

THE PUBLIC DEFENDERS
ANNUAL REVIEW
2012 – 2013

The Public Defenders

The Hon. Greg Smith SC MP
Attorney General and Minister for Justice
Level 31 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

18 December 2013

Dear Attorney

2012 – 2013 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 2013 for tabling in Parliament.

Yours sincerely



Mark Ierace SC
Senior Public Defender

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Foreword

This year has been one of consolidation for the Public Defenders in our new Sydney Chambers. All Public Defenders continue to maintain very busy practices and were able to increase the number of matters finalised, despite ongoing vacancies.

A regional office, named Papayanni Chambers after former Public Defender Cliff Papayanni, who passed away in 2011, was formally opened at Wagga Wagga by Judge Jeffreys of the District Court, and Cliff's daughter, Nicole Lenoir-Jourdan. Two Public Defenders are now located there, including a Senior Counsel (Eric Wilson SC) whose primary responsibility is to provide representation in regional Supreme Court matters.

Seven Public Defenders collaborated with a special unit set up at Legal Aid NSW last year to assess many hundreds of cases potentially affected by the decision of the High Court in *Muldrock v The Queen*, concerning standard non-parole periods. By the end of the year, almost all such cases had been assessed and submissions filed where appropriate.

Two new Public Defenders were appointed. Jason Watts was appointed as the Public Defender servicing Lismore District Court and other courts in that region and Ertunc Ozen was appointed to a Sydney-based position with the additional responsibility of Legal Aid and Aboriginal Legal Service briefs in the Bega District court sittings.

During the year we celebrated the appointment of Chrissa Loukas as Senior Counsel.

Public Defenders continued to meet with lawyers and judges from foreign jurisdictions to explain, and respond to their inquiries about defence representation in our criminal justice system. Visiting groups this year included Judges from Turkey, prosecutors from Vietnam and the President of the Law Society of England and Wales.



Mark Ierace SC
Senior Public Defender

The Role of Public Defenders

Public Defenders are barristers appointed as independent statutory officers by the Governor of NSW 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. 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 is to represent people charged with serious criminal offences who have been granted legal assistance 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 are bound by the New South Wales Bar rules and are subject to the same disciplinary regime in relation to professional conduct as other counsel. The head of Chambers is the Senior Public Defender.

Functions of the Senior Public Defender

The Senior Public Defender, Mark Ierace SC, 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:

