2005 - 2006





Date

The Hon Bob Debus MP Attorney General Level 36, Governor Macquarie Tower 1 Farrer Place SYDNEY NSW 2000

Dear Mr Attorney

2005 - 2006 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 2006 for tabling in Parliament.

Yours sincerely

Peter Zahra SC Senior Public Defender

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Foreword

Through the past year we have demonstrated success in achieving our essential purpose of providing eligible accused persons with high quality legal representation. In this reporting period a survey of NSW Legal Aid Commission (LAC) solicitors who frequently instruct Public Defenders revealed high levels of satisfaction with our service.

In addition, frequent informal comments by members of the judiciary and criminal law practitioners, including Crown Prosecutors, continue to highlight the impressive advocacy skills and professionalism of Public Defenders.

We have continued to cover the majority of regional District Courts (about 85%) as well as maintaining a comprehensive service within the metropolitan area. Our focus in terms of providing value for expenditure continues to be on the more serious and complex matters at the higher jurisdictional levels, with several Public Defenders acting in a number of lengthy and often high profile criminal trials. Supreme Court matters, High Court and Court of Criminal Appeal cases form a large part of our practice.

Service Level Agreements (SLA's) have again been negotiated with the LAC. Having in former years concluded agreements with the several separate Aboriginal Legal Services, an agreement has now also been settled with the successor single Aboriginal Legal Service (NSW/ACT) Limited (ALS). The terms of all these agreements determine on an annual basis the mutually identified priorities to be set, in order to ensure the most cost – effective use of our necessarily limited Public Defender resources. The individual agreements are monitored and reviewed throughout their currency. Where necessary, the terms of the agreements or the appended schedules noting specific allocations of counsel to Courts or areas of work are adjusted by the parties at intervals through the year. The review mechanism assists in maintaining a responsive and cooperative working relationship with both the LAC and ALS.

A strategic template that is inherent in each SLA focuses on the efficient use of Public Defenders as a valuable resource by emphasis on the following high value aspects of our work. This may be expressed in the following policy priorities:

- The use of Public Defenders in the advising and appearing in matters being considered for appeals to the High Court of Australia or in the Court of Criminal Appeal.
- The use of Public Defenders in very complex and difficult trials in the Supreme Court, in the main relating to charges of murder.
- The use of Public Defenders to be multi-briefed at regional centres in the circuits of the District Court and in longer, more complex trials in the District Court generally.
- Early intervention in advising at the earliest stage, with respect to all of the above areas.

The above priorities are simply reflective of an appreciation that Public Defenders are a relatively small group of very experienced counsel, including seven Senior Counsel at the time of writing. As a valuable asset to the justice system this limited resource is to be utilised with a continuing concern for providing maximum value to the community. To this end, implementation and planning under the SLA's is assisted greatly by our formal and informal contacts maintained with heads of jurisdiction and senior court administrators and by active membership of the listing and users committees of the District and Supreme Courts. We regard it as essential that we remain aware of listing trends and workload within jurisdictions. This assists in meeting the changing needs of the SLA partners and other stakeholders. This approach recognises our capacity to make a whole of system contribution to the justice system.

A major achievement over the last 12 months has been the implementation of early intervention strategies. Pursuant to this strategy we increasingly work with the LAC and the ALS to identify complex and serious matters that would benefit from the involvement of a Public Defender at the earliest opportunity.

The early intervention system has worked particularly well in regional areas where a nominated Public Defender is assigned to cover a designated District Court circuit. By building strong working relationships with the local profession and the judiciary, Public Defenders are able to identify matters in the Local and District Courts that can be dealt with expeditiously and with benefit to our clients.

A Public Defender may provide tactical advice to the solicitor appearing in a Local Court matter or provide representation in committal hearings for serious matters. In both cases, early intervention can be vital in ensuring the most favourable disposition of the matter can be achieved when the matter reaches a higher court. The energetic application of a Public Defender often means that a large number of matters can be brought to a favourable and timely outcome during the sittings. Apart from undoubted utility and cost saving for the administration of justice, the strategy's primary purpose and effect is to advance the interest of our clients.

