

# **ANNUAL REVIEW**

2010 – 2011





21 December 2011

Greg Smith  
Attorney General and Minister for Justice  
Level 31 Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2001

Dear Attorney

**2010 – 2011 Annual Review**

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 2010 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

2011 is our twenty-first, and last, year at our current address. We move to new premises in December 2011, at 1 Oxford Street.

There have been profound changes in criminal law and procedure over that time; the abolition of the dock statement in 1994 and the commencement of the Uniform Evidence Act in 1995, to name two. A noticeable difference between then and now is that the average length of a NSW criminal trial has more than doubled; for the NSW District Court, from 3.9 days in 1990<sup>1</sup> to 8.64 days in 2010.<sup>2</sup> In 2011, Public Defenders were briefed in two Supreme Court trials of five months duration. Two Public Defenders appeared in the so-called “terrorism” trial, completed in 2009, which lasted in excess of twelve months; one of the longest in NSW history.

In part, this protraction is due to the increased sophistication of investigative techniques, such as the use of DNA profiles, which take time to “translate” the evidence into everyday language and provide necessary background information, so that its probative value can be assessed.

The contribution of the Public Defenders to the criminal justice system is all the more important in light of these changes. The experience of the Public Defenders ensures a high degree of efficiency and expertise. In that time the number of Public Defenders has grown from 16 to 25, the number of regionally-based Public Defenders increasing from two to seven. Our support staff has also grown, from 4 to 8 positions, including full-time positions for a Chambers Clerk and Chambers Manager, and two part-time research positions.

As one who was here when we moved from Selborne Chambers twenty-one years ago, it is apparent that for all the change, there is also consistency. The collegiate atmosphere and spirit, the dedication and the sheer professionalism of the Public Defenders remains the same now as it was then.

In 2010 Andrew Haesler SC, Deputy Senior Public Defender, was appointed to the District Court, marking the ultimate step in a stellar career of service in the law; from a solicitor at Redfern Legal Centre (including a period as the principal solicitor), the Central Australian Aboriginal Legal Service, and the Legal Aid Commission (1989-90), then as a Public Defender since 1995, and Deputy Senior Public Defender since 2005. We wish his Honour well, and shall miss his humour and tireless advice.

We were also delighted by the recognition of Eric Wilson receiving silk, being the second regionally-based Public Defender to be so honoured. Eric has worked for many years covering the State’s biggest (geographically) region, from Bathurst to Broken Hill, based in Dubbo. Eric is currently on secondment to the Crown, until mid-2012.



Mark Ierace SC  
Senior Public Defender

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<sup>1</sup> Don Weatherburn, *Grappling with Court Delay*, Crime and Justice Bulletin, No.19, Jan 1993, NSW Bureau of Crimes Statistics and Research at page 6; available on the BOCSAR website.

<sup>2</sup> NSW District Court Annual Review 2010, page 20.

## **Our Role**

Public Defenders are barristers and members of the New South Wales Bar Association. All Public Defenders are independent statutory officers, appointed by the Governor in Council under the *Public Defenders Act 1995* ("the Act").

The terms of appointment under the Act were changed in 2007 to remove life tenure for Public Defenders appointed after the commencement of the new provisions. Under the amendments, Public Defenders may now be appointed for a period of up to seven years and may be reappointed after that term expires. The Senior and Deputy Senior Public Defenders are appointed for set but renewable terms of seven years.

The principal duty of a Public Defender under the Act is to represent people charged with serious criminal offences who have been granted legal aid by Legal Aid New South Wales ("LAC"), the Aboriginal Legal Service (NSW/ACT) Limited ("ALS"), or community legal centres ("CLCs"). Public Defenders may also assist in other matters such as inquests and government inquiries.

