

Guidelines for the appointment of Public Defenders

Issued pursuant to section 3A of the *Public Defenders Act 1995* (NSW)

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Table of Contents

1	Introduction	3
2	Merit selection	3
3	Appointments	4
	3.1 Advertisements	4
	3.2 Appointments Committee	4
	3.3 Initial appointments for ordinary Public Defenders	4
4	Reappointments	5
	4.1 Expressions of interest in reappointment	5
	4.2 Appointments Committee	5
	4.3 Notification where no reappointment	6
5	Confidentiality	6
6	References	6
7	Signature	7
8	Document history	7

1 Introduction

These Guidelines set out the procedures that should be followed in selecting a person to be proposed for appointment (including reappointment) to the office of Public Defender under the *Public Defenders Act 1995* (NSW). Unless otherwise specified, the Guidelines apply to the appointment of Public Defenders, Deputy Senior Public Defenders and the Senior Public Defender.

The Guidelines should be read in conjunction with the *Public Defenders Act 1995* (NSW). In the event of any inconsistency between that Act and these Guidelines, the Act prevails.

The purpose of these Guidelines is to establish a fair and transparent process for the selection of a person to be proposed for appointment (including reappointment) to the office of Public Defender.

2 Merit selection

Recommendations for appointment (including reappointment) to act in or hold the office of Public Defender are based on merit, taking into account the knowledge, skills and experience of candidates in relevant areas including:

- a) demonstrated advocacy skills of a high standard in criminal trials and/or appeals;
- b) demonstrated high degree of practical knowledge of criminal law procedure and evidence; and
- c) a thorough understanding of the ethical duties of defence counsel;
- d) a high standard of oral and written communication skills;
- e) demonstrated timeliness and time management skills;
- f) professional work ethic;
- g) sound decision-making skills and practices;
- h) ability to work effectively and efficiently with others including instructing solicitors; and
- i) appropriate communication skills with witnesses.

3 Appointments

3.1 Advertisements

The Attorney General will advertise the intention of the Governor to appoint a Public Defender or Public Defenders and call for expressions of interest.

3.2 Appointments Committee

The Attorney General will establish an Appointments Committee, of at least three people, whose task will be to make recommendations to the Attorney General regarding the suitability or non-suitability of a person for appointment to the office of Public Defender. The Attorney General will appoint one of the members of the Appointments Committee to Chair the Committee.

The Appointments Committee must include the Senior Public Defender or a Deputy Senior Public Defender and may include the following people:

- a) the Chief Executive Officer or other suitable representative of the NSW Legal Aid Commission;
- b) the Chief Executive Officer or other suitable representative of the Aboriginal Legal Service NSW;
- c) a retired judicial officer; and/or
- d) any other person(s) who, in the opinion of the Attorney General, has suitable skills, qualifications or experience to sit on the Appointments Committee.

The Appointments Committee will include no more than one person from the Public Defender's Office.

The Appointments Committee may provide a report to the Attorney General making recommendations regarding each candidate interested in appointment.

The Chair of the Appointments Committee is responsible for preparing this report, but the report should reflect the views of all Committee members.

3.3 Initial appointments for ordinary Public Defenders

Practitioners will initially be appointed to act in the office of Public Defender for a period of 12 months. Before the expiry of the acting appointment, the Attorney General will decide whether or not to propose the person for appointment to the office of Public Defender, taking into account the recommendations of the Senior Public Defender.

Where the Attorney General decides not to propose an Acting Public Defender for appointment to the office of Public Defender, the Acting Public Defender should, if possible, be notified of that decision at least one month before the expiry of his or her term.

The provision for initial acting appointments, set out under this clause, does not apply in respect of appointments to the office of Deputy Senior Public Defender or Senior Public Defender.

4 Reappointments

4.1 Expressions of interest in reappointment

In the last year of a Public Defender's term, the Attorney General will write to the Public Defender asking if he or she wishes to be considered for reappointment.

The Public Defender should respond in writing indicating whether or not he or she wishes to be considered for reappointment.

4.2 Appointments Committee

The Attorney General will establish an Appointments Committee, of at least three people, whose task will be to make recommendations regarding the suitability or non-suitability of the Public Defender for reappointment. The Attorney General will appoint one of the members of the Appointments Committee to Chair the Committee.

If a Public Defender indicates that he or she wishes to be considered for reappointment the Senior Public Defender will prepare a performance report or obtain one from a Deputy Senior Public Defender (in the case of the reappointment of a Deputy Senior Public Defender, the Senior Public Defender will prepare a performance report). The Senior Public Defender may make recommendations based on the performance report and the recommendations will be taken into account by the Appointments Committee.

The Appointments Committee must include the Senior Public Defender or a Deputy Senior Public Defender and may include the following people:

- a) the Chief Executive Officer or other suitable representative of the NSW Legal Aid Commission;
- b) the Chief Executive Officer or other suitable representative of the Aboriginal Legal Service NSW;
- c) a retired judicial officer; and/or
- d) any other person(s) who, in the opinion of the Attorney General, has suitable skills, qualifications or experience to sit on the Appointments Committee.

The Appointments Committee will include no more than one person from the Public Defender's Office.

The Appointments Committee will assess the Public Defender taking into account the matters set out in clause 2 and:

- the Public Defender's performance throughout his or her term (including the results of any performance reviews that have been conducted);
- whether the Public Defender has demonstrated efficient and effective use of preparation time for hearings;
- whether the Public Defender has demonstrated mentoring skills in relation to junior colleagues;
- the anticipated performance of the Public Defender in the event that he or she were reappointed; and
- the human resource needs of the office of the Public Defender.

The Appointments Committee may provide a report to the Attorney making recommendations regarding the reappointment of the Public Defender.

The Chair of the Appointments Committee is responsible for preparing this report, but the report should reflect the views of all Committee members.

If an applicant is not to be reappointed and the applicant has been notified of the Attorney General's decision, the Appointments Committee may provide reasons for its recommendation, if requested by the applicant.

4.3 Notification where no reappointment

Where the Attorney General decides not to propose a Public Defender for reappointment the Public Defender should, if possible, be notified of that decision within six months or other reasonable period before the expiry of the Public Defender's term.

5 Confidentiality

The process of selecting a person to be proposed for appointment (including reappointment) to the office of Public Defender shall remain confidential.

6 References

Public Defenders Act 1995 (NSW)