WORKLOAD MANAGEMENT

As a result of the work bans imposed by the Public Service Association in 2003, a Workload Management Agreement was developed – Workload Management Agreement.

Claire Girotto, Andrew Dziedzic and myself have visited each Group, Section and Regional Office, to personally discuss the terms of this Agreement and its implementation.

A number of issues still require to be addressed and a timetable has been developed to assist in this regard. Additionally, a sub-committee of the PSA/Management Joint Consultative Committee, is to be formed to address workload and weighting issues.

CASES has been enhanced to allow for the weighting of matters in a Lawyer's practice. Managers have the ability to weight matters. Where a staff member considers that an individual matter should have a weighting greater than one, he/she should consult with their Manager. Guidelines on how to weight matters will be developed by the sub-committee.

ALL STAFF ARE REMINDED THAT ANY SUGGESTIONS THEY HAVE IN RELATION TO THE AGREEMENT AND ITS CONDITIONS WOULD BE WELCOMED.

It should be appreciated that whilst the Agreement is current, and management is committed to the provisions it contains, some "teething" problems may be experienced. There are mechanisms contained within the Agreement that have a "no-fault" consideration related to reviews of work-load and flex-time.

The main contention at this point is that some staff may consider that they are carrying loads that are excessive. In cases where any staff feel over-loaded, they must approach their Managing Lawyer and/or any PSA Delegate to have their work-load reviewed.

Gary Corkill
Manager, Personnel Services.
13 December 2004.

WORKLOAD MANAGEMENT AND STAFF ATTENDANCE IN THE ODPP

The following practices are effective immediately:

1. A lawyer's practice range will be 22 to 28 (with an average of 25) in the city; and 15 to 22 (with an average of 20) in the country; this average to-be over six months.
   This is for a trial period of 6 months, with continuous consultation between the PSA and management. (The idea is for a normal simple matter (trial or committal) to count as the yardstick for a single matter).

2. CCA lawyers having no more than 20 matters.

3. WAS officers:
(i) having no more than 50 to 60 WAS files in the country; and
(ii) 60 to 70 WAS files in the city;
(iii) A review of the WAS management line reporting structure to take place with full PSA participation; and
(iv) being subject to the workload audits.

4. All matters are to be weighted, and their weighting added to CASES. The weighting to be added to the practice review function of CASES so that at any time it can be seen the total of the weighting of all matters in the practice. Thus it is the weighted total of all the matters in a practice that will count towards the practice ceilings referred to in paragraph 1.

5. On allocation of all matters, each manager is to ensure that workload is not such that the lawyer to whom the work is allocated would have to work over contract hours in order to take on the matter. Any disagreement in this regard to be referred for a workload review (see below). Even if the total number of matters is below the lower level of the relevant range (18 for circuit lawyers and 22 otherwise), but such the work cannot be done within 35 hours, the matter should not be accepted. However a manager need not consult with the lawyer as to the allocation of matters until the staff member's total number of matters is at or below 20 in the city and 15 in the country. This arrangement is automatically revoked where the total number of matters held exceeds the relevant average number.

N.B. This paragraph (ie 5) is still in draft form and is subject to further negotiation. At present management is still bound to adhere to the form of this paragraph in the form originally agreed to, which is as follows:
"The new protocol is for the staff member to be approached by his/her manager before the file is allocated (so as to ensure that workload is not such that the person would have to work over contract hours in order to take the file); any disagreement in this regard can be referred for a workload review (see below); note that even if the total number of matters in your practice is below the lower end of the range specified (15 for circuit lawyers and 22 otherwise) but such that you cannot do the work within 35 hours, you are still able to decline to do the matter."

6. All circuit trials would count as one matter (subject to on-going review and a full review in three months). Allowance for short matters for circuits would be handled by allowance for a certain amount of time out of court for preparation of the circuit. Full guidelines in this regard are to be formulated in consultation with the PSA.

PSA, Claire Girotto and Gary Corkill. At that meeting, the PSA may raise any matters of concern re workload in any specific location or with respect to any individual.

8. Each 6 months, there will be PSA participation in rolling audits of each office and group with respect to workload and also as to forfeited flex, recreation leave etc.

   Audit to include:
   (i) Each practice in the office/group is reviewed for the weighted number of matters it holds (considering the spread of matters held by each person, and their experience etc).
   (ii) Each office and group should produce a monthly report so as to ensure the Level 1 Lawyers and '24-weekers' are, on average, out of court for a least as much as they are in court.
   (iii) Review of the flex sheets and recreation leave balances of everyone in the office/group, including the amount of hours done outside of bandwidth to ensure that all such hours are done as official overtime, as either paid overtime or, if this agreed, with time in lieu granted at overtime rates
   (iv) Checking that officers hold only those types of matters appropriate to their classification and grading.
   (v) Statistical review of matter turnover and trial turnover applicable to that group/office.
   (vi) Appropriate gaps between travel and circuits.
   (vii) Workload reviews of any officers who request it (including administrative staff). To be carried out confidentially, the request for which could be made to the PSA, and would not have to necessarily go through the manager in the first instance.

