

ANNUAL REVIEW

2006 - 2007



December 2007

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

Dear Mr Attorney

2006 – 2007 Annual Report

Pursuant to section 17 of the *Public Defenders Act 1995*, I am pleased to forward the Public Defenders report for the year ending 30 June 2007 for tabling in Parliament.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mark Ierace', written in a cursive style.

Mark Ierace SC
Senior Public Defender

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Foreword

I am pleased to present this report on behalf of Peter Zahra SC, who was the Senior Public Defender until January 2007, and Chris Craigie SC, who was the acting Senior Public Defender until 30 June 2007. I did not take up my position as Senior Public Defender until 16 July this year and therefore my comments on certain aspects of this report are necessarily limited.

However, my experience as a Public Defender some twelve years ago, my continuing association with these Chambers whilst at the private Bar and my time here since my appointment, has given me the privilege of observing the fine work of Public Defenders over a considerable period.

At the outset I would like to pay tribute to my predecessor, Judge Peter Zahra who was appointed as a Public Defender in 1989 and occupied the position of Senior Public Defender for the past five years. Peter was an outstanding leader of Chambers – hard working, a fine advocate and dedicated to developing and maintaining the highest standards in the work undertaken by Public Defenders. I have been extraordinarily lucky to inherit such a talented and cohesive team.

Peter was very ably supported in his work by Chris Craigie SC, Deputy Senior Public Defender and now the Commonwealth Director of Public Prosecutions. Chris was appointed as a Public Defender in 1994, and took on the role of Deputy Senior in late 2001. As well as running a demanding appellate practice, Chris was renowned for his calm and wise counsel on ethical, legal and management issues.

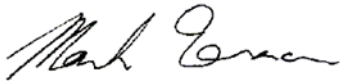
Leonie Flannery SC, a Public Defender for over 10 years, was appointed to the District Court Bench in March this year. Judge Flannery SC balanced a large Supreme Court trial practice with the Port Macquarie District Court sittings, establishing herself as a well-respected trial and appellate advocate.

Although it is sad to lose three long-serving and renowned Public Defenders within a year, it is unsurprising that they have been appointed to high office, given their abilities and experience. Despite these losses, Public Defenders have demonstrated their absolute commitment to ensuring that the most socially disadvantaged in the community receive a fair trial and proper representation. All Public Defenders have worked far beyond reasonable expectations to ensure that as many cases as possible were taken on; often volunteering for urgent matters at short notice in spite of already heavy caseloads.

Now that the legislative changes to the basis of our appointment are in place, introducing fixed-term appointments, we look forward to the recruitment of fresh advocates into our team. Although the work is demanding, we continue to attract the best of criminal counsel to our ranks.

The year ahead will continue to present challenges with the commitment to providing two counsel in the terrorism trials which are expected to run for at least nine months. We will also continue to meet our obligations to regional parts of NSW to ensure equity in the provision of our services for our clients and our stakeholders. The opening of the new court complex at Parramatta will provide an additional challenge and we are already planning towards expanding our services in this area.

I am looking forward to meeting these and other challenges confident in the support and skills of my colleagues at Public Defenders.

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

Mark Ierace SC
Senior Public Defender

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. It is anticipated that the Act will be amended to abolish the current entitlement to life tenure for all new Public Defender appointments.

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.

Under the Act, our principal duty is to represent legally assisted people charged with serious criminal offences who have been granted legal aid by the NSW Legal Aid Commission (LAC), Aboriginal Legal Service (NSW/ACT) Ltd (ALS) or community legal centres (CLCs).

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.