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. Public Defenders are bound by the Bar Rules and are 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:

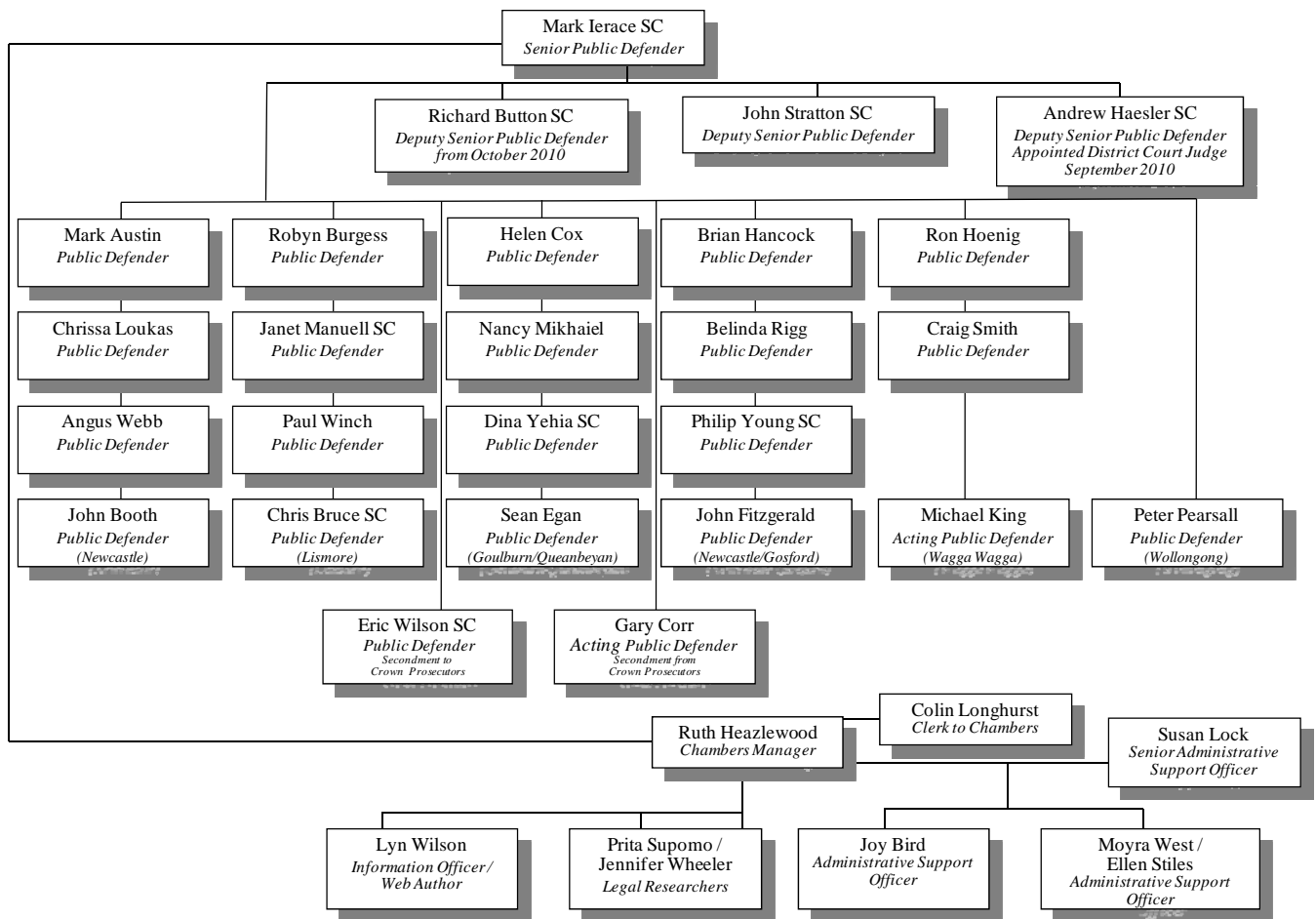
- the making of arrangements and giving of directions to ensure the effective and efficient conduct of Public Defenders' work;
- providing advice and assistance to Public Defenders and monitoring their work;
- consulting with the LAC, the CLCs and the ALS on the provision of legal assistance to legally assisted persons; and
- advising the Attorney General on law reform.

Three Deputy Senior Public Defenders, John Stratton SC, Andrew Haesler SC and Richard Button SC assisted the Senior Public Defender in his duties in this reporting period. Richard Button SC was appointed Deputy Senior Public Defender in October 2010 following the appointment of Andrew Haesler SC to the District Court Bench.

## **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 establish written guidelines on the exercise of the above functions by the Public Defenders.