Main-stream services outlined above are in addition to assistance, often provided by Public Defenders, including Senior Counsel on occasion, who make themselves available to respond to both formal written and informal telephone requests for assistance. Consistent with our charter and our role within the Bar, this assistance is provided to solicitors with carriage of legally aided matters and, in accord with a Bar tradition of tutelage and collegiate support, to any member of the Bar.

In Memoriam

On a sad note, I wish to pay tribute to Anthony Parker Public Defender, who died this year after a long illness. Tony had given 12 years tireless service as a Public Defender and continued in that role until shortly before his passing. Prior to his appointment he had given many more years as a true defender of aboriginal people before the Courts. Those of us who attended the funeral service for Tony held at the Bar's parish church were moved and impressed by the many tributes to Tony as a Public Defender and as a dedicated leader in the early development of legal services for aboriginal people throughout the State.

In June, many Public Defenders attended a memorial dinner in honour of Terry Keaney, who had passed away suddenly as he was about to commence duties with us an acting Public Defender in July 2005. As Senior Public Defender I was privileged to be master of ceremonies for the evening at which the distinguished lawyer Father Frank Brennan spoke. The inaugural annual award for excellence in the representation of disadvantaged persons was presented to Mr Tim Heenan solicitor.

Our greatest strength continues to be in the collegiate support that we provide for each other and the individual commitment of Public Defenders in fulfilling their duties as advocates for socially and economically disadvantaged people.

I am immensely proud of all Public Defenders who have worked extremely hard this year.

Peter Zahra 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. 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 LAC, ALS or community legal centre.

As barristers, the 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 and community legal centres including the Aboriginal Legal Service (NSW/ACT) Limited on the provision of legal assistance to legally assisted persons; and
- To advise the Attorney General on law reform.

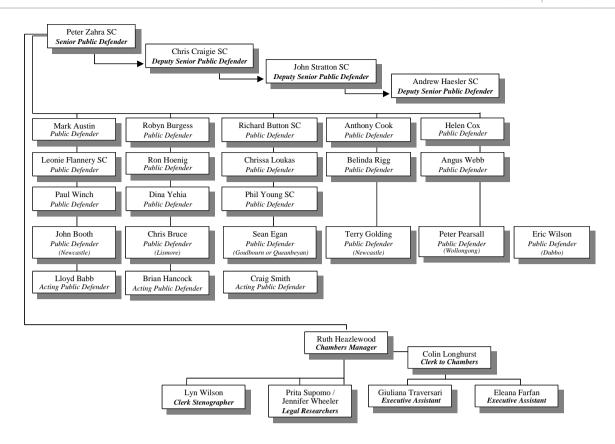
Three Deputy Senior Public Defenders assist the Senior Public Defender in his duties.

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 SLA's 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 SLA's 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 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.

Negotiations with the ALS (formerly the Coalition of Aboriginal Legal Services) were delayed this financial year as the ALS was required to tender its services under the revised Federal Government aboriginal legal service funding arrangements. This process and the subsequent restructure of the ALS delayed the finalisation of the current SLA. However, negotiations undertaken within the review period indicate that the current agreement will continue in a similar manner to previous years.

An added benefit of the SLA's 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 8.

Full details of the current SLA's can be viewed at the Public Defenders website.

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.

This issue will become even more pressing with the opening of the new courts at Parramatta in 2007-08. It is intended that Public Defenders will have a strong presence at the new courts however, we need to ensure that our time there is used to the best advantage of all our stakeholders. Planning for this expansion of services in western Sydney will be a priority for our 2007-08 Business Plan.

2005 Justice Awards

Two Public Defenders, Robyn Burgess and the late Anthony Parker were nominated for the Justice Medal in the 2005 Law and Justice Foundation Justice Awards.

The Justice Medal is awarded to an individual who demonstrates outstanding achievement in improving access to justice for socially and economically disadvantaged people. The nomination of both Public Defenders for this award is an honour in itself and is a tangible demonstration of the high regard in which they are held in the legal community.