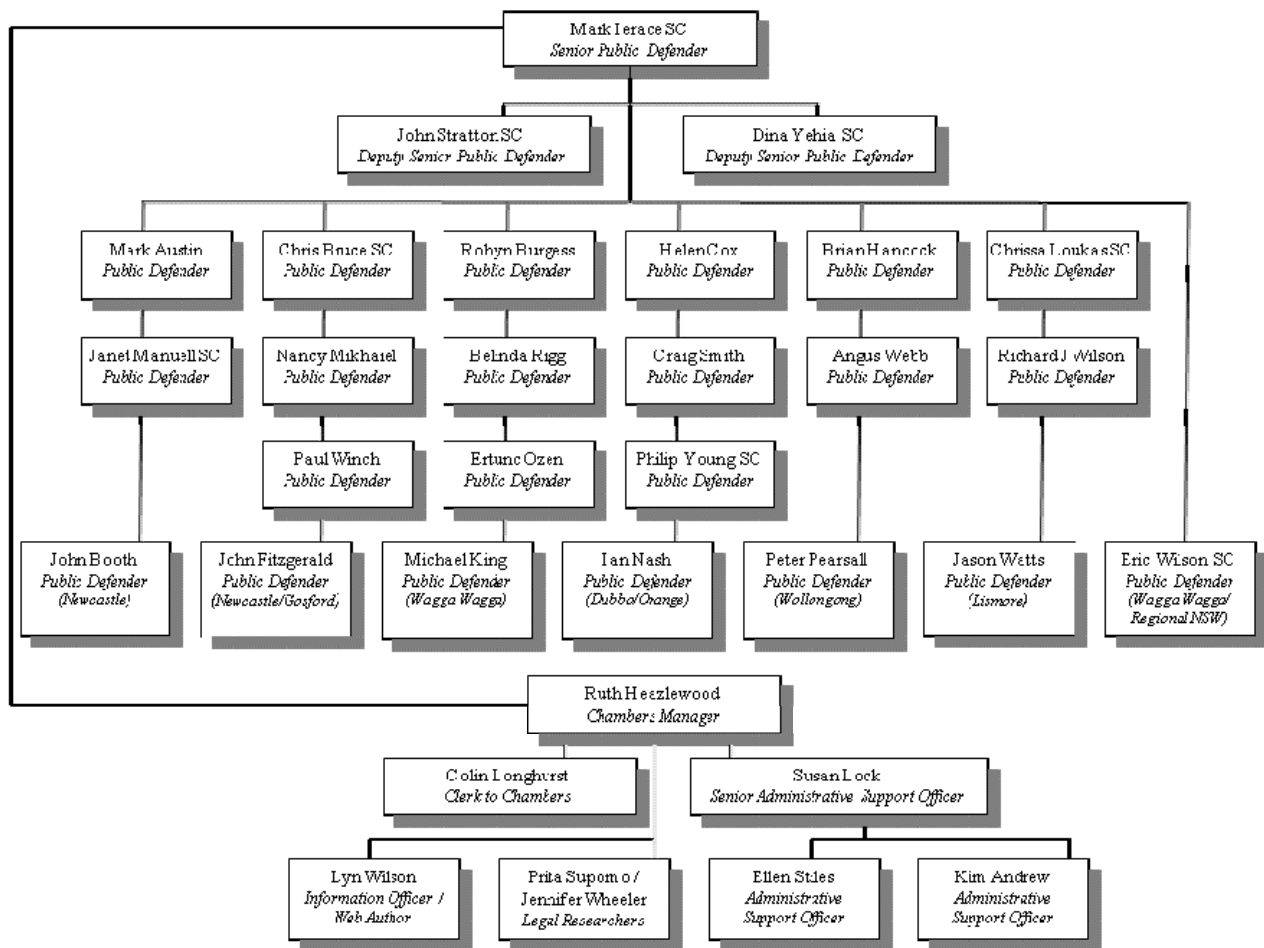
- the making of arrangements and giving of directions to ensure the effective and efficient conduct of Public Defenders’ work;
- providing advice and assistance to Public Defenders and monitoring their work;
- consulting with the LAC, ALS and CLCs on the provision of legal assistance to legally assisted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

Two Deputy Senior Public Defenders, John Stratton SC and Dina Yehia SC, 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 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. About 81 per cent of this year's work was briefed by the LAC, either directly or by private solicitors acting under a grant of legal aid. Matters referred by the ALS account for 19 per cent of Public Defenders' work completed. 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, lengthy 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 and help 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. The ratio of Sydney court matters to regional courts was 55:45 this year.

Seven full-time Public Defenders are based in regional locations at Dubbo/Orange, Lismore, Newcastle, Wagga Wagga and Wollongong. Two Public Defenders are based at Parramatta.

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 cost 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 tasked with policy development.

The Senior Public Defender is a member of the Sentencing Council, the Supreme Court Media Consultation Committee and other departmental committees. 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 \$8,315,855 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 SLAs from:

- The LAC, which provided \$807,010. This amount funds two Public Defender positions and provides partial funding for one legal research officer.
- The ALS, which provided \$170,000.

Fees from the Public Defenders annual criminal law conference and for private use of our video conferencing facility help offset some 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 of Attorney General and Justice.)

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. Annual statistics are provided to the LAC and ALS as required under the service level agreements.

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 the Public Defenders are responsible for the day-to-day management of administrative and financial matters.