## Service Level Agreements

Public Defenders represent legally assisted people as defined by the Act. Most of this work is briefed by the LAC (about 84 per cent), either directly or by private solicitors acting under a grant of legal aid. Matters referred by the ALS account for nearly 16 per cent of Public Defenders' work, with a small number of matters briefed by community legal centres. Formal arrangements for access to our services are contained in Service Level Agreements ("SLAs"), which are negotiated annually with the LAC and ALS.

The SLAs set a framework for the type of work undertaken by Public Defenders, with priority given to more serious and complex matters, such as appellate work and Supreme Court trials. By focusing on these high-cost matters, Public Defender services are used in the most efficient and effective manner. These agreements ensure we regularly consult with the parties. This helps maintain strong relationships with the LAC and ALS.

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.

This year, seven full-time Public Defenders were based at Dubbo, Lismore, Newcastle, Coffs Harbour, Wagga Wagga and Wollongong. One part-time Public Defender attended Goulburn and Queanbeyan District Courts. The permanent placement of a Public Defender at Wagga Wagga this year occurred in response to the growing need for our services in this region.

Regional Public Defenders appear predominantly in the District Court sittings and to a lesser extent in Supreme Court matters. Sydney-based Public Defenders attend regional District and Supreme Court sittings across NSW as determined by the SLAs and their availability.

Public Defenders receive funding from both the LAC and ALS under these agreements (see Funding and Accountability).

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

Public Defenders have long been regarded as an integral part of the justice system. Their extensive experience as criminal barristers is well recognised by all participants 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 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 in addition to other committees listed in this report.

The Senior Public Defender is a member of the Sentencing Council, the Supreme Court Media Consultation Committee and other Court committees that aim to improve the administration of the criminal justice system in NSW.

Public Defenders work closely with the NSW Bar Association and have an elected representative on the Bar Council. A number of Public Defenders are also actively involved in the Association's committees as well as being consulted on criminal law issues. One Public Defender provides training for newly admitted barristers through the Bar Association's practice course and also provides regular advocacy training for the Australian Advocacy Institute to Australian and international lawyers.

## **Funding and Accountability**

### *Funding*

The primary source of funding is the Department of Attorney General and Justice. The Public Defenders' budget for this financial year was \$7,966,230, which represents the net cost of services. Employee-related expenses continue to represent about 85 per cent of the budget.

Additional revenue is obtained under the service level agreements from:

- The LAC, which provided \$693,937. This amount funds two Public Defender positions and provides partial funding for one legal research officer.
- The ALS, which provided \$165,000.

Fees from the Public Defenders annual criminal law conference and for private use of our video conferencing facility help offset operational costs.

Public Defenders ended this year well within budget due to careful monitoring of expenditure and through additional revenue raised from the annual criminal law conference. Delays in filling vacancies also reduced salary costs.

(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 which are based on the number of completed briefs within defined jurisdictions. Regular reports are also provided on the progress of business plan initiatives, financial management and risk assessments.



Public Defenders are regularly audited and make progress reports to the Department on issues identified by internal audit reports. Ad hoc and yearly reports are provided to the LAC and ALS as required under the SLAs or as requested.

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. Administrative 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 Plan**

The Business Plan for 2010/11 focussed on three initiatives:

- implementation of a brief management system
- developing an online booking system for Public Defenders
- assessing the viability of allocating Public Defenders to City West Courts at Parramatta

Implementation of the brief management system has proceeded slowly, largely due to technical issues. However, work continued on this project through-out the year and it is hoped to have the new software fully operational by the beginning of 2012.

The ongoing technical issues have also delayed the progress of the online booking system which will now proceed as a second part of the project once the new system for recording and reporting is established.

A pilot project saw the number of Public Defenders based at the City West Courts increase from one to three. On review, it was found that there had been an increase of approximately 50 per cent in completed matters for these courts. This confirms the viability of the permanent placement of two Public Defenders at the Parramatta Justice Precinct with additional assistance when required. Three other Public Defenders were based at Parramatta for a complex and lengthy Supreme Court trial.

In addition to the above initiatives, considerable time was spent locating suitable accommodation for our CBD chambers in anticipation of the lease expiring in December 2011. New premises, close to our current location, were located just before the end of this financial year.

