



Public Service Association of NSW

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In reply please quote: DA:mb

16 May 2022

Ms Karen Smith
Crown Solicitor
Crown Solicitor's Office
60-70 Elizabeth Street
SYDNEY NSW 2000

Attention: Ms Jane Francis

Email: jane.francis@cso.nsw.gov.au

Dear Ms Smith,

Crown Solicitor's Office – Accommodation arrangements proposal feedback

We refer to the above and thank you for the opportunity to provide feedback on behalf of PSA members. The purpose of this letter is to outline member feedback on the proposal.

In summary, members do not support the proposal to relinquish a floor for various reasons, including the significant impact it will have on work practices. Members also have concerns with the implementation plan outlined in the event that a decision is made to relinquish a floor.

The PSA understands that this proposal is not linked to nor will it impact any existing negotiated flexible working conditions and member feedback is provided on this basis.

1. There is no “case for change”

The rationale for the proposal, as indicated in the proposal documents, is that *presently* there is low in-office attendance by staff, resulting in workspace that is not being effectively utilised. Putting it plainly, members understand this to mean that the CSO's rationale for the change is that there are cost savings that can be gained from relinquishing a floor of office space and that any potential cost savings can be re-purposed to better support staff.

Members understand that the CSO has put considerable work into this proposal. Members also accept that the office space is not at full capacity on a daily basis. Nevertheless, members consider that in putting this proposal together, the CSO has failed to consider or put weight on the effect the proposal would have on existing work practices, the competitiveness of the CSO as a legal services provider of choice, workplace growth, the retention and recruitment of high-quality staff, and the impact on staff work health and safety. Members consider that the proposal is premature but are not opposed to it being reconsidered in the future.

(a) The proposal is premature

At the outset, members think it is premature for the CSO to make a decision to relinquish a floor in circumstances when the State and its employees are still transitioning out of working arrangements established for the COVID-19 pandemic.

In the past 6 months, courts, tribunals, and other legal bodies have been transitioning from requiring remote attendance for all hearings to requiring a mixture of in-person and remote AVL attendances. Generally, final hearings are all conducted in person, whilst directions, case management, conciliations and mediations are conducted via AVL. This transition has affected staff attendance numbers at the office, with more staff beginning to attend the office on a more regular basis as there is an increased requirement for in-person appearances. It is not clear whether some or all of these AVL processes will transition to in person appearances in the near future. The transition is slow as courts, tribunals and other bodies grapple with balancing the need for open justice whilst ensuring health and safety issues are adequately addressed. Legal members consider that it is likely that there will be a further transition to requiring further in-person court attendances. If this occurs, a greater number of CSO employees will have to work from the office on a more regular basis.

In light of this, members are concerned that significant reliance has been placed upon statistics gathered within the office on in-person attendances during limited periods in the past 12 months. Members consider that these figures are unlikely to provide an accurate picture of current and future attendance rates, particularly as courts and tribunals transition towards more in-person appearances.

(b) The proposal will reduce the competitiveness of the CSO's legal services

As you are aware, the CSO is a legal services agency that prides itself on being the first-choice legal services provider for the NSW Government and its agencies. Its stated aims include delivering high-quality, cost-effective legal services, providing exceptional customer service to its clients, and fostering a culture of continuous improvement.

Members consider that the current proposal is not consistent with these aims and will impact their ability to provide high quality cost-effective legal services, resulting in the CSO becoming less competitive both as an employer of choice and in the legal services marketplace.

Members consider that the quality and efficiency of their work will be reduced if the proposal is implemented, as there will be a greater number of staff working in an open-

plan workplace, a reduced per-capita number of focus rooms and reduced availability of shared facilities (such as printers). It must be accepted that with an increased number of staff in a given workspace there will be increased background noise and interruptions to workflow. This is likely to be exacerbated under the current proposal, as high-volume litigation teams are proposed to be sitting next to quieter advice writing teams. As the past several years of open plan has shown, this noise and these interruptions cannot be mitigated by providing staff with headphones or asking staff to be quiet. The PSA raised these concerns when the workplace first moved to open plan, however workers were assured that there would be adequate focus rooms to address these issues. The effect of the proposal is to reduce the ratio of focus rooms to staff even further, in effect, reducing further the built-in safeguards that were put in place when the workplace transitioned to open-plan.

