred to as purchased leave. The periods of purchased annual leave are planned in advance and funded by salary reductions spread evenly over a service year.

Employees may purchase leave in addition to the employee's usual annual leave entitlement, up to a maximum of 12 weeks in a 12-month period, subject to approval.

An employee may apply, at any time, to the Chief Executive Officer for approval to participate in the purchased leave scheme. The application must specify the amount of leave to be purchased in whole weeks up to a maximum of 12 weeks in a financial year, and the period over which the additional leave is to be taken.

Approval will be subject to both the operational requirements of the workplace and the personal responsibilities of the employee.

Approval to purchase additional leave will not be given where an employee has an annual leave balance equivalent to two and a half years' worth of annual leave credit or more, except where the employee intends to use all excess annual leave credit before taking purchased leave.

Flextime

Flextime allows for an employee's pattern of attendance at work to be varied according to the needs of the employee and the requirements of the work unit. It is not intended to increase or reduce the total number of hours that must be worked.

Flextime is not available to:

- casual or part-time employees
- employees above Senior Officer Grade C or Legal 3

3.5 Home-based Work (HBW) Arrangements

Legal Aid acknowledges that there are circumstances where employees may request home-based work arrangements of a long term, short term or ad-hoc basis:

- ✓ ad-hoc arrangements – a one-off part or full day to meet an ad-hoc arrangement that cannot otherwise occur outside of the employee’s regular hours e.g. delivery of furniture/white goods, a tradesperson is performing work, or emergency house repairs
- ✓ short-term arrangements – a one-off period, generally not exceeding four (4) weeks, where an employee is unable to attend the workplace but is able to perform their usual duties such as recuperating from an illness or short-term injury that presents mobility issues, but does not impact the ability to work
- ✓ long term arrangements – regular home-based work for up to three (3) years, where an employee has a regular pattern of working from home, that does not impact on the operations of their team/section/Practice

Where an employee cites medical reasons for a short-term arrangement, medical evidence may be required.

Requests for HBW arrangements are subject to operational requirements and employees must have prior approval from their manager and where relevant, the Chief Executive Officer, via a completed [*Home-Based Work Application Form + Checklist*](#).

Flexitime is not available for the duration of a HBW arrangement.

Home-based work may be considered to be operationally inappropriate for staff who:

- are required to attend court in a timely manner
- provide frontline and/or face to face service delivery to clients

HBW arrangements can be beneficial in that they provide employees with the opportunity to better balance personal circumstances and work and so maximise their contribution to Legal Aid as well as giving employees time back to spend doing the things they value most.

HBW arrangements combines the benefits of flexibility with the opportunities our office building provides for co-location and connectedness. It involves some time working in your primary place of work, such as the office, and some time working in another location(s), such as from home. Flexible working arrangements will be different for everyone and for every team. They consider operational and business needs, capacity in the workplace, the work being done by each person and team, and the most effective location to perform different types of work.

HBW arrangements can provide flexibility for both Legal Aid and the employee. However, Legal Aid’s workplace is the primary place of work, and home-based work is not a replacement or substitute for other flexible working arrangements such as working part time.

Applications to undertake HBW arrangements will be considered on a case-by-case basis, having regard to operational requirements and the suitability of the work to such arrangements.

Scheduled In-Person Attendance

HBW arrangements will not be approved for days when an employee is required to attend in-person as part of their role, for example through meetings with clients, as part of a duty lawyer roster, or due to appearances in a court/tribunal.

A proposal for HBW arrangements should consider the particular days of a week/fortnight where an employee can be consistently scheduled to work flexibly without disruption to their work duties. For roles where operational requirements are unable to be predicted, ad-hoc arrangements may be more practical.

Capacity for Short Notice In-Person Attendance

The nature of the legal work done by Legal Aid requires some teams to regularly have employees available to appear in-person on short notice, for example to cover absences from duty rosters, respond to urgent client needs, and to make short-notice appearances in court. In these circumstances, it is an operational requirement to have employees available in the office, even where they do not have a meeting/appearance scheduled on that day, in order to accommodate changes in demand and capacity.

Long term HBW arrangements that restrict the flexibility of a team providing in-person frontline services are therefore not ordinarily appropriate due to operational requirements. Similarly, arrangements should not create an inequitable burden on other office-based employees who would be disproportionately required to suspend their ordinary work to support the frontline service on short notice.

Where this is the case, the manager/supervisor should discuss the issue with the employee and consider whether an alteration to the proposed HBW arrangements would avoid the issue, for example:

- (a) balancing the number of employees working flexibly across each day of the week to maintain operational capacity, or
- (b) considering whether a different type of flexible working arrangement may assist in accommodating the circumstances of the employee.

Access to Supervision

An employee working flexibly is required to maintain access to supervision. A request for HBW arrangements should set out how this access will be maintained, for example through check-ins over a video call, on the phone, or through digital messaging. The type of work done by the employee should be taken into account when considering how appropriate access to supervision may be maintained under a HBW arrangement (e.g., the nature litigation work differs greatly from the nature of work undertaken by an employee processing grants of aid).

As a provider of essential services to vulnerable members of the community, Legal Aid employs staff in frontline, client-facing roles. This means that employees may be exposed to elevated levels of vicarious trauma and other psychosocial hazards. Accordingly, the availability of in-person supervision can be an important safety consideration for some employees. HBW arrangements will not be appropriate for roles that require regular, in-person supervision and support for safety purposes.