## **Legal Representation**

There are 25 Public Defender positions for the whole of NSW. This number fluctuates in any given year due to unfilled vacancies, long service leave and other leave. Four Public Defenders work part-time.

It is inevitable that the demand for Public Defender representation exceeds our capacity. This year Public Defenders accepted 963 requests for assistance and declined 1,023 requests. Matters are declined for a number of reasons, including conflict of interest and unavailability of a Public Defender.

The acceptance and allocation of briefs to Public Defenders is largely determined by the service level agreements with the LAC and ALS. The aim of these agreements is to ensure the most cost effective use of our mutual resources. The types of matters where Public Defenders are briefed include:

- Supreme Court trials;
- long and/or complex District Court trials;
- circuit work at nominated regional centres;
- appellate work in the High Court, Court of Criminal Appeal and Court of Appeal; and
- murder committal hearings and other committals involving serious charges.

Public Defenders also appear in coronial inquiries either at the request of the LAC, the ALS or the Crown Solicitor's Office. The distribution of work (matters completed) across the various court jurisdictions is as follows:

- District Court, 56%;
- Supreme Court, 12%;
- High Court and Court of Criminal Appeal, 25%; and
- Local, Coroner's and Children's Courts, 7%.

Preparation time amounted to 3,086 days with an additional 2,788 conference hours spent with solicitors, clients and witnesses. This year Public Defenders spent 1,942 days in court.

Representation in regional and non-metropolitan court sittings accounts for approximately 44 per cent of our work. In addition to the placement of Public Defenders at Dubbo, Goulburn, Lismore, Newcastle, Wollongong and, more recently at Wagga Wagga, Public Defenders spend many weeks attending regional District and Supreme Court sittings.

<b>Matters Completed 2010 – 2011</b>		
<b>Jurisdiction</b>	<b>State</b>	<b>Commonwealth</b>
High Court advices & appeals	6	0
Court of Criminal Appeal advices & appeals	206	8
Court of Appeal	4	0
Supreme Court trial & sentence matters	97	5
District Court trial & sentence matters	501	1
Local Court committals & related matters	54	0
Coroner's Court	6	0
Children's Court	6	0
<b>Total</b>	<b>880</b>	<b>14</b>
<b>Total matters</b>	<b>894</b>	
<b>Other assistance (non-court)</b>	<b>485</b>	

Public Defenders are regularly involved in very lengthy trials in accordance with the priorities set by our service level agreements. Although there are cost benefits to this approach, it decreases the number of matters that we are able to complete in any given year.

One such trial involved the prosecution of members of a motor cycle club for murder and related offences arising from a brawl at Sydney Domestic Airport. Three Public Defenders, including John Stratton SC, Deputy Senior Public Defender were involved from the committal stage to the trial, which ran for over five months. At the time of writing, both accused were found not guilty of murder, with a third having entered a plea to a lesser charge before trial. The Senior Public Defender was involved for most of this year with the matter of ***R v Standen***. This was an extremely complex matter with the trial running for over four months. All of these trials require extensive preparation and pre-trial hearings but this has the benefit of reducing court time and therefore expenditure.

## **Secondments**

Public Defenders have arranged secondments between this office and the Crown Prosecutors for a number of years. The secondment is seen as an acting appointment and, as such, is limited in time by each of the relevant Acts to no more than 12 months at a time. The secondment may be extended by the Attorney General.

Gary Corr, Crown Prosecutor, was seconded to the Public Defenders this year with Eric Wilson SC continuing his secondment to the Crown.

## **Other Assistance Provided**

Public Defenders are an important resource for the legal profession and this year they provided 485 instances of telephone and brief written advice to the profession on legal, ethical and practice issues. Public Defenders often provide urgent telephone advice to practitioners attending court. Although this is often an interruption to their own work, all calls are taken and dealt with as soon as possible by a Public Defender.

The Public Defenders website is a valuable resource for the profession, students and the general public with the site receiving at least 339,602 "hits" this year. The sentencing tables and other resources on the website are used both by practitioners and the judiciary, who regularly comment on the usefulness of this resource.