9. There will be no split short matters in the city, apart from severity appeals. If there is any inquiry from the court for solicitors to appear in other types of short matters, Admin Services are under instructions to say there is no-one available. The Director will back up anyone who refuses to appear in split short matters apart from severity appeals and in any case, in any office, where the office is denied procedural fairness.

10. Guidelines are to be drawn up jointly between the PSA and management in relation to the appropriate gap between circuits and other travel for matters in the country, and this will be part of the 6 monthly audit of country offices.

11. After other initiatives aiming for earlier entry of pleas of guilty, there will be an approach to the District Court to try to ensure continuity of matters is given full weight by the Court (where there is a need for continuity, as is the case for sexual assault victims, for re-trials and for complex matters, where the committal lawyer or previous instructing lawyer should stay in the matter).

12. Guidelines will be formulated so that Crown Prosecutors will release instructing solicitors from instructing duties at the earliest possible point, and in any case no later than by the time the Crown finishes their closing address.

13. Management review access on CASES is to be granted to the Chair of the PSA Departmental Committee (or to his delegate where that delegate is carrying out monthly reviews or the rolling group/office 6 monthly audit).

14. Management will ensure that workload will be subject to monthly review by:

with matters in their practices;

(b) workload review for all staff, so as to ensure the equitable distribution of work and proper rotation of jobs, as well as proper distribution of opportunities for HDA to all eligible staff who want this experience.

15. Management will regularly review the way in which elections are being made, due to the number of less serious matters on which elections have been made.

16. Management is providing funding to allow for 2 x level 2 lawyers to do short matters in all Sydney West offices, and sufficient staff to cover all short matter is all other ODPP offices.

17. It is agreed in general that Level 1 Lawyers should spend as much time out of court as in court. In those ODPP offices where it is possible to ensure that this occurs (i.e. everywhere but in Sydney), all matters are allocated through the Managing Lawyer who holds diary for the Level 1 Lawyers, then once any Level 1 is booked for 50% of the time ahead, that lawyer is designated as unavailable during that period at any call over. Managers in all offices other than Sydney are expected to put in place a system to ensure that this occurs, as well as putting in place a system so as to be able to report on whether this is occurring.

WORKING HOURS AND STAFF ATTENDANCE

The following procedures are to be following in the management of staff working hours and attendance.

Working Hours

A Manager may require a staff member to perform duty beyond Office coretime (as defined in the Guidelines on Flexible Work Hours), but only if it is reasonable for the staff member to be required to do so.

A staff member may refuse to work additional hours in circumstances where the working of such hours would result in the staff member working unreasonable hours. In determining what is unreasonable the following factors shall be taken into account:

i. The staff member's prior commitments outside the workplace, particularly the staff member's family and carer responsibilities, community obligations or study arrangements,
ii. Any risk to staff member's health and safety,
iii. The urgency of the work required to be performed during additional hours, the impact on the operational commitments of the Office and the effect on client services,
iv. The notice (if any) given by the Manager regarding the working of the additional hours, and by the staff member of their intention to refuse the working of additional hours, or
v. Any other relevant matter.

Staff who wish to work prior to 7.00am or after 7.00pm (Office Bandwidth), or on weekends, are to obtain prior approval from their Manager and a notation made on the Flexitime Record (the flex system will be modified to allow these notations to be made). Staff who are unable to obtain prior approval, should inform their Manager at the first available opportunity of the reason for their attendance at work outside bandwidth or on a weekend.

A staff member may be directed by the Manager to work overtime, provided it is reasonable for the staff member to be required to do so.

A staff member may refuse to work overtime in circumstances where the working of such overtime would result in the staff member working unreasonable hours. In determining what is unreasonable, the following factors shall be taken into account:

(1) The staff member's prior commitments outside the workplace, particularly the staff member's family and carer responsibilities, community obligations or study arrangements,
(2) Any risk to staff member health and safety,
(3) The urgency of the work required to be performed during overtime, the impact on the operational commitments of the Office and the effect on client services,
(4) The notice (if any) given by the Manager regarding the working of the overtime, and by the staff member of their intention to refuse overtime, or
(5) Any other relevant matter.

Payment for overtime shall be made only where the staff member works **directed** overtime.

If a staff member is asked to work overtime and wishes to be paid, rather than take time in lieu (at overtime rates), then they do not have to work the overtime.

If a staff member agrees to work overtime (ie on the basis of time in lieu at overtime rates), and are unable to take the time in lieu within three months due to circumstances beyond their control, then he/she can take that time in lieu within a further two months – see attached Clause 94 from the Crown Employees (Public Service Conditions of Employment) Award 2000, for relevant Overtime Rates.

