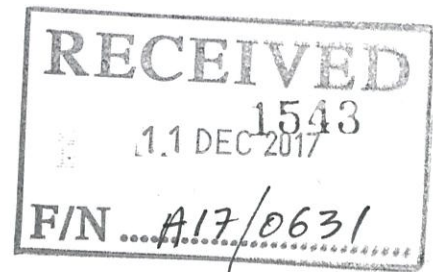


Your Ref: MW:vv

7 December 2017

Mr Stewart Little
General Secretary
Public Service Association of NSW
GPO Box 3365
SYDNEY NSW 2001



Dear Mr Little

Re: Changes to Crime Staffing Structure under the Early Appropriate Guilty Plea (EAGP) Reforms

I write in relation to your letter dated 6 December 2017 sent to Legal Aid NSW regarding changes to Crime staffing structure under the EAGP Reforms.

The letter raises the following issues on behalf of members.

1. Ongoing consultation through employee representatives

PSA request that they be included in regular scheduled meetings to monitor implementation.

Staff have been heavily included in the consultation to date. The Implementation Team has conducted over 30 consultations with staff involved from every Criminal Law office and sought specific buy-in from the staff most likely to be affected, including meetings with the Advocates, Indictable and Committals staff at Central Sydney. These briefings and consultations were well attended. Every attending staff member has had the opportunity to ask questions and contribute to the process of how our staffing structure will operate. They were invited to respond privately, or through their manager.

PSA representatives attended consultation sessions on 25 October 2017 and 31 October 2017. On both occasions the PSA representative actively contributed to discussions.

Legal Aid NSW conducted a four week period of consultation from 6 October 2017 to 3 November 2017 during which all members of the Criminal Law Division were invited to provide feedback. Numerous staff members did provide feedback. This is reflective of the results of the People Matters Survey that indicated that 74% of the Criminal Law responses felt they could speak up and share a different view to their colleagues and manager.

PSA were included in this consultation process and did not provide feedback by the 3 November date. After 3 November 2017, we were told informally that the PSA would provide feedback by 10 November 2017. No written feedback was received.

Sue Emery, PSA Industrial Officer attended a consultation with in-house staff and arranged a meeting with Annmarie Lumsden, which she later cancelled.

On 22 November 2017, the EAGP Implementation Team provided a proposal to the Director Crime which has been approved by the CEO. Staff will be shortly notified of the approval and Legal Aid NSW is prepared to meet with PSA to address any relevant issues arising out of the implementation.

2. Increased workload

The PSA provide the following recommendations:

- I. Management to provide to PSA the workload modelling that Legal Aid used to support the allocation of positions in the proposed model
- II. Management to outline the actions it will take to monitor workload under the new structure
- III. PSA to take part in any such measures to give our members confidence in the process

Legal Aid NSW agrees that the full impact of the reform will only be known after the proposed changes take effect. Double handling of the file will reduce some workload due to the continuity model.

It was on the assumption that there may be more workload overall that Legal Aid NSW lobbied for and received funding for 12-16 additional legal officer positions state-wide, to account for the possibility of an increasing volume of work. Most of these positions have been placed in regional areas where the ability to engage private practitioners for the volume required is difficult. Increases to the Central Sydney workload will be dealt with by assigning to private practitioners the work that is beyond the workload capacity of in-house lawyers.

There will be close monitoring of workload following the introduction of the reforms by management, as well as a number of other KPIs that will monitor the effectiveness of the reforms.

3. De-skilling of members at Grades IV & V

The changes are designed to increase the skills and development of all staff, not decrease the skill level of any staff member. There is an expectation that where the ODPP instructs a Crown Prosecutor in serious matters, that Legal Aid NSW will do the same.

Regarding deskilling, senior solicitors who are currently conducting negotiations with the ODPP without the assistance of counsel can continue to do so and will attend case conferences without counsel, subject to their expertise and experience, in consultation with their manager.

There is no proposal to 'fetter' the manner in which staff brief counsel. Our concern is to ensure that our staff feel appropriately supported and are not without counsel in matters where a Crown Prosecutor will appear for the ODPP, and where staff may feel inadequately resourced without counsel.

There seems to be a misconception about the manner in which matters will be briefed. The assurances given during the 31 October briefing are quite correct – allocation of the matter to a solicitor will occur early and counsel will only be briefed after the matter is allocated to an instructing solicitor.

4. Selection of counsel

PSA are seeking more information about adherence to an equitable briefing policy.

Such determinations will be left for the manager of an individual team to consult with the solicitor with carriage about whether counsel is required to be allocated and who should be briefed.

Legal Aid NSW is committed to providing fair and equitable briefing of barristers who have the necessary experience and expertise.

5. Mixture of work & obligations under Anti-Discrimination legislation

PSA request that Legal Aid NSW formalise its commitments to anti-discrimination and flexible work practices regarding how members' needs will be accommodated post implementation.

Legal Aid NSW is committed to flexible working arrangements and staff who work part-time will work with their manager to have the flexibility required to maintain continuity where this is possible.

Legal Aid NSW has responded several times to this during the consultation phase by indicating that we would approve part-time staff applying to work additional days during trial, for those persons who wish to and have capacity to work the extra days. We have received some feedback that part time workers would prefer this option to allow them to get the satisfaction of seeing the matter through and staying in the matter rather than it being reallocated at the trial stage.

For staff who cannot or prefer not to work additional days, their team will ensure that another solicitor either 'job shares' to attend the other days of the trial, or that another solicitor is allocated once the matter is proceeding to trial, despite the fact that this interferes with continuity.

At Central Sydney, there is previous experience of job sharing by part time staff in trial practices.

In the People Matters Survey, 79% of the Criminal Law responses indicated that the organisation respects individual differences of cultures, working styles, backgrounds and ideas.

6. Management structure

PSA state that the proposed management structure appears top heavy compared to most organisations.

The management structure is designed to provide appropriate levels of support for staff who are being asked to take on challenging work, and in recognition of the seniority of existing staff performing this work. It also is designed to alleviate the concern raised in point 3, as more Grade IV solicitors will be able to carry out more of the case conference work without counsel than Grade I-III solicitors.

There will be significant training and support from February 2018 to April 2018 so that everyone is well adapted to the new structure prior to the implementation of the reform on 30 April 2018.

7. Conferencing Hub and case conferencing

PSA request more information be provided on case conferencing and AVL issues.

There will be a hub to facilitate the holding of Case Conferences at the Central Sydney office of Legal Aid NSW. Funding to add additional AVL resources and some soundproofing of existing AVL suites has also been provided. The use of a booking system for AVLs will allow every Legal Aid NSW Hybrid device to become an AVL screen if required for the holding of case conferences.

We are in ongoing discussions with Corrective Services NSW about the development of additional AVL facilities at the Corrective Services end to facilitate the holding of all of the case conferences necessary. We agree that the capacity for our solicitors to provide timely advice to our clients in custody is a significant concern and Legal Aid NSW continues to lobby to ensure this.

8. Confidence in the recruitment process

PSA ask to be included in a working group tasked with increasing confidence in recruitment in Legal Aid NSW by addressing perceived problems in fairness and transparency in recruitment, under the Government Sector Employment Act.

Legal Aid NSW will invite PSA to participate in such a group as part of the actions to be put in place in response to the People Matters Survey.

If you have any questions please contact Nohad Ghibely, Manager Workplace Relations.

Yours sincerely



Brendan Thomas
Chief Executive Officer