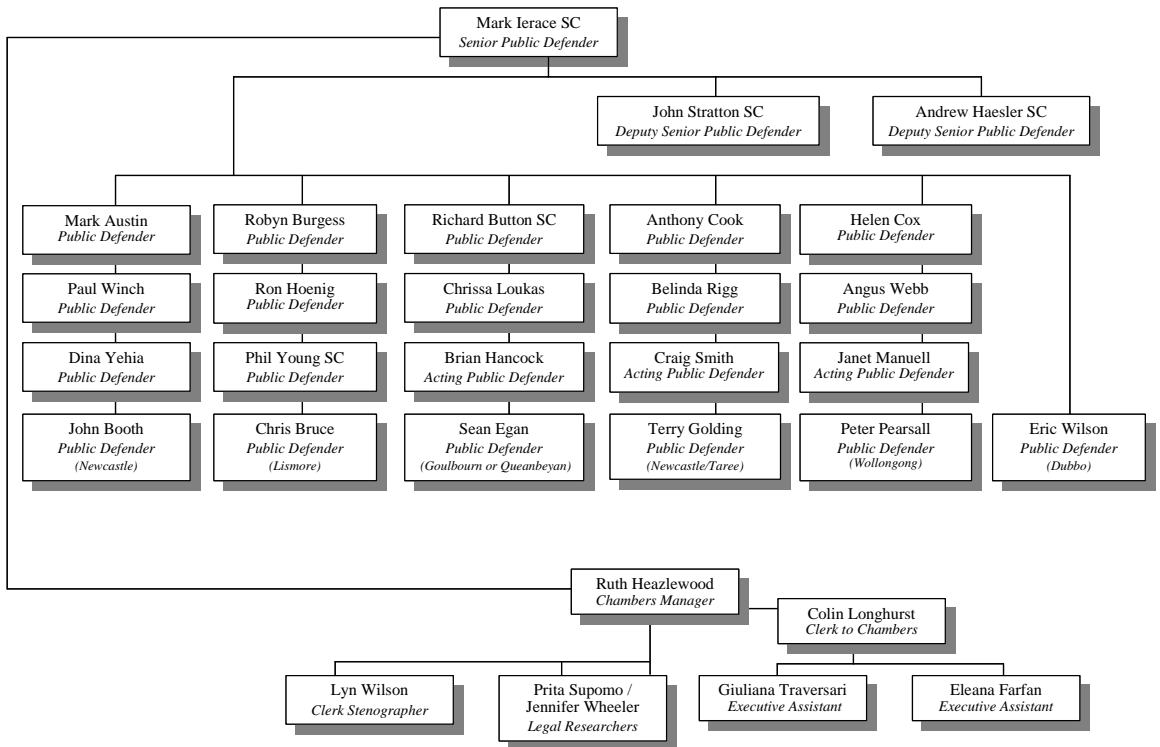
Three Deputy Senior Public Defenders assisted the Senior Public Defender in his duties in this reporting period.

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.



Organisation chart as at date of publication.

Relationships with our Stakeholders

Public Defenders are only able to represent legally assisted people as defined by our Act. As a result, the bulk of our work comes from the LAC (87%), followed by the ALS (12%). Public Defenders are either instructed by LAC or ALS solicitors, or by private solicitors acting under a grant of legal aid. More recently, we have been briefed by the State Crown Solicitors Office in a number of coronial inquests.

Formal arrangements for access to our services are contained in service level agreements (SLAs), which are negotiated annually with the LAC and ALS. These agreements set a framework for the types of work undertaken by Public Defenders, with priority given to 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.

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.

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 Public Defenders whenever possible.

There are currently five full-time Public Defenders based at Dubbo, Lismore, Newcastle, Taree and Wollongong who attend these and other District Court sittings within those regions. One part-time Public Defender is based in Goulburn. Other Public Defenders attend regional District and Supreme Court sittings across NSW as determined by the SLAs and their availability.

We are able to maintain a ratio of about 60:40 of matters completed in metropolitan and regional courts each year, covering approximately 85% of regional court sittings.

Some funding is provided under each agreement. This is detailed at page 6.

Public Defenders and the Justice System

Public Defenders have long been regarded as an integral part of the justice system. Their extensive experience and expertise as criminal barristers is well recognised by all participants involved in the administration of criminal justice. Both the LAC and ALS use the services of Public Defenders in difficult and complex cases whenever possible to ensure the most effective use of legal aid resources.

In addition to providing representation to legally aided clients, Public Defenders also play an important role beyond the courtroom through their involvement in government and other committees. 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.

Public Defenders also work closely with the NSW Bar Association being actively involved in the Association's committees as well as being consulted on criminal law issues.

We also have an international reputation, with visits this year from a delegation of Japanese judges and a meeting with the Chairman of the South African Legal Aid Board. The Solomon Islands Public Solicitor also sought our advice in a number of significant trials and appeals.

Funding and Accountability

Funding

The primary source of funding is the Attorney General's Department. The Public Defenders' budget for this financial year was \$6,623,946. This was the net position after adjustments were made for Crown liabilities and depreciation. Employee – related expenses continue to represent about 85% of the total cost of services.

Additional revenue is derived from:

- The LAC providing \$599,000 under the current SLA – this funds two acting Public Defender positions and includes some Commonwealth funding;
- The Coalition of Aboriginal Legal Services, providing \$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 exists 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.

An audit was conducted this year as part of the Attorney General's internal audit plan. The focus of the audit was to ensure their were appropriate systems in place to monitor and manage the work of Public Defenders, and to ensure appropriate financial systems were in place particularly in relation to travel claims. The auditors found only a number of minor deficiencies, many of which had already been identified by Public Defenders management staff who had been working towards systems improvements well in advance of the audit.