Members report that the existing focus room facilities are insufficient for staff needs. This is unsurprising given that prior to the COVID-19 pandemic, when the office was at maximum capacity, members regularly reported that there were insufficient focus rooms available. The proposal will have the effect of further reducing focus room facilities. The focus rooms are used by fee-earners for a range of work activities including client conferences, telephone calls, staff meetings, court appearances, supervision of junior solicitors, and focused advice or submission writing. Additionally, fee-earners compete for the use of these rooms with corporate services and legal support staff who also use them for their work activities. The proposal assumes that usage of the focus rooms can by and large be scheduled. Members report that this reflects a misunderstanding of the busy and unscheduled nature of the legal services provided by staff who often, at no notice, have to attend teleconferences, virtual court or MS Teams meetings with clients, witnesses and counsel.

Some teams have a heightened need for focus rooms given the sensitive nature of the material they work with (ie. classified intelligence can only be discussed with clients and witnesses in a focus room) or the type of and sensitivity of stakeholders they deal with (ie. family members of deceased individuals, birth parents in child removal or adoption proceedings). Members do not consider that the creation of one additional focus room (the IT training room) will sufficiently address this issue. Moreover, the present proposal does not appear to have considered the specific needs of different teams for focus rooms.

Members consider that a likely outcome of the proposal is that:

- There will be increased inefficiencies in work which requires detailed concentration such as advice writing, submissions drafting and document review. This is because of increased interruptions and background noise. These increased inefficiencies will increase the cost for clients and will likely result in greater mistakes, decreasing the quality of the work provided. To the extent that additional costs are incurred on matters this time may need to be discounted or written-off to avoid over-costing of matters or the perception of over servicing, and thereby ensuring that the CSO remains competitive in the legal services marketplace.

- Solicitors working on multi-solicitor litigation matters will be unable to have necessary informal and formal discussions about matters and will spend more time emailing one another back and forth. This is because in-person discussions, phone calls and meetings cannot be held as easily due to more staff working from home, an increased focus on a “quiet” workplace, and the lack of available focus rooms. As a result, these teams are likely to work less collaboratively reducing the quality of work and increasing the cost for clients.
- Junior solicitors and secretarial staff are likely to refrain from asking questions or interrupting their supervisors as more staff will be working from home, there is less space to have a discussion about issues and the quieter workplace focus. This is likely to result in junior staff undertaking unnecessary or unusable work (which will incur unnecessary costs), taking steps without supervision and supervisors being less likely to pick up these mistakes in a timely manner.
- There will be adverse effects on the CSO’s reputation as a well-regarded professional legal service provider. This is due increased background noise on telephone calls, an inability to hold sensitive telephone calls or meetings as needed or required by clients and a lack of AVL facilities for meetings with clients and court appearances.

Members consider that to the extent that there are cost savings generated by the proposal, these savings will likely be outweighed by the decreased quality and efficiency of client services provided.

(c) The proposal fails to take into account the work practices of staff

The proposal fails to take into account the existing work-practices of fee earners, the majority of which do litigation and court appearance work. The proposal states that to support the proposed changes there will be a continued adoption of the CSO’s “digital first” policy. This policy is clearly applicable to CSO corporate services, however it cannot be applied to the same extent to solicitors working in litigation. This is because of the significant volume of paper documents relied on by fee earners.

It is not uncommon for a solicitor to be required to review large volumes of documents. The current digital facilities of the CSO are not amenable to readily editing and saving large files. Staff frequently have to print large volumes of documents in order to be able to carefully consider and edit them. Moreover, some teams, such as the Inquiries Team and Child Protection Team, receive many large boxes of client files at the start of a matter which the fee earner is required to review and consider. The preparation and review of these hard copy files means that fee-earners inevitably will have many hard copy files at or next to their desk. These documents must also be stored at least until they can be scanned or at times retained until the conclusion of a matter. The proposal does not outline where these files are expected to be stored for fee-earners who do not have a current desk. It is noted that on many floors the existing file storage space is already insufficient and/or at capacity.