Funding and Accountability

Funding

The primary source of funding is the Attorney General's Department. The Public Defenders' budget for this financial year was \$6,205,034. 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 providing \$579,000 under the current SLA;
- 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 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.

Business Plan

Improving our data systems has been a high priority for the last two years. Public Defenders staff have been working closely with the Information Services Branch of the Department to develop an online brief management system. The new system will allow for the booking of Public Defenders via a secure site on our web site and integrate our current databases onto one system.

Significant efficiencies will be achieved once the system is functional and it will also provide greater accuracy and make reporting and analysis of workflow much easier and faster. It appears that funding will be provided in the next financial year with an estimate of 6 –12 months before the new system is established.

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.

This year we accepted 775 briefs and declined 904 matters. In most cases the reason for declining to accept a brief is insufficient capacity to provide a Public Defender in all matters. In other cases there may be a conflict of interest or other ethical consideration that prevents a Public Defender accepting the brief.

About 85% of our matters are briefed by the LAC, either by LAC staff or private solicitors under a grant of legal aid.

The ALS briefed Public Defenders in 13% of matters with community legal centres, the Crown Solicitors' Office, Solomon Islands Public Solicitor's Office and ALS Northern Territory briefing the balance (2%).

Of the 979 matters completed:

- District Court matters comprise 42%;
- Supreme Court 11%;
- High Court and CCA 39%; and
- Local, Coroner's and Children's Court's comprising 8% of finalised cases.

Nine matters involved cases running in excess of nine weeks, with Supreme Court matters taking up to 26% of the total number of days spent in court.

The increasing complexity of matters has resulted in considerable time being spent on case preparation. This complexity in part arises from the greater use of surveillance technology used by police, particularly in drug matters and the use of DNA and other forensic evidence in sexual assault and murder cases.

Preparation time alone amounted to 2,660 days in this financial year with 1,970 days spent in court.

These figures must be seen in the context that Public Defenders suffered significant staff shortages with the serious illness of at least two Public Defenders coupled with extended leave of one Public Defender, the resignation of another Public Defender and extended periods when vacant positions remained unfilled.

Matters Completed 2005-06			
State		Commo	nwealth
High Court advices & appeals	23	7	3%
Court of Criminal Appeal advices & appeals	326	26	36%
Supreme Court trial & sentence matters	101	4	11%
District Court trial & sentence matters	406	7	42%
Local Court committals & related matters	61	-	6.2%
Coroners Court	5	-	0.5%
Children's Court	13	-	1.3%
TOTAL	935	44	100%

TOTAL MATTERS	979

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 an the earliest opportunity.

This model has been used to great effect at a number of regional court circuits this year. Ron Hoenig, the Public Defender assigned to Bega District Court sittings has worked hard to build effective working relationships with the Local Court magistrates, local lawyers and the DPP. As well as appearing in trials, he is able to appear at committal hearings and advise in serious Local Court matters with the result that a significant number of cases are finalised within the particular sitting. This in turn reduces the need for jury trials and matters being committed to the District Court for sentence. There are tangible benefits for the justice system in adopting this approach by reducing court sitting times and the need for jury trials.

Similar schemes operate at other regional courts such as Bathurst, Queanbeyan and Wagga.

Inquests

Public Defenders appear in inquests at the request of the Crown Solicitor and the LAC. This year we provided representation in five coronial inquests. We expect this number will increase next year with the recent establishment of the LAC specialist coronial unit.

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

Significant Cases

High Court and Court of Criminal Appeal (CCA) cases form a major part of our work. Some significant cases completed this year include:

- **Skaf v R.** This was High Court appeal instigated by the Crown against inadequacy of sentence. John Stratton SC, Deputy Senior Public Defender successfully defended the appeal.
- NZ. This case was argued before the CCA and turned on the issue of whether video evidence of
 complainants and witnesses in sexual assault cases should be provided to the jury as part of
 their considerations in the jury room. Andrew Haesler SC, Deputy Senior Public Defender
 successfully argued that the material should only be presented in open court.
- **DPP v El Mawas.** The issue involved s.32 of the *Mental Health (Criminal Procedure) Act 1990* and it's applicability to a respondent charged with assault.
- **GJ.** The Northern Territory Aboriginal Legal Service briefed Andrew Haesler SC in this matter involving the application of principle permitting traditional aboriginal beliefs and law to reduce the moral culpability of the offender.