Work Activity and Assessing Performance

It is important that the manager and the employee with a HBW arrangement have a shared understanding of:

- (a) the work that the employee will complete, and
- (b) how the performance of the employee will be ascertained.

The specific ways in which work performance will be assessed are to be decided by discussion between managers and their employees, keeping in mind the types of work undertaken by their team and the operational requirements of that work. An agreement, either informal or formal, should be made about what work is to be undertaken.

To support managers in remaining informed about the work their team is completing, employees with a HBW arrangement may be required to complete a [*Home-Based Work Log*](#) giving an overview of the activities they have undertaken on a given day.

At a minimum, managers should arrange to check in with employees working from out of the office using Teams (or a mutually agreed alternative form of contact) prior to, during, and after the period when the employee works from out of the office. These check-ins should not occur outside of an employee's working hours.

Workplace Health and Safety

An employee who proposes a HBW arrangement is required to have access to a chair and desk workspace that meets the workplace health and safety standards set out in the [*Home-Based Work Application Form + Checklist*](#). Beyond this, supervision requirements contribute to the management of psychosocial workplace hazards when working from outside the office.

Where an employee has an approved HBW arrangement and becomes ill, the employee must comply with the usual reporting of absence due to illness, as set out in the *Attendance Reporting and Recording Procedure*. HBW arrangements are not intended to be a substitute for personal leave.

Access to Computing Facilities

Employees at Legal Aid are provided with a laptop, charger, headset, mouse, and keyboard which may be utilised as home computing facilities. Additionally, each employee has access to the work phone system through the RingCentral program. Issues with this equipment and software should be raised through Legal Aid's IT provider, OPC.

Legal Aid is not responsible for providing (or compensating for use of) a monitor(s), Wi-Fi, printer, or other additional forms of technology that a person may choose to use as part of their home-based workspace. Employees should be aware that Legal Aid does not insure any employee-owned equipment, furniture or other property used when an employee works from home.

Security and Confidentiality

To comply with the secrecy provisions of the *Legal Aid Act 1977* (as well as other professional confidentiality requirements), employees seeking HBW arrangements are required to have a private workspace. This means a workspace where:

- (a) individuals other than the employee are not present on the premises, or the workspace can be separated from the rest of the premises when others are present (e.g. by closing doors) such that the content on the employee's screen or on physical files cannot be observed in an unauthorised manner, and
- (b) the employee can conduct phone/video calls without being overheard, and
- (c) physical files and other work materials can be stored in a way where they will not be observed by any person other than the employee.

Employees are required to observe cyber-security practices as explained in OPC training modules, including use of a secure password for laptop, accessing the internet through a secure Wi-Fi network, installation of security updates, and ensuring the physical security of their devices.

Minimising Disruption

During working hours, the employee's workspace must be set up to minimise distraction. Employees working from outside the office should have a quiet work environment, where household noise would not be expected to interrupt a phone/video call.

While HBW arrangements can provide flexibility to care for family, household members, or pets, dependent care should not compromise the employee's ability to complete their work without disturbance. Due to this, it would not be appropriate for an employee to be out of contact during the hours they are working, or to be providing primary care to an infant, young child, or elderly person during the hours of their work, due to the active attention this requires.

Ongoing Review of HBW Arrangements

Legal Aid needs to ensure any HBW arrangements remain suitable for Legal Aid and the employee.

When reviewing the suitability of HBW arrangements, it is important to consider the health and wellbeing of the employee and the benefits of face-to-face interpersonal interactions on a regular basis not just for that individual but for the work team.

4.0 REVIEW OF DECISIONS

An employee may seek a review of any decision regarding HBW arrangements under the Internal Review provisions of the Enterprise Agreement.

3.7 Step-by-Step Guide for Discussions and Approvals

Pattern of Attendance + Part Time Hours	Home-Based Work Arrangement	Returning from birth leave / parental leave	Job Sharing
<p>1 Employee discusses proposed change to working hours with their manager: <i>operational requirements, timeframe, job sharing options</i></p>	<p>1 Employee discusses proposed HBW Arrangement with their manager: <i>operational requirements, timeframe, reasons</i></p>	<p>1 Employee discusses proposed change to working hours with their manager: <i>timeframe, job sharing options</i></p>	<p>1 Employee/s discusses proposed change to working hours with their manager: <i>timeframe</i></p>
<p>2 Form is completed and provided to manager: <i>Change in Work Pattern</i></p>	<p>2 Form is completed and provided to manager: <i>HBW Application</i></p>	<p>2 Form is completed and provided to manager: <i>Change in Work Pattern</i></p>	<p>2 Forms are completed for each employee and provided to manager: <i>Change in Work Pattern</i></p>
<p>3 Manager reviews completed form and considers against operational demands and team functionality</p>	<p>3 Manager reviews completed forms and considers against operational demands and team functionality</p>	<p>3 Manager reviews completed form and considers against operational demands and team functionality</p>	<p>3 Manager reviews completed forms and considers against operational demands and team functionality</p>
<p>4 Upon approval by manager, HR confirms amended work arrangements with employee</p>	<p>4 Ad-hoc approval by manager; Short term and long term approval by CEO; CEO reviews completed forms and considers against operational demands</p>	<p>4 Upon approval by manager, HR confirms amended work arrangements with employee</p>	<p>4 Upon approval by manager, HR confirms amended work arrangements with employee/s</p>
	<p>5 Short term and long term: upon approval by CEO, HR confirms the HBW Arrangement with employee</p>		