There are a range of jurisdictions in which solicitors work which have not embraced digital court files or documents. For example, the NSW Civil and Administrative Tribunal

(a Tribunal in which more than 4 teams work on a significant basis) require multiple copies of all documents relied on to be filed in hardcopy. Most, if not all, other courts require the provision of hard copy court-books or bundles of authorities at the time of the hearing. Hard copy documents are also frequently required to be served on opponents, particularly litigants in person and many counsel engaged by the CSO request hard copies of documents contained in their brief, including hard copy court documents. All such documents require adequate printing facilities and storage until served or distributed. The proposal does not account for where this additional storage space will be located (given one floor of storage space will be lost) nor does it account for the additional printing and compilation facilities which will be required.

In addition to the above, it is standard practice for all solicitors who conduct litigation to maintain a hard copy file of their court documents which are then taken to court on the day of the hearing(s) (in case of connectivity issues, back up digital copies go missing or the Court cannot locate a copy). These bundles are usually maintained at the solicitor's desk and added to throughout the course of the matter. The proposal has not addressed where these hard copy files will be stored for those solicitors who do not have a dedicated desk.

In addition to this, members consider that the proposal to establish hot desking or shared desks for fee-earners reflects a failure to consider the fast-paced and unplanned nature of litigation performed by fee earners in the office. Fee-earners working in litigation are often in and out of the office attending court hearings. Court hearings are not always scheduled in advance and, at times, a fee-earner may only find out about a court hearing the night before the hearing. A fee-earner who does not have a dedicated desk is unlikely to always have time to ensure there is a set desk for them to sit before being required to attend the office and will be unable to immediately attend to urgent tasks as they will need to locate an available desk for them to sit at. This will impede the fee-earners ability to provide high quality legal services to clients.

(d) The proposal fails to take into account workplace growth and the effect on the retention and recruitment of high-quality staff

Members hold concerns that, despite what the proposal document states, the CSO has not adequately considered the implications of the proposal on workplace growth. Page 9 of the proposal document states that the proposed allocation of workstations "allows for current CSO staff "growth" estimates". The data on that page reflects that on the current proposal and applying the June 2023 forecast headcount numbers, there will be enough workstations for 72% or 75% of staff (depending on whether the proposed additional workstations are able to be added). It is on this basis that this proposal has been put to staff.

With the exception of FY2020-21, the headcount numbers at the CSO have grown consistently year on year for the past decade.¹ The numbers provided by the CSO indicate that there is projected to be a growth of more than 13% in staff from 2022 to June 2023.² The CSO has previously stated in correspondence to the PSA that it is

¹ See records outlined in CSO Annual Reports from 2014-15 onwards.

² The records indicate a headcount from growth 472 to 535.

committed to growing the CSO, including by expanding the non-core work that it does. If, consistent with this commitment, staff numbers were to grow in line with the most recent year on year headcount growth, then within three years there will potentially only be sufficient workstations for 50% of staff.³ Plainly this would further exacerbate the issues outlined above and below regarding the competitiveness of the CSO and work health and safety risks. The CSO will not be able to accommodate all the staff who wish to attend the office when growth occurs, even if it is assumed that staff preferences regarding office attendance reflect those in the proposal.

The proposal also seems to assume that the attendance rates are static. Although there is the proposal for neighbourhood zones, there is no provision for variation to attendance rates within teams (or zones), such as where there is a change in circumstances for an individual (ie. change in caring responsibilities), recruitment of new staff means that more people wish to attend the office more frequently or the impact on attendance rates with staff rotating between teams. In raising this concern, members recall that prior to COVID-19, there were insufficient workstations on many floors, with some staff having to use workstations outside of their team. Members seek to avoid such a situation arising again from this proposed accommodation change.

Members have raised consistent concerns that they will consider leaving the CSO if they are unable to have a dedicated desk and also have the flexibility which allows them to work from home occasionally. Members hold concerns that the proposal will affect the ability of the CSO to recruit the best legal talent from the private sector, as candidates may be unwilling to accept a job if they were unable to be guaranteed that they would not have their own desk (it is expected that a bulk recruitment panel will be unlikely to provide assurances to candidates as allocation of desks is done by a director and will depend on the availability at the time of hire). Members think that this should be a considerable factor that weighs against the proposal, particularly given this is a time where there are difficulties attracting and retaining talent and the CSO cannot compete with the private sector in relation to other workplace matters (such as high salaries, bonus or incentive programs, and offices).