Providing Aid in the Solomon's

The Public Defenders were able to provide representation in the High Court and Court of Appeal of the Solomon Islands under a memorandum of understanding with AusAID. Anthony Cook, Public Defender, volunteered to appear in these matters. Permission was sought and obtained from the Attorney General in each instance of travel to appear in these cases. AusAID covered all costs.

Mr Cook appeared in seven matters this financial year for periods of up to 3 weeks at a time. The Public Solicitor for the Solomon Islands sent a letter of thanks, praising his advocacy skills and noting also the valuable role he played in advising, guiding and assisting many of the lawyers in that office on evidentiary and procedural matters.

Public Defender at The Hague

Chrissa Loukas, a Public Defender since 1995, has spent the last two years as defence counsel at the International Criminal Tribunal for the former Yugoslavia. Ms Loukas was also appointed as Vice-President of the Association of Defence Counsel during that time. Ms Loukas was one of the first Australian counsel to appear at the Hague and has been praised for her skills and commitment as an advocate in a difficult and challenging position. Ms Loukas will return to duties as a Public Defender in August 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. This year, 458 instances of advice were provided to the profession on legal, ethical and practice issues.

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 and students with 506,264 visits to the site. As one satisfied user commented "I am a new barrister looking for criminal information and found the site incredibly up to date and comprehensive, providing summaries of recent cases and guidelines to sentencing".

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 three years. The Council meets 10 times per year.

Major written submissions were made on the following:

- Review of the Evidence Act.
- Admissibility of audio- visual evidence of sexual assault complainants from earlier proceedings.
- Sentencing of Federal Offenders.
- · Advocates immunity from civil suit.
- Court imposed fines and their enforcement.
- Participation in the Media Consultation Group looking at access to court information.
- Strict and absolute liability offences.

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

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, initially to assist aboriginal law graduates establish themselves at the NSW Bar.

The program was expanded this 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 pays the successful applicant a wage based on a graduate salary. Our first graduate under this new program would not otherwise have been able to afford the fees and the loss of income that would have occurred if we were not able to fund this part of his legal education.

Our current graduate, Don Jenner, has found the experience to be invaluable in his development as a lawyer and considers the program a vital one in encouraging the entry of more aboriginal people into the legal profession.

Continuing Professional Education

The highlight of the year continues to be the Annual Criminal Law Conference held at the Taronga Zoo Conference Centre on 20th and 21st May with over 130 criminal law practitioners attending, including lawyers from Queensland and the ACT.

Conference topics addressed a variety of practice issues including effective cross-examination and topical subjects such as counter-terrorism laws and proposed changes to the Evidence Act along with practice management issues including stress management and how to maintain good health as a legal practitioner

Public Defenders are also in high demand to speak at other seminars and conferences conducted by the LAC, ALS, Young Lawyers and tertiary institutions. We also have established a reputation at an international level with Dina Yehia, Public Defender presenting a paper on Public Defenders as part of a seminar on Counsel Issues at the International Criminal Court, The Hague.

I have introduced various strategies such as encouraging Public Defenders to attend occasional conferences to expand their skills into new areas and to increase the variety of work available to Public Defenders where possible.

We 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.

Public Defenders continue to support law students with their external placement programs by offering volunteer opportunities throughout the year. We have also implemented the Public Defenders prize for "Best Performance in a Criminal Appeal Project" as part of the University of NSW Law Faculty annual prize ceremony.

This year we provided a blind law graduate with the opportunity to complete 16 weeks practical work experience at Chambers. During the 16 weeks training we were able to arrange short-term placements with the LAC and the DPP, and one day sittings with Judge Ainslie-Wallace and Judge Berman. Public Defenders and support staff made a considerable commitment to assisting the graduate in every day adjustments, including taking him to and from court and helping with his mobility training.

We participated 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 employed a student for four weeks to help him gain an insight