Business Plan

Improving our data systems has been a high priority for the last three years. We had hoped to have the new on-line booking and integrated brief management system in place by the end of this financial year. However, the costs associated with the project proved to be well above the anticipated expenditure as advised by the Department and various other options are currently under investigation.

We are still committed to improving how we manage our work and report on our productivity in a more meaningful fashion. The development of the on-line booking system will continue to be a high priority for the coming year.

Maintaining a safe and healthy workplace is another high priority item in our business plan. As part of the refurbishment of chambers which took place in December and January, a thorough inspection of the office was undertaken and all necessary repairs were made. Ergonomic equipment was also provided where recommended and some regional offices were inspected as part of our occupational health and safety requirements. More difficult to address is the impact of the daily stresses of appearing in high profile and often highly emotional cases where defence lawyers are often criticised for simply doing their job. Likewise, the relentless back-to-back trials and other casework of our regional Public Defenders can also take its toll. The value of the collegiate support in these circumstances cannot be underestimated and the Public Defenders are fortunate to have the support provided by their colleagues in helping to manage these stresses.

(Full details of our Business Plan can be seen at our 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.

The demand for Public Defenders far exceeds our capacity to provide a Public Defender in every case. The maximum number of Public Defenders is 24, which includes two acting Public Defender positions funded by the LAC. We have kept an additional acting Public Defender to backfill vacancies arising from extended and other leave. Three Public Defenders work part-time, with two conducting demanding appellate practices. Another Public Defender also worked part-time for several months during the year.

In addition, Peter Zahra SC, the Senior Public Defender and Leonie Flannery SC were both appointed to the District Court bench. The Senior Public Defender position was not filled until late June and Ms Flannery's position has not yet been advertised. This had a significant impact on our capacity to meet demand given that both had very busy Supreme Court practices.

Of the total number of matters completed:

- District Court matters comprise 41%;
- Supreme Court 9%;
- CCA matters 41%;
- High Court matters 1.5%; and
- Local, Coroner's and Children's Court's comprise 8% of finalised cases.

Preparation time amounted to 1,944 days plus 2,703 conferences with solicitors and clients. The number of days in court increased substantially this year, with 4,647 days spent in court.

Matters Completed 2006-07			
State		Commonwealth	% of total
High Court advices & appeals	11	3	1.5%
Court of Criminal Appeal advices & appeals	333	17	41%
Supreme Court trial & sentence matters	76	0	9%
District Court trial & sentence matters	338	9	41%
Local Court committals & related matters	43	0	5%
Coroners Court	8	0	1%
Children's Court	14	0	1.5%
TOTAL	823	29	100%

TOTAL MATTERS	852
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Other Assistance (non-court)	524
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Of the two Public Defenders briefed in the terrorism committals, a total of 75 days were spent in court. In addition, one Supreme Court trial ran for over 10 weeks and another for six weeks with a further six Supreme Court trials running between three and five weeks.

In the District Court, three trials ran for between six to eight weeks, and seven ran for between three and five weeks.

These lengthy cases, combined with several vacancies over the year have resulted in a decline in the number of completed matters. All Public Defenders have maintained very high workloads in an attempt to meet the demand despite these shortages.

Inquests

Public Defenders may appear in inquests at the request of the Crown Solicitor and the LAC or ALS. This year we provided representation in eight coronial inquests, including the highly publicised inquest into the death of Dianne Brimble, with Ron Hoenig acting as counsel assisting the coroner.

John Stratton SC, Deputy Senior Public Defender appeared for the family of Brian Peters at the inquest into the death of what is generally known as “the Balibo Five”, where five Australian journalists were killed in East Timor in 1975.

Both inquests attracted a great deal of media attention and had important ramifications beyond the immediate and tragic circumstances surrounding these deaths. At the time of publication, the Deputy State Coroner handed down her finding that the Balibo Five had died at the hands of the Indonesian military forces in East Timor.

Early Intervention

Public Defenders continue to work closely with LAC, ALS solicitors and the private profession to identify matters that can be properly negotiated and dealt with before trial or to clarify issues in dispute which can reduce the court sitting times.

This model works particularly well in regional court sittings where the Public Defender works with the profession, the Crown and judiciary, to case manage matters from the Local Court to the District and Supreme Courts. In some areas this has led to a reduction in the number of court sitting days with resultant cost savings across the justice system.

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. This year, 524 instances of advice were provided to the profession on legal, ethical and practice issues. Often Public Defenders are asked to provide urgent telephone advice to practitioners calling from court. Although this is often an interruption to the particular matter they are working on, all calls are taken and dealt with as soon as possible by any available Public Defender.