If the time in lieu cannot be taken within five months, then the staff member shall be paid the overtime.

Flexible Working Hours

Weekly hours worked during the settlement period are to be monitored by the staff member and his/her Manager. If it appears that the staff member may exceed an accumulated work time of 150 hours in a settlement period; or if the total hours of work in a settlement period with the credit hour carry over from the previous settlement period, may exceed 150 hours, the supervisor and staff member shall develop a strategy to ensure that the staff member does not forfeit any of the credit hours accumulated, or likely to be accumulated.

Where it appears a staff member may exceed a 10 hour credit during a settlement period, as per the above clause, strategies to reduce this credit may include the granting of additional full days, consecutive days, half days, or any combination of days and half days.

Morning and Afternoon Breaks

Staff members may take a 10 minute morning break, provided that the discharge of public business is not affected and, where practicable, they do so out of the view of the public contact areas. Staff members may also take a 10 minute afternoon break, subject to the same conditions as apply to the morning break.

Extract of Clause 94 of the CROWN EMPLOYEES (PUBLIC SERVICE CONDITIONS OF EMPLOYMENT) AWARD 2002

(b) Rates - Overtime shall be paid at the following rates:

(1) Weekdays (Monday to Friday inclusive) --- at the rate of time and one-half for the first two hours and at the rate of double time thereafter for all directed overtime worked outside the staff member's ordinary hours of duty, if working standard hours, or outside the bandwidth, if working under a flexible working hours scheme, unless local arrangements negotiated in terms of clause 10, Local Arrangements of this award apply;

(2) Saturday --- All overtime worked on a Saturday at the rate of time and one-half for the first two hours and at the rate of double time thereafter;

(3) Sundays --- All overtime worked on a Sunday at the rate of double time;

(4) Public Holidays --- All overtime worked on a public holiday at the rate of double time and one half.

(c) If a staff member is absent from duty on any working day during any week in which overtime has been worked the time so lost may be deducted from the total amount of overtime worked during the week unless the staff member has been granted leave of absence or the absence has been caused by circumstances beyond the staff member's control.

(d) A staff member who works overtime on a Saturday, Sunday or public holiday, shall be paid a minimum payment as for three (3) hours work at the appropriate rate.

(e) Rest Periods

(1) A staff member who works overtime shall be entitled to be absent until eight (8) consecutive hours have elapsed.

(2) Where a staff member, at the direction of the supervisor, resumes or continues work without having had eight (8) consecutive hours off duty then such staff member shall be paid at the appropriate overtime rate until released from duty. The staff member shall then be entitled to eight (8) consecutive hours off duty and shall be paid for the ordinary working time occurring during the absence.

GENERAL PROCEDURE FOR CONSIDERATION IN WEIGHTING OF LOCAL COURT MATTERS

This document was prepared in consultation with the Executive, Managing Lawyers, Solicitors and delegates of the PSA as a guideline for establishing the weighting given to Local Court matters in practices.
It is an ESSENTIAL requirement for this process to operate effectively that there is honest and open communication between lawyers and managers.

Definition of weighting of "1" as outlined in workload management agreement:
"One (1) is given to a straightforward matter. One matter often represented by one defendant, one brief and one set of charges"

FACTORS TO BE TAKEN INTO ACCOUNT WHEN GIVING OR REVIEWING WEIGHT TO A MATTER.

Indicia:-

- Number of accused (defendants)/role of accused (defendants)
- Size of the brief (includes TI's, number of witnesses etc)
- Victim/witness issues (includes interpreters, number of victims, need for conferencing)
- Nature/complexity of charges
- Hearing/Paper committal
- Representation of accused
- Other Issues, examples of which may be;
    - Mental health
    - Criminal justice visas
    - Technology requirement (cctv etc)
    - Expert witnesses
    - Informers
    - Confiscations
    - Media interest
    - Reports required

This is not an exhaustive list of factors for consideration rather it provides some common examples of factors, any combination of which may flag a change in weighting of a file. A factor by itself does not automatically mean that a matter should have a change in weighting.

APPROPRIATE TIMES WHEN LOCAL COURT MATTERS MAYBE REVIEWED

ALLOCATION
Managing Lawyer to give initial weighting to a matter

SERVICE OF BRIEF/SCREENING
Lawyer to approach Managing Lawyer to review weighting of matter if in need of review

MATERIAL/SIGNIFICANT CHANGE
Any material factor which may affect the work on a file and require a review. Either the lawyer or the Managing lawyer may make request for a review.

COMMITTAL/ARRAIGNMENT
The level of weighting should be reviewed following committal by the managing lawyer or on request from a solicitor who is retaining the file post committal and prior to allocation for trial.

