



**Public Service Association of NSW**

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In reply please quote: MW.vv

3 December 2020

Mr Lloyd Babb  
Director of Public Prosecutions  
NSW Office of the Director of Public Prosecutions  
175 Liverpool Street Sydney NSW 2000

**Attention: Nigel Richardson**

*Via email: [NRichardson@odpp.nsw.gov.au](mailto:NRichardson@odpp.nsw.gov.au)*

Dear Mr. Babb,

**Re: Workload Weighting Agreement and Workload Management Agreement**

I refer to the Joint Consultative Committee (JCC) meeting between the Association and the Office of the Director of Public Prosecutions (ODPP) on 10 November 2020. During this meeting the parties discussed the new Workload Management Agreement (WMA) which is to be piloted next year.

The existing WMA, which remains in force, was negotiated and signed on 13 December 2004 by Gary Corkill, Manager of Personnel Services. A copy of this agreement is attached to this letter and marked "A".

As part of the existing WMA, a lawyer's practice is to range from 22 to 28 in the city (average 25), and 15 to 22 in the country (average 20). The average is over six months.

Many members have advised that their practice size exceeds a weighting of 40. Further, many members have advised they are working well in excess of their contracted 35 hours per week on a consistent basis. This is in clear breach of the existing WMA and creates clear work, health and safety concerns.

The Association appreciates that the process of determining a new WMA is underway, however, it is likely to be some time before any new WMA is finalised. Accordingly, the Association demands that the existing WMA be complied with. Should this not occur, the Association will advise members to ensure that their weighted practice does not exceed 25 and to return all files to their managing lawyers for re-allocation. Please advise as a matter of urgency what the office intends to do in order to ensure compliance with the existing WMA

Yours faithfully

**Monika Wunderlin**  
for **STEWART LITTLE**  
**GENERAL SECRETARY**

YOUR REFERENCE

DIRECTOR'S CHAMBERS



YOUR REFERENCE

DATE

1 May 2008

Mr John Cahill  
General Secretary  
PSA of NSW  
160 Clarence Street  
SYDNEY NSW 2000

Dear Mr Cahill

I refer to a meeting between myself, other ODPP management representatives and PSA officials and delegates on 28 April 2008, at which a number of demands were tabled by the PSA. As indicated by counsel for the Office in the Industrial Relations Commission on that same date, an undertaking was given to provide a response to the demands within the week.

Set out below is my response.

- 1. Workloads to be managed so that the Office's Workload Management Agreement is adhered to*

RESPONSE:

I expect management and staff to adhere to the provisions of the Workload Management Agreement. Any staff member may report to managers instances where they consider they have been required to carry a workload that does not comply with the Agreement.

Conversely, any staff member may request a workload greater than that set out in the Agreement. These instances will be monitored to ensure OHS issues are satisfied.

I encourage the on-going review of the Agreement between management and the PSA.

- 2. An end to the practice of allocating prosecutions to clerks ("parking") so as to avoid the provisions of the Workload Management Agreement*

RESPONSE:

Unallocated matters will be retained in either the Managing Lawyer's, Assistant Managing Lawyer's or Managing Clerk's practice until allocation. This matter will be pursued further in the course of the on-going review of the Workload Management Agreement.

3. *The establishment of a Confiscations Unit in accordance with the allocation of tied funding*

RESPONSE:

Insufficient funding has been provided for the establishment of a Confiscations Unit or for a specialist lawyer to undertake this function in each location. All matters, including those involving confiscation, are subject to the weighting provisions of the Workload Management Agreement. I shall be consulting with the Chief Judge of the District Court to seek the co-operation of the court in having these matters dealt with at the time of sentencing.

I suggest this matter be further discussed during the review of the Agreement, particularly when the extent of the workload generated by recent amendments to confiscation legislation is known.

4. *The appointment of a full complement of WAS officers as determined by the grant of funding and the filling of all current WAS vacancies*

RESPONSE:

I am satisfied with the current number of WAS positions, given the funding restraints within the Office. WAS officer workloads are addressed in the provisions of the Workload Management Agreement.

I have approved the advertising of the following WAS positions:

1 x Wagga Wagga  
1 x Dubbo (ATSI)  
2 x Sydney

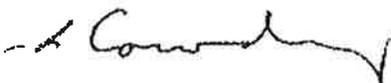
5. *Short matters to be conducted in a manner that does not prejudice workloads as set out in the Workload Management Agreement*

RESPONSE:

Agreed. This issue will also be subject to review in consultation with the Workload Management Agreement Review Committee.

I strongly recommend that the Review Committee meet as scheduled on 15 May 2008 to progress the review of the Workload Management Agreement.

Yours faithfully



N R Cowdery AM QC  
Director of Public Prosecutions

## WORKLOAD MANAGEMENT IN THE ODP

The following issues are to be undertaken:

1. The practice ranges would 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. For this purpose, the previously circulated guidelines for the weighting of matters will be circulated for use by all staff.
5. **On allocation of all matters, each manager is to ensure that workload is not such that the person to whom the work is allocated would have to work over contract hours in order to take on the file. 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 manager need not consult with the staff member 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 number.**

N.B. This paragraph (ie no.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:

"3. 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 on 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 (18 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/staff.**

7. There will be a monthly review of workloads by way of a review of CASES by the PSA, Claire Giroto 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 at least as much as they are in court.
  - (iii) ~~[superseded]~~
  - (iv) 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
  - (v) Checking that officers hold only those types of matters appropriate to their classification and grading.
  - (vi) Statistical review of matter turnover and trial turnover applicable to that group/office.
  - (vii) Appropriate gaps between travel and circuits.
  - (viii) 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:
  - (a) practice reviews will take place for all lawyers and all admin staff with matters in their practices;
  - (b) workload review for all ~~other~~ 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. Level 1 lawyers: it is agreed that in general, they should spend as much time out of court as in court. In those ODPP offices where ~~this~~ it is possible to ensure that **this occurs** (ie everywhere but in Sydney itself) if all matters are allocated through the managing lawyer who holds a diary for the level 1's, 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 place a system so as to be able to report on whether this is occurring.**

**[PSA Comment: However in Sydney, the trial matters are held by the Local Court advocate until it is set down for trial at arraignment. If this system results in there not being any level 1 lawyers available, management has no solution, especially as these matters are set down for trial by the District Court regardless of the availability of Crowns or - much less - solicitors. This is still a live issue which has not been resolved as regards Sydney (and to a lesser extent) Sydney West, other than by monitoring of flex time and group audits. There will be further consultation between the PSA and ODPP management in order to try to resolve this issue and with Group and managing lawyers in Sydney, Sydney West and country to monitor this problem.]**