Our website is also a valuable resource for the profession, students and the general 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*. No applications were made under these provisions this year.

Peter Zahra SC, Senior Public Defender has been a member of the Sentencing Council for four years. The Council meets 10 times per year.

Major written submissions were made on the following:

- Participation on Criminal Law Review Division (CLRD) Committee on briefs of evidence.
- Submission to CLRD on using video evidence of witnesses in jury trials.
- Submission on proposal to involve juries in sentencing proceedings.
- Submission on Crimes Legislative Amendment (Proceedings for Sexual and Other Offences) Bill.
- Attorney General's review of *S.61 AA Crimes Act* – Defence of lawful correction.
- Submission to Parliamentary Legislative Review Committee on strict and absolute liability.
- Submission to Mental Health Review Tribunal on provisions relating to forensic patients under the Mental Health and other Acts.
- Submission to the NSW Law Reform Commission advisory committee on the review of jury directions.

- Attorney General's Department (AGD) review of the *Terrorism (Police Powers) Act 2002*.
- AGD discussion papers and draft consultation bills on the law of consent and on intellectual impairment.
- Consulted with Australian Law Reform Commission on their issues paper on legal professional privilege.

Participation in Committees

Public Defenders are frequently invited to participate on various committees involved with the administration of justice. This year 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 Federal Sentencing Committee.
- 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

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

The program was expanded last year to include all law graduates needing assistance to move into their legal career, not just those wishing to go to the Bar. Funding can now be directed to pay for the practical legal training component necessary for admission to practise as a solicitor. Under this program Public Defenders pay the course fees and the successful applicant a wage based on a summer clerk's salary.

Applications are considered by one of the Deputy Senior Public Defenders usually in consultation with the NSW Bar Association and where relevant, the relevant faculty member of the tertiary institution. Approval has been given for three Aboriginal graduates to participate in the program.

Continuing Professional Education

The highlight of this year was the presentation made by Major Michael Mori, defence counsel for David Hicks at our Annual Criminal Law Conference. Major Mori gave an impassioned speech about defending David Hicks, which drew a standing ovation from over 200 conference delegates. He also met with the then Attorney General, Bob Debus who formally opened the conference.

The conference also covered a broad range of practical topics including cross-examination; recovered memory and adult disclosure of child sexual assault; facial and body mapping; ethics; locating users of mobile phones; and accessorial liability.

Public Defenders are also in high demand to speak at other seminars and conferences conducted by the LAC, ALS, Young Lawyers, the NSW Bar Association, College of Law and other tertiary institutions. This year Public Defenders spoke at 60 conferences, talks, seminars and similar events, often in their own time on weekends or after hours.

We also play an important role in providing tutors for criminal readers at the NSW Bar as well as providing instructors for the Bar Association Readers course and tutors for the Australian Institute of Advocacy.

Public Defenders continue to support law students with their external placement programs by offering volunteer opportunities throughout the year. We also provide a Public Defenders prize as part of the University of NSW Law Faculty annual prize ceremony.

We continue to support the Attorney General Department's involvement in the "Stepping into Law Program" – a program organised by the Australian Employers' Network on Disability for law students with a disability approaching the completion of their degree. We agreed to provide a placement for a legally blind student from the Australian National University in Canberra to work with us over a period 6 weeks to gain experience in criminal law advocacy.

Movements and Appointments as of June 2006

		Appointed
Senior Public Defender (SPD)		
Peter Zahra SC	Appointed to District Court Bench SPD originally appointed	30.01.07 25.10.01 03.04.89
Deputy Senior Public Defenders (DSPD)		
Chris Craigie SC	SPD (Acting) DSPD DSPD (acting) originally appointed	18.12.06 20.01.02 14.11.01 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
Public Defenders		
Mark Austin		05.06.95
John Booth		09.08.01
Chris Bruce		26.04.88
Robyn Burgess	part-time	13.12.00
Richard Button SC		06.05.91
Anthony Cook		21.10.99
Helen Cox	part-time	17.07.95
Sean Egan	part-time	19.06.96
Leonie Flannery SC	Appointed to District Court Bench	15.07.96 20.03.07
Terry Golding		24.11.03
Brian Hancock	acting	29.08.05
Ron Hoenig		06.10.87
Chrissa Loukas		17.07.95
Janet Manuell	acting	06.02.07
Peter Pearsall		06.12.01
Belinda Rigg		27.01.04
Craig Smith	acting	13.06.06
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:

Carl Shannon Chambers
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.