Business Plan

The Business Plan for 2012/13 focussed on two initiatives:

- implementation of CASES brief management system; and
- review of placement of Public Defenders in regional and Sydney practices to maximise savings whilst still meeting demand for service in specific locations.

The CASES brief management system was implemented in October 2012. It has substantially improved the reliability of our reporting and streamlined the process of managing and allocating work to Public Defenders. This project was funded from within existing budgets over the development period. The next stage will involve investigating the ability to provide an online booking service for the profession.

There was a delay in filling two Public Defender vacancies pending the reallocation of one Public Defender from Lismore to Sydney.

These vacancies were filled near the end of this financial year by Ertunc Ozen, who was appointed to cover Sydney District Court and Bega District Court sittings, and Jason Watts was appointed as the Public Defender servicing Lismore District Court and other courts in that region.

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. It is inevitable that the demand for Public Defender representation exceeds our capacity. This year Public Defenders **accepted 851 requests** for assistance and **declined 1,380 requests**. Matters are declined for a number of reasons, including conflict of interest and unavailability of a Public Defender.

Public Defenders carry 8-15 briefs on average at any given time, depending on the nature of their practice. This year additional work arose from the review of cases affected by the decision in *Muldock v The Queen*. Statistics on these matters are reported separately as this was a specific project managed jointly with a team from Legal Aid NSW and input from the Aboriginal Legal Service.

Determining Priorities

The acceptance and allocation of briefs to Public Defenders is largely determined by the SLAs with the LAC and ALS. The purpose 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, 44%;
- Supreme Court, 14%;
- High Court and Court of Criminal Appeal, 24%; and
- Local, Coroner's and Children's Courts, 18%.

Preparation time amounted to 3,538 days with an additional 3,133 conference hours spent with solicitors, clients and witnesses. This year Public Defenders spent 1,781 days in court.

Representation in regional and non-metropolitan court sittings accounts for approximately 45 per cent of our work. In addition to the placement of Public Defenders at Dubbo, Lismore, Newcastle, Wollongong and, more recently at Wagga Wagga, Public Defenders spend many weeks attending regional District and Supreme Court sittings.

Matters Completed 2012 – 2013		
Jurisdiction	State	Commonwealth
High Court advices & appeals	5	2
Court of Criminal Appeal advices & appeals	163	6
Court of Appeal	1	0
Supreme Court trial & sentence matters	99	4
District Court trial & sentence matters	327	3
Local Court committals & related matters	127	1
Mental Health Review Tribunal	1	0
Coroner's Court	1	0
Children's Court	10	0
SNPP ("Muldrock" matters)	310	N/A
Total	734	16
Total matters	1,060	
Other assistance (non-court)	399	

Other Assistance Provided

Public Defenders are an important resource for the legal profession and this year they provided 399 instances of assistance to the profession on legal, ethical and practice issues either by telephone or brief written advices.

The Public Defenders' website is a valuable resource for the profession, students and the general public. 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.

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:

- Attorney General's review of the right to silence.
- Attorney General's review of case management provisions.
- Attorney General's review of the new strangulation offence.
- NSW Law Reform Commission reference on criminal appeals.
- NSW Law Reform Commission review of sentencing.
- NSW Law Reform Commission review on People with Cognitive and Mental Health Impairments in the Criminal Justice System.
- NSW Law Reform Commission on the reference on encouraging appropriate early pleas in indictable proceedings.
- Participation in the working group arising from the Legislative Council Select Committee review of the partial defence of provocation.
- Sentencing Council review of standard non-parole periods.

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:

- Corrective Services NSW Legal Practitioners Committee.
- Crime and Justice Reform Committee.
- DAGJ Forensic Procedures Working Group.
- District Court Criminal Listing Committee.
- LAC Specialist Barristers panels.
- NSW Sentencing Council.
- The Court of Criminal Appeal Users Group.
- The DNA Review Panel.
- The NSW Bar Association Criminal Law Committee.
- The NSW Bar Association Legal Aid Committee.
- The NSW Bar Council.
- The Supreme Court Media Consultation Group.
- Western NSW Community Legal Centre Committee.