This website is currently being redesigned as part of a Department-wide project. Considerable work has been undertaken by our web author this year to meet the requirements of this project.

## **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 and Parliamentary Committees of Inquiry. In addition, a number of Public Defenders participate in law reform committees and advisory groups.

Mark Ierace SC, Senior Public Defender, is a member of the NSW Sentencing Council.

Written submissions were made on the following:

- NSW Law Reform enquiry on People with Cognitive and Mental Health Impairments in the Criminal Justice System.
- Joint submission with the NSW Bar Association on the law of complicity to NSW Law Reform Commission.
- Campbell Review of Laws Surrounding Criminal Incidents Involving the Death of an Unborn Child.
- Response to Attorney General's request for comment on the proposal to enact criminal offences for loss of life or serious injury arising from lack of proper maintenance of swimming pool fences and related matters.
- Response to the Department on proposed changes to law on Family Victim Impact Statements and Sentencing in Homicide Cases.

## 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 Council.
- The Court of Criminal Appeal and Common Law Division Court Users Group.
- The Supreme Court Media Consultation Group.
- NSW Sentencing Council.
- The DNA Review Panel.
- District Court Criminal Listing Committee.
- Western NSW Community Legal Centre Committee.
- Sydney University Institute of Criminology Advisory Committee.
- University of Wollongong Law School Advisory Committee.
- Crime and Justice Reform Committee.
- Corrective Services NSW Legal Practitioners Committee.
- DAGJ Forensic Procedures Working Group.
- LAC Specialist Barristers panels.

## Aboriginal Lawyers Program

Since 2001, Public Defenders have provided an Aboriginal Law Graduates Program following approval by the then Attorney General for funding under the Indigenous Justice Strategy. Funding of \$46,752 was provided this year.

The initial aim of the program was to assist Aboriginal law graduates establish themselves at the NSW Bar.

The program was expanded in 2006 to include all Aboriginal law graduates needing assistance to move into a 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 may pay the course fees and salary for up to six months for successful applicants. Ten graduates have completed the program since its inception and have been admitted as legal practitioners in NSW.

Dina Yehia SC has taken over the role of administering this program following the appointment of Andrew Haesler SC to the District Court bench this year. Judge Haesler played a pivotal role in developing this program over the years and has made a valuable contribution to its success.

Damian Beaufile, a recent graduate of the University of Sydney, began his placement in February and considers the placement to be the perfect start to his career as a criminal lawyer. *“When you leave university this is the type of placement you dream of”* says Damian *“the work at times can be a bit challenging but there is a sense of satisfaction here I don’t think you can get at some other places. I’m learning a lot and the people are great. I couldn’t ask for anything more.”* Damian has since been appointed to a legal position at Legal Aid NSW.

Kristy Kennedy, also a graduate from the University of Sydney, commenced her placement at the same time. After her admission as a solicitor in April, she will commence work as the Tipstaff for the Honourable Justice Michael Slattery. Kristy is focused on a career as a litigator, and says *“my time at the Public Defenders has cemented my idea of a career at the Bar. The program at*

*the PDO's has provided me with great mentoring, and I have thoroughly enjoyed the opportunity to work closely with Dina Yehia SC. I would definitely recommend the program to other Indigenous law graduates."*

## **Continuing Professional Education**

The Public Defenders Annual Criminal Law Conference continues to be a highlight of the continuing legal education calendar for NSW and interstate practitioners. This year we had a record number of 314 practitioners attending, including 14 from Queensland, 22 from the ACT and two from the Northern Territory.

The keynote speaker was Her Honour, Justice Virginia Bell of the High Court of Australia who spoke on the "Art of Persuasion". Other speakers included Nicholas Cowdery AM, QC presenting a paper on "Reforming the Criminal Justice System" and social commentator, Hugh Mackay who presented a thought provoking talk on "why the Pursuit of Happiness Will Make You Miserable". Judge Peter Zahra presented a comprehensive paper on advocacy and Chris Bruce SC covered the very challenging topic of ethics and mental illness. Full details of this and previous conference programs and papers are available on our website.<sup>3</sup>

Public Defenders are highly sought after to speak at 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 72 conferences, talks, seminars and similar events, often in their own time. We provide regular speakers for the Enough is Enough victims of crime support group and assist with the training program for support workers organised by Victims and Witnesses of Crime Court Support Inc.

