



# **ANNUAL REVIEW**

2003 - 2005





18 December 2007

The Hon John Hatzistergos MP  
Attorney General & Minister for Justice  
Level 33, Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

Dear Mr Attorney

**2003/2005 Annual Reports**

Pursuant to section 17 of the *Public Defenders Act 1995*, I am pleased to forward the Public Defenders reports for the year ending 30 June 2004 and 30 June 2005 for tabling in Parliament.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mark Ierace'.

Mark Ierace SC  
Senior Public Defender



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## **Our Role**

Public Defenders are barristers and active members of the New South Wales Bar Association. All Public Defenders are appointed by the Governor in Council and hold office as Public Defenders pursuant to the *Public Defenders Act 1995*. The Senior and Deputy Senior Public Defenders are additionally appointed to those offices for set but renewable terms. All Public Defenders are independent statutory officers. The terms of appointment under the *Public Defenders Act 1995* ensure they are able to perform their duties as barristers independently of government or any other direction. Although subject to direction by the Senior Public Defender as to administrative matters, including the efficient disposition of work, they enjoy complete statutorily entrenched independence in the conduct of their professional practice.

Pursuant to the Act, our principal duties lie in the representation of legally assisted people charged with serious criminal offences and who have been granted legal aid by the NSW Legal Aid Commission (LAC), the Aboriginal Legal Service (NSW/ACT) Limited (ALS) or community legal centres.

As barristers, Public Defenders operate in a manner conforming to the rules and customs of the New South Wales Bar. The head of Chambers is the Senior Public Defender. We are bound by the Bar Rules and subject to the same disciplinary regime in relation to professional conduct as other counsel.

## **Functions of the Senior Public Defender**

The Senior Public Defender is responsible to the Attorney General for the due exercise of his functions under the Act. Those functions are set out in detail in Section 8 (1) and include:

- The making of arrangements and giving of directions to ensure the effective and efficient conduct of Public Defenders' work;
- Providing advice, assistance to Public Defenders and monitoring their work;
- Consulting with the Legal Aid Commission, community legal centres and the Aboriginal Legal Service (NSW/ACT) Limited on the provision of legal assistance to legally assisted persons; and
- Advising the Attorney General on law reform.

Two Deputy Senior Public Defenders assist the Senior Public Defender in his duties.

## **Functions of Public Defenders**

The functions of a Public Defender are set out at Section 10 of the Act and include:

- Advising and appearing in criminal proceedings;
- Advising on matters referred by the Senior Public Defender;
- Carrying out other related functions as may be specified by the Attorney General in consultation with the senior Public Defender; and

- Providing representation in Parole Board and Mental Health Act proceedings and related matters.

The Senior Public Defender may also establish written guidelines on the exercise of the above functions by the Public Defenders.

## **Relationships with our Stakeholders**

Public Defenders continue to work closely with the LAC and the ALS in setting priorities for the disposition of our work throughout NSW.

Formal arrangements for access to our services are contained in service level agreements (SLAs) negotiated annually with these organisations. These agreements set a framework for the types of work undertaken by Public Defenders with priority given to the more serious and complex matters, such as appellate work and Supreme Court trials. By focussing on these high-cost matters, Public Defender services are used in the most efficient and effective manner.

The SLAs also set out the regional and metropolitan sittings of the Supreme and District Courts covered by Public Defenders. We aim to balance our resources to ensure that regional and remote communities have equal access to the Public Defenders whenever possible.

We aim to maintain a ratio of about 60:40 of matters completed in metropolitan and regional courts each year, with Public Defenders covering approximately 80% of regional court sittings.

An added benefit of the SLAs is that they enhance the level of communication between the parties. The agreements require regular consultation, which helps maintain strong relationships with our stakeholders.

Some funding is provided under each agreement. This is detailed at page 4.

## **Public Defenders and the Justice System**

The Senior Public Defender and Deputy Senior Public Defenders participate in the District and Supreme Court User groups. We are particularly concerned that the listing of matters enables the most efficient use of Public Defenders in metropolitan and regional District courts. By maintaining good working relationships with the court's administration and other participants, we are able to effectively manage the placement of Public Defenders where they are likely to be of the greatest utility.

Public Defenders also participate in working groups and are frequently consulted on issues affecting the administration of criminal justice at both state and federal levels.

## **Funding and Accountability**

### *Funding*

The primary source of funding is the Attorney General's Department. The Public Defenders' budget for the 2003-04 financial year was \$5,434,176 and \$5,625,141 for the 2004-05 financial year. This was the net position after adjustments were made for Crown liabilities and depreciation. Employee - related expenses represent about 85% of the total cost of services.

Additional revenue is derived from:

- The LAC which provides \$500,000 under the current SLA to fund two Public Defender positions;
- The ALS which provides \$150,000 under the current SLA;
- Fees for the Public Defenders annual conference and other continuing legal education seminars; and
- Fees for use of the Public Defenders' conference room.

The Public Defenders finances are managed by the Attorney General's Department and no separate accounting facility exist at Chambers.

(Full details of the Public Defenders' Budget are available from the Department).

