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## What if you are in the firing line?

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Here's what the law says about Peter Dutton's plans for the public service

**Kieran Pender, John Wilson**

THE election is imminent. If the Coalition is elected, it has promised to pursue significant changes for the Australian Public Service - including slashing jobs and reversing the trend towards public servants working from home. What do these proposals mean for the APS?

First up, job cuts. The Opposition Leader, Peter Dutton, has indicated that a Coalition government would shed many of the APS jobs that have been added during the Albanese government. "The government's put on an additional 36,000 public servants," Dutton said in February. "We will reduce that number and the savings there will be about \$6 billion a year."

The specifics of this policy remain somewhat unclear. It is true that the Albanese government has added about 40,000 jobs to the APS over the past three years, but many of these jobs are to front-line roles around the country (which, the Coalition has suggested are not the focus of its cuts). In total, there are about 70,000 federal public servants based in Canberra; it is unclear how many of these could be shed without a drastic impact on public sector delivery.

What are the legal implications of all of this? What happens if you find yourself in the firing line?

Section 29 of the Public Service Act 1999 (Cth) governs the dismissal of federal public servants. It permits an agency head to terminate the employment of a public servant in a range of circumstances, including where "the employee is excess to the requirements of the agency". The process and entitlements relating to the redundancy process is then set out in general workplace law, relevantly the Fair Work Act 2009 (Cth), and each agency's enterprise agreement.

To take Services Australia as an indicative example (many of the terms of APS enterprise agreements are common thanks to

APS-wide bargaining).

Under the agreement, if an agency head determines that an employee is excess to requirements, they are to be notified in writing and can elect to be retrenched (a voluntary redundancy). Employees are entitled to be advised of their redundancy entitlements, and can be reimbursed up to \$604 for financial advice in relation to the redundancy. An employee notified of potential retrenchment has four weeks to consider their position.

An employee who accepts a voluntary redundancy is entitled to a benefit equal to two weeks' salary for each year of continuous service, plus a pro rata amount for additional months. This is subject to the statutory minimums in the Fair Work Act (which start at four weeks). The maximum possible redundancy entitlement is 48 weeks' salary.

The redundancy entitlement is calculated on the basis of an employee's salary at their substantive classification, but can also take into account any temporary higher classification where the worker has been acting up at that level for the preceding 12 months. The entitlement also takes into account any regular allowances, and shift penalties, where applicable.

At the end of the consideration period, if a worker has not elected to accept a voluntary redundancy, the agency head can proceed with an involuntary redundancy. There are various consultation obligations in the enterprise agreement, including a requirement to consider redeployment options. An employee that is notified they may be determined excess to requirements may also seek to "job swap" with another employee who wishes to pursue a voluntary retrenchment (where suitable).

In summary, there are a range of process requirements, and relatively generous entitlements, for federal public servants shown the door. Ultimately, though, there is broad



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discretion for the government of the day to slash APS jobs.

The other major public sector policy foreshadowed by the opposition is a reversal of the shift towards work from home. A common condition in APS enterprise agreements, negotiated during the Albanese government's term in office, provides federal public servants with generous work-from-home rights, including no cap on the number of possible days out of the office, a presumption towards approving requests and appeal avenues in the event of refusals.

Data compiled by *The Australian Financial Review* shows a considerable take-up of the improved conditions: at several major departments, more than 80 per cent of public servants work from home at least some of the time. The Department of Foreign Affairs and Trade is a laggard, at just 27 per cent.

But in a speech last month, the opposition's finance spokeswoman, Senator Jane Hume, criticised what she said was "a blank cheque to work from home" that the Albanese government had given public servants. "Led by the Community and Public Sector Union, Labor has made work from home a right for the individual, not an arrangement that works for all. This is unsustainable," she said.

Hume indicated that, under a Coalition government, public servants would be expected in the office five days per week, with only limited exceptions.

The Coalition will struggle to enforce a swift reversal of the work-from-home trend. The existing rights are embedded in APS-wide enterprise agreement condi-

tions, which do not expire until 2027. Even beyond that deadline, the existing enterprise agreements will remain in force until new agreements are agreed.

And even if the Coalition did succeed in renegotiating to remove these particular work-from-home conditions, there are flexible working request arrangements embedded in the Fair Work Act. These are less generous, and only apply to certain categories of workers - for example, employees who have care responsibility for school age children, employees with a disability or employees over 55. But they are not nothing. Repealing these entitlements would require majority support in the Senate, which seems unlikely.

In short, significant job cuts are very possible in the event the Coalition is elected next month - although public servants have various rights under employment law and their enterprise agreements which ensure due process and appropriate payouts. The ability to work from home, on the other hand, will be less easy for a new government to remove.

Whatever the election outcomes, there will be interesting times ahead for the public service.

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Opposition Leader Peter Dutton has promised to pursue significant changes for the Australian Public Service. Picture by Elesa Kurtz