(e) There has been insufficient consideration of workplace health and safety issues

Members have raised concern that the proposal fails to adequately consider the extent of potential work health and safety risks that arise from it, including particularly the effect on the psychological health and wellbeing of staff.

As the CSO is aware, in addition to its obligation under the *Work Health and Safety Act* to identify hazards, assess risks and identify controls for those risks, it is required to consult with workers on all of these matters prior to deciding on or implementing a change.⁴ The proposal documents states that as part of the proposal the project team will “work with People & Culture to assess any impacts on staff WHS issues associated

³ Assuming a 13% increase in staff each year, will mean that by June 2026 the headcount will be 774. The figure is similar if using actual workstations or proposed workstations.

⁴ *Work Health and Safety Act*, s. 49.

with this initiative”.⁵ The PSA understands that this means that the CSO has not yet identified or assessed the work health and safety risks associated with this proposal. This appears to be confirmed by the absence of any risk assessment in the consultation pack and the absence of any reference or consultation on the potential controls for the risks referred to in the pack (such as psychosocial risks and manual handling). I would appreciate if you could confirm that the CSO intends to undertake further work health and safety consultation with workers in relation to this proposal prior to making any decision to implement the proposal. The PSA requests the opportunity to participate in any further consultation that will occur.

Members are of the view that work health and safety consultation must occur as the proposal raises a range of hazards and risks to worker’s health and safety. Some of the hazards and risks which are not adequately identified or addressed in the consultation pack include:

- a) Increased transmission of viruses with greater numbers of staff working in close proximity and the sharing of desks. This could lead to increased absenteeism and may potentially endanger staff, their family or the people they reside with who may be immuno-compromised. In particular, members are concerned that COVID-19 is still impacting large numbers of the community and remains a dangerous disease and that this has not adequately been taken into account. Members do not consider that the provision of disinfectant wipes will be a sufficient control for this risk as it relies on individual staff responsibility to use these and consistent supply of these items (which does not presently occur with other related hygiene items in the office).
- b) Increased risk of mental health issues, including anxiety, depression, vicarious trauma and burnout of staff as a result of staff working from home more regularly and working in a higher density office space. The CSO are already aware that a risk arising from its work is that staff may suffer burnout or vicarious trauma as a result of workload issues and the sensitive nature of material that staff work on (such as child abuse and sexual abuse material).⁶ Members report that if they do not have an allocated desk they will likely work from home more frequently and attend the office less. Members (junior and senior) also report that staff that are working from home are less likely to reach out for help from their supervisors or colleagues and that they have less general engagement in their team. These matters mean that the risk of vicarious trauma or burnout occurring is likely to be greater if the proposal was implemented as more staff would be working from home and managers would be less likely to identify when these issues are developing.
- c) The risk of physical injuries arising given files cannot remain on a shared desk and staff may be required to move these large file back and forth from a storage space each day. There is also the risk that the files may end up on the floor causing a trip hazard due to the absence of available storage space.

⁵ CSO’s consultation pack, p. 5.

⁶ These issues were all highlighted in the CSO’s latest PMES results.

- d) The hazard arising from staff having to re-set up the ergonomics of their workplace set-up each day and the limited availability of sit/stand desks. There are many staff in the workplace that have pre-existing medical needs for sit/stand desks and other work set-up requirements.

Members also hold concerns that the proposal has failed to comply with existing best practice guidelines on the provision of a healthy and safe work environment. In particular, the following concerns have been raised:

1. It is not clear if the proposal will comply with the minimum standards as specified in Safework NSW's *'Model Code of Practice – Managing the work environment and facilities'*. That Code of Practice specifies, among other things, minimum toilet numbers by gender. The proposal has not considered the gender balances of teams and toilet numbers on floors. For example, level 5 is proposed to hold the Inquiries, Regulatory and Environment and the Public Safety & Justice. The Inquiries Team and Regulatory and Environment Team are both predominately female (inquiries being 77% female and Regulatory and Environment being 80% female), which is likely to result in their being insufficient female toilets when all staff are in the office.⁷
2. It also appears unlikely that the proposal will comply with the NSW Government's *'Office Accommodation: Workplace Design Principles'* (August 2020) which suggest that 70% of desks in a workplace should be sit/stand desks.
3. It is also unclear if the proposal will meet the gold standard for best-practice accessibility standards, as specified in the NSW Government's *'Accessible Office Design Framework Guide'* (September 2001), particularly in light of the suggestion to add workspaces to each floor.
4. It is unclear if the proposal will provide sufficient rooms for personal use by staff consistent with standard best practice in employment and the requirements in the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009* (see cl. 15A.5-6). It is noted that when the office transitioned to open-plan commitments were made around the creation of personal or family rooms where staff could do rehabilitation exercises, undertake religious activities, personal phone calls, care for children or breastfeed/pump. These shaded rooms are now predominately used by staff for work purposes due to the absence of other available focus rooms. The proposal indicates that these rooms will now all be fitted with computer and AVL facilities, but does not provide for the creation of other personal rooms in their place.

The PSA requests that the CSO indicate if and how it intends to comply with these best practice guidelines.

⁷ The Model Code of Practice provides that, at a minimum, there should be 1 female toilet per 15 females and 1 male toilet per 20 males (or 1 urinal per 25 males).

2. Concerns with the proposed implementation

In addition to concerns about the general proposition of relinquishing a floor, members have specific concerns with the implementation plan proposed in the event that a decision is made to relinquish a floor.

(a) Hot desking

Different roles, teams, and practice groups have different needs, and would be impacted differently by the introduction of hot desking.

Legal team members (including legal support staff) are concerned that the proposal provides scope for a director to impose hot desking for some or all of the allocated desks. Hot desking is likely to have a detrimental effect on legal team members as it would impact their ability to manage their practices, deal with the physical files required for legal practice and due to work health and safety concerns. These concerns are outlined in further detail above.

All members would like further clarity on how neighbourhood zones are intended to be organised and an indication in advance as to how decisions will be made about the assignment of permanent desks.

(b) Locker space

As the CSO is aware, locker space is a key concern for members. The updated FAQs on the CSO Intranet on 3 May 2023 (which I note were not shared with the PSA) state that “lockers or other personal storage facilities will be made available to staff who don’t have an allocated workstation”. Staff should have access to some lockable personal storage in or near their workstation in accordance with the *Model Code of Practice – Managing the work environment and facilities*. Locker space is also required in light of the specific practice needs of the CSO, which are outlined under the workplace practices heading above.

Members have indicated that the provision of clothes hanging space (which is currently available) will not be sufficient and that they require a physical locker space which is lockable for the storing of personal items (such as medicine, deodorant, sanitary products, personal ergonomic tools and shoes for court). Members note that the presence of large quantities of personal items in all of the disabled bathrooms in the office is indication already that there is not sufficient personal storage space for those staff who wish to use the shower facilities at the office. Any locker space would need to be in addition to the facilities already provided.

The floor plans in the consultation pack do not outline where the CSO intends to locate these lockers. Members want clarity on specific plans for how lockers would be provided, including size, quantity, and location (noting that there would need to be enough for the forward planning of staff numbers). Any dense collection of lockers would also impact staff located near lockers, as this traffic may create noisy thoroughfares.

(c) Plans for savings

The PSA would like an estimate of the funds to be released should the proposal proceed, and further detail on how these savings are proposed to be reallocated.

Members have significant concerns with the current plans for how the funds are intended to be reallocated, including the present focus on primarily assisting staff to work from home in circumstances where most staff have already purchased the necessary equipment. Members consider that part of the cost savings should go to the purchasing of further sit/stand desks.

PSA members value the flexible working provisions provided under the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009*, including the right to negotiate working from home arrangements. These conditions exist independently of the CSO's obligation to provide appropriate accommodations for staff - whether they're in the office or working from home. Staff should not be compelled or falsely incentivised to work remotely as a result of this proposal or its impacts.

We look forward to discussing the feedback with you at the meeting scheduled at 3:00pm on Tuesday, 23 May 2023.

We request that the CSO provide a written response to the feedback outlined above and that is discussed at the meeting on 23 May 2023.

Should you wish to discuss the matter further please contact me on telephone 1300 772 679 or send me an email.

Yours sincerely,



Dean Allen
for **STEWART LITTLE**
GENERAL SECRETARY