POST-ARRAIGNMENT/CALL-OVER
Wherever a Level 2 lawyer retains carriage of a matter post arraignment either the Managing Lawyer or the solicitor with carriage may request a review of the matter at any time there is a change in it's status. Particularly in relation to country matters listed before call-overs in regional centres.

PROCEDURE FOR REVIEW IF THERE IS A DISAGREEMENT BETWEEN A MANAGING LAWYER AND SOLICITOR WITH CARRIAGE AS TO THE APPROPRIATE WEIGHTING OF A MATTER

If there is no consensus between a lawyer and manager as to the appropriate weighting of a file, the views of a senior solicitor (Level 2, Level 3 or Trial Advocate) within the Local Office can be sought to assist in arriving at an impartial assessment

ONLY where there is still a significant disagreement as to whether the weighting is appropriate, the matter may be referred to an Assistant Solicitor (Sydney West and Country)/ the Managing Lawyer, Sydney or to the Deputy Solicitor (Operations) for an ultimate and binding determination.

Inquiries: Claire Girotto, Deputy Solicitor (Operations).

17 December 2004.

yourrightsatwork

worth fighting for

INFORMATION PACK

ACTU Unions Work

The Federal Government wants to take away many of your basic rights at work

"Taking away our rights at work will benefit business at the expense of working families"

Important changes coming from 1 July 2005

From 1 July 2005 the Federal Government will take control of the Senate, giving it a majority in both houses of Federal Parliament.

For the first time since he became Prime Minister, John Howard's Government will be able to pass whatever laws it likes without checks or balances. This will continue until at least the next federal election in 2007.

One of the first things that the Howard Government has said it will do with its new Senate powers is take away many of your basic rights at work.

Big business is lobbying the Government to change Workplace laws and throw out fairness at work.

Big Business

"Regulatory excess in the name of fairness is misconceived."

Michael Chaney, Business Council of Australia
Financial Review, 16 February 2005

The Howard Government

"An emphasis on fairness only leads to regulatory excess and inefficiency"

Kevin Andrews, Minister for Workplace Relations,
Speech, 25 February 2005

This pack contains information about the Government's plans to:

1. Remove employment conditions from awards
2. Change the way minimum wages are set to make them lower
3. Use individual contracts to undercut existing rights and conditions
4. Keep unions out of workplaces and reduce workers' negotiating and bargaining rights
5. Abolish redundancy pay and protection from unfair dismissal for 3 million people who work in small businesses
6. Reduce the powers of the independent Industrial Relations Commission to settle disputes and set fair minimum standards at work

How will these changes affect you?

If you or a member of your family or household work, or want to work in the future, then the Howard Government's plans to take away basic rights at work will affect you.

The Howard Government's plans would benefit business at the expense of working people.

Australian families can't afford to go backwards, at a time when many are just keeping their heads above water.

Access all your Rights at Work campaign materials, petitions and information at www.rightsatwork.com.au or call the ACTU Hotline on 1300 362 223
Authorised by G Combet ACTU 393 Swanston Street Melbourne 3000 Printed by Printcast Pty Ltd Unit 1, 16-20 Amcor Way Campbellfield 3061

yourrightsatwork
worth fighting for

Your rights at work – worth fighting for

Unions have always stood for decent rights and fairness in the workplace. The changes the Government is proposing will hurt working families.

Unions oppose the Government's changes and will campaign for:

- **A strong safety net of decent minimum wages and conditions**
- **Proper rights for Australian workers to reject individual contracts and bargain collectively for decent pay and conditions in collective agreements**
- **The right to join a union and to be represented by a union**
- **A strong, independent Industrial Relations Commission to settle disputes and ensure fair minimum wages and conditions**

These things are vital to protect Australian living standards, families and the Australian way of life.

How you can help the union campaign

Your rights at work are worth fighting for. Unions oppose the Howard Government's changes because they will hurt working families.

Unions across Australia will be campaigning in the workplace, the community and if necessary the next election to protect Australian living standards, families and the Australian way of life.

What you can do to support the union campaign

- **Tell your work colleagues, family and friends about the Federal Government's plans or give them a copy of this information pack.**
- **Be active through your union - strong unions are the best way to protect your rights at work.**
- **Ask your employer to sign a Rights at Work Charter, and respect your rights at work.**
- **Join the ACTU's national week of union and community action 27 June to 1 July.**
- **Let your local Liberal or National Party Federal MP know that you oppose the Government's plans to take away basic rights at work.**

You can also contact your union or State Trades and Labour Council, or call the ACTU Hotline.

Access all your Rights at Work campaign materials, petitions and information at

www.rightsatwork.com.au

ACTU Hotline on **1300 362 223**

Access all your Rights at Work campaign materials, petitions and information at www.rightsatwork.com.au or call the ACTU Hotline on 1300 362 223
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