We welcomed a delegation of Japanese academics from Nanzan, Osaka and Konan Universities to discuss the role of plea negotiation in the criminal justice system. The delegation was also very interested to know about the unique role of Public Defenders in NSW.

Public Defenders met with representatives from the Department of Attorney General, South Australia as part of a review of legal aid services in that state including examining whether to establish a Public Defenders office.

Public Defenders play an important role in providing tutors for criminal readers at the NSW Bar, as well as providing instructors for the Bar Association's Readers course, and tutors for the Australian Institute of Advocacy.

Public Defenders continue to support law students with their external placement programs and practical legal training by offering volunteer opportunities throughout the year. We regularly provide work experience placements for students each semester from the University of Sydney, University of New South Wales and the University of Wollongong. These placements are highly prized and we receive many applications from students wishing to work with Public Defenders. We also provide work experience placements for year 10 high school students.

Public Defenders provide an annual prize for a best performing student across all postgraduate students at the UNSW Law Faculty prize giving ceremony.

Please refer to our website for copies of conference papers and papers prepared by Public Defenders.

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<sup>3</sup> [www.publicdefenders.nsw.gov.au](http://www.publicdefenders.nsw.gov.au)

**Movements and Appointments as at the time of publication**

		<b>Appointed</b>
<b>Senior Public Defender (SPD)</b>		
Mark Ierace SC	SPD	16.07.07
<b>Deputy Senior Public Defenders (DSPD)</b>		
Andrew Haesler SC	DSPD originally appointed (appointed District Court Judge)	28.07.05 24.01.95 20.09.10
John Stratton SC	DSPD originally appointed	28.07.05 10.03.97
Richard Button SC	DSPD permanently appointed	21.10.10 06.05.91
<b>Public Defenders</b>		
Mark Austin	permanently appointed	05.06.95
John Booth	acting permanently appointed	07.01.98 09.08.01
Chris Bruce SC	permanently appointed	26.04.88
Robyn Burgess	acting (part-time) permanently appointed (currently part-time)	13.12.00 10.11.05
Helen Cox	permanently appointed (currently part-time)	17.07.95
Sean Egan	Permanently appointed (currently part-time)	19.06.96
John Fitzgerald	acting permanently appointed	25.01.10 25.01.11
Brian Hancock	acting fixed term appointment*	29.08.05 29.10.09
Ron Hoenig	permanently appointed (seconded to Crown)	06.10.87
Michael King	acting permanently appointed	30.08.10 30.08.11
Chrissa Loukas	permanently appointed	17.07.95
Janet Manuell SC	acting fixed term appointment*	06.02.07 13.06.08
Nancy Mikhaiel	acting fixed term appointment*	12.05.08 12.05.09
Peter Pearsall	permanently appointed	06.12.01
Belinda Rigg	acting permanently appointed (currently part-time)	27.01.04 13.07.06
Craig Smith	acting fixed term appointment*	13.06.06 13.06.08
Angus Webb	permanently appointed	15.07.96
Gary Corr	secondment (from Crown Prosecutors)	01.01.09 30.06.12
Eric Wilson SC	acting permanently appointed seconded to Crown Prosecutors	27.01.98 09.08.01 01.07.10 30.06.12
Paul Winch	permanently appointed	21.10.99
Dina Yehia SC	acting permanently appointed	28.07.99 08.05.03
Philip Young SC	permanently appointed	24.07.02

\* Appointment for fixed term of 7 years renewable under 2007 amendments to the Act.

## **Contact Details**

The Public Defenders are located at

Public Defenders Chambers  
23/1 Oxford Street  
DARLINGHURST NSW 2010

DX 11545  
SYDNEY DOWNTOWN

### **Telephone**

(02) 9268 3111

### **Facsimile**

(02) 9268 3168

### **Website**

[www.publicdefenders.nsw.gov.au](http://www.publicdefenders.nsw.gov.au)

### **Chambers Manager**

Ruth Heazlewood

### **Clerk to Chambers**

Colin Longhurst

### **Hours**

Monday to Friday between the hours of 9.00am and 5.00pm