### *Accountability*

The Public Defenders are accountable to the Attorney General and his Department through the provision of standard quarterly reports on agreed performance indicators, including human resources and financial information. We are also required to provide information for the Department's Annual Report.

Reports are also provided to the LAC on completed matters, including Commonwealth cases for which we receive separate funding under the SLA. Ad hoc reports may be provided to the ALS as requested.

The Public Defenders are not public servants under the *Public Sector Employment and Management Act 2002*. However, Public Defenders have adopted the administrative policies and procedures of the Department. Support staff are public servants and therefore bound by both the *Public Sector Employment and Management Act 2002* and *Public Finance and Audit Act 1983*. Senior clerks employed by Public Defenders are responsible for the day-to-day management of administrative and financial matters.

### *Business Plans*

Public Defenders are required to produce annual business plans for the Department. A copy of the most recent Business Plan is available on the Public Defenders website.



## **Legal Representation**

Our priorities for service are:

- Supreme Court trials;
- Long and/or complex District Court trials;
- Circuit work at nominated regional centres;
- Appellate work in the High Court and Court of Criminal Appeal; and
- Commonwealth matters

These priorities are determined in consultation with the LAC and ALS as part of our service level agreements.

In 2003-04, 2323 days were spent in court. A further 2908 days were spent on case preparation, and there were 3745 conferences with clients, solicitors and others.

For 2004-05, 2217 days were spent in court, with 2975 days preparation and 1986 conferences.

In 2003-4, Public Defenders were briefed in three trials that ran in excess of three months. One trial ran for 5 months in 2004-05, with 22 trials running for between three and seven weeks.

## **Statistics**

The statistics set out below simply record the number and type of matters completed in the relevant financial year. They represent a very simple measure of productivity given that the administration of criminal justice is a complex process, involving the defence, prosecution, judiciary and courts administration.

Although time spent in court is another measure of productivity, this also has to be balanced against those Public Defenders whose practices involve High Court and Court of Criminal Appeal matters, where a considerable amount of time is spent in chambers determining complex questions of law.

Public Defender involvement in long and complex cases will also reduce the number of matters dealt with as the turn-over in cases will decrease during that period.

<b>Matters Completed 2003-04</b>			
<b>State</b>		<b>Commonwealth</b>	
High Court advices & appeals	25	0	3%
Court of Criminal Appeal advices & appeals	404	2	41%
Supreme Court trial & sentence matters	95	0	9%
District Court trial & sentence matters	433	0	43%
Local Court committals & related matters	25	0	3%
Coroners Court	2	0	0%
Children's Court	11	0	1%
<b>TOTAL</b>	<b>995</b>	<b>2</b>	<b>100%</b>
<b>TOTAL MATTERS</b>	<b>997</b>		

Other assistance (non-court)	602
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<b>Matters Completed 2004- 05</b>			
<b>State</b>		<b>Commonwealth</b>	
High Court advices & appeals	17	5	2%
Court of Criminal Appeal advices & appeals	477	45	45%
Supreme Court trial & sentence matters	88	2	8%
District Court trial & sentence matters	468	15	42%
Local Court committals & related matters	31	0	2.5%
Coroners Court	1	0	0%
Children's Court	9	0	1%
<b>TOTAL</b>	<b>1091</b>	<b>67</b>	<b>100%</b>
<b>TOTAL MATTERS</b>	<b>1158</b>		

Other assistance (non-court)	547
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## **Early Intervention**

Public Defenders have worked closely with the LAC and ALS to involve Public Defenders from the very outset of the matter coming before the court in certain categories of offences such as murder, sexual assault and drug matters.

The benefits of this approach are manifold and include the earlier identification of contentious issues; refinement of charges to fit the available evidence; representation at committal hearings and ongoing advice to the instructing solicitor during the course of the matter. Maintaining the same counsel from charge to trial has distinct benefits for the client and the overall conduct of the matter, often resulting in reduced court time and the entering of pleas of guilty where appropriate at the earliest opportunity.

Placement of Public Defenders at regular regional court sittings also assists in the earlier disposition of matters as they are available to advise and assist in committals whilst attending these circuits.

## **Inquests**

Public Defenders appear in inquests at the request of the Crown Solicitor and the LAC. Representation was provided in three coronial hearings, including representation for the family of T. J. Hickey at the inquest into his death.

This work provides an opportunity for Public Defenders to expand their experience and offer valuable assistance in such matters.

## **Public Defender at The Hague**

Chrissa Loukas, a Public Defender since 1995, has taken leave without pay to take up an appointment as defence counsel at the International Criminal Tribunal for the former Yugoslavia.

Ms Loukas is one of the first Australian counsel to appear at the Hague. She is expected to resume her role as a Public Defender in late 2006.

## **Other Assistance Provided**

Public Defenders also act as an important resource for the legal profession generally, through the provision of telephone and brief non-case written advices on legal, ethical and practice issues. In 2003-4, Public Defenders dealt with 602 requests for advice, with 547 requests for 2004-05.

By providing this service, Public Defenders are fully utilised in the times when they are not in court.