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 \$49,551 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 successful applicants, usually for a period of up to six months. Twelve graduates have completed the program since its inception and have been admitted as legal practitioners in NSW.

Kirsten McClellan was the only applicant for this year which enabled us to keep her in this position beyond the initial six month period until the end of the year. This proved to be invaluable experience for her as she was offered a position with a private law firm at the end of her placement. We also greatly benefitted from her work during that period.

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 exceeded full capacity for the venue and continue to receive very positive feedback for this event.

The opening address was by the Attorney General and Minister for Justice, the Hon. Greg Smith SC MP, who spoke on developments in criminal law and policy. Full details of the speakers and conference papers are available on our website.

Hugh Donnelly, Director, Research and Sentencing at the Judicial Commission NSW, presented an extremely useful seminar to Public Defenders on using the Judicial Commission bench books.

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 and continued to do so this year. We also 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.

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 Advocacy Institute.

We also provide placements for law students undertaking external placement programs and practical legal training throughout the year as well as year 10 work experience opportunities. These placements are highly prized and we receive many applications from law students wishing to work with Public Defenders.

Government Information (Public Access) Act 2009 (GIPAA)

Public Defenders meet the requirements of the GIPA Act to provide open access to information for the public where possible and without charge. Our website provides access to the following documents:

- Annual reports.
- Service Level Agreements.
- Relevant legislation.
- Guidelines for Appointment of Public Defenders.
- Legal research materials.
- Information on internships.
- Papers prepared by Public Defenders.
- Conference papers.

Legal professional privilege precludes access to clients' information.

Movements and Appointments as at the time of publication

		Appointed
Senior Public Defender (SPD)		
Mark Ierace SC	SPD	16.07.2007
Deputy Senior Public Defenders (DSPD)		
John Stratton SC	DSPD originally appointed	28.07.2005 10.03.1997
Dina Yehia SC	DSPD permanently appointed acting	25.10.2012 08.05.2003 28.07.1999
Public Defenders		
Mark Austin	permanently appointed	05.06.1995
John Booth	acting permanently appointed (currently part-time)	07.01.1998 09.08.2001
Chris Bruce SC	permanently appointed	26.04.1988
Robyn Burgess	acting (part-time) permanently appointed (currently part-time)	13.12.2000 10.11.2005
Helen Cox	permanently appointed (currently part-time)	17.07.1995
John Fitzgerald	acting fixed term appointment*	25.01.2010 25.01.2011
Brian Hancock	acting fixed term appointment*	29.08.2005 29.10.2009
Michael King	acting fixed term appointment*	30.08.2010 30.08.2011
Chrissa Loukas SC	permanently appointed	17.07.1995
Janet Manuell SC	acting fixed term appointment*	06.02.2007 13.06.2008
Nancy Mikhaiel	acting fixed term appointment*	12.05.2008 12.05.2009
Ian Nash	acting fixed term appointment*	23.01.2012 23.01.2013
Ertunc Ozen	acting	27.05.2013
Peter Pearsall	permanently appointed	06.12.2001
Belinda Rigg	acting permanently appointed (currently on maternity leave)	27.01.2004 13.07.2006
Craig Smith	acting fixed term appointment*	13.06.2006 13.06.2008
Jason Watts	acting	03.06.2013
Angus Webb	permanently appointed	15.07.1996
Eric Wilson SC	acting permanently appointed	27.01.1998 09.08.2001
Richard Wilson	acting fixed term appointment*	23.01.2012 23.01.2013
Paul Winch	permanently appointed	21.10.1999
Philip Young SC	permanently appointed	24.07.2002

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

Contact Details

The Public Defenders are located at

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Chambers Manager

Ruth Heazlewood

Clerk to Chambers

Colin Longhurst

Hours

Monday to Friday between the hours of 8.30am and 5.00pm