Our website is also a valuable resource for the profession, students and members of the public.

## **Law Reform**

An important function of Public Defenders under the Act is the provision of advice to the Attorney General and others on law reform. We regularly make submissions on criminal law reform at the request of the NSW and Australian Law Reform Commissions, Criminal Law Review Division and Parliamentary Committees of Enquiry. In addition, a number of Public Defenders participate in law reform committees and advisory groups.

The Senior Public Defender (or his delegate) has a statutory right as intervener in Guideline Judgments under the *Crimes Sentencing Procedure Act 1999*. He was involved in one Guideline Judgment on sentencing for PCA (drink-driving) offences within the reporting period for 2003-04.

Peter Zahra SC, Senior Public Defender was appointed as a member of the Sentencing Council in March 2003. The Council meets 10 times per year.

### **Major written submissions were made on the following:**

- Statutory review of Criminal Procedure Amendment (Pre-Trial Disclosure) Act
- Proposal to abolish prison sentences of 6 months or less
- Section 5F(2) Criminal Appeal Act
- Sentencing young offenders
- Common law rule against double jeopardy
- Majority verdicts
- Proposed procedural changes to sexual assault legislation
- Crimes ( Sentencing Procedure) Act and proposal to establish DNA panel
- Bail ( Repeat Offenders) Act
- Standing Committee on Law and Justice enquiry into child sexual assault
- Standard minimum sentences
- Law relating got the infliction of grievous bodily harm and disease transmission
- Inquiry into juvenile offences
- Crimes (Forensic Procedures) Amendment Bill
- Discussion paper on the Evidence Act

## **Participation in Committees**

Public Defenders are frequently invited to participate on various committees involved with the administration of justice. Public Defenders were members of the following committees:

- The NSW Bar Association Criminal Law Committee.
- The NSW Bar Association Silks Committee.
- The Court of Criminal Appeal and Common Law Division Court Users Group.
- District Court Criminal Listing Committee.
- Australian Law Reform Protection of Human Genetic Information - Law Enforcement.
- Australian Law Reform Review of the Evidence Act Committee.
- Western NSW Community Legal Centre Committee.
- The Attorney General's Sexual Assault Task Force.

## **Indigenous Lawyers Program**

The Attorney General under the Indigenous Justice Strategy approved funding and since 2001 the Public Defenders have provided an Indigenous Law Graduates Program. Funding of \$20,000 per graduate per annum was provided under the Department's Aboriginal Program, to assist aboriginal law graduates establish themselves at the NSW Bar.

Two Aboriginal law graduates were assisted by this program in successfully establishing themselves at the Bar in 2004 and 2005.

## **Continuing Professional Education**

The highlight of the year was the Annual Criminal Law Conference held at the Taronga Zoo Conference Centre on 20th and 21st May 2004. This was the first time the conference was held at a venue large enough to enable all interested criminal law practitioners in NSW to attend, including some from regional locations. The conference was a resounding success with over 150 participants attending.

Public Defenders also provide speakers for other bodies conducting continuing legal education, such as the NSW Legal Aid Commission, Aboriginal Legal Service, College of Law, Young Lawyers and the Australian Advocacy Institute.

**Public Defenders**

		<b>Appointed</b>
<b>Senior Public Defender (SPD)</b>		
Peter Zahra SC	SPD originally appointed	25.10.01 03.04.89
<b>Deputy Senior Public Defenders (DSPD)</b>		
Chris Craigie SC	DSPD (acting) DSPD originally appointed	14.11.01 20.01.02 05.09.94
Andrew Haesler SC	DSPD originally appointed	28.07.05 24.01.95
John Stratton SC	DSPD originally appointed	28.07.05 10.03.97
<b>Public Defenders</b>		
Mark Austin		05.06.95
John Booth		09.08.01
Chris Bruce		26.04.88
Robyn Burgess	acting/part-time	13.12.00
Richard Button		06.05.91
Anthony Cook		21.10.99
Helen Cox	part-time	17.07.95
Sean Egan		19.06.96
Leonie Flannery		15.07.96
Terry Golding	acting	24.11.03
Anthony Parker		23.02.94
Ron Hoenig		06.10.87
Chrissa Loukas	LWOP	17.07.95
Peter Pearsall		06.12.01
Belinda Rigg	Acting	27.01.04
George Ritchie		20.10.86
Angus Webb		15.07.96
Eric Wilson		09.08.01
Paul Winch		21.10.99
Dina Yehia		28.07.99
Philip Young SC		24.07.02

## Contact Details

The Public Defenders' Chambers are located at:

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Level 13  
175 Liverpool Street  
SYDNEY  
NSW 2000

DX 11545  
SYDNEY DOWNTOWN

**Telephone:** (02) 9268 3111

**Facsimile:** (02) 9268 3168

**Website:** <http://www.lawlink.nsw.gov.au/publicdefenders>

**Chambers Manager:** Ruth Heazlewood

**Clerk to Chambers:** Colin Longhurst

## Hours

Chambers are accessible to the public Monday to Friday between the hours of 9.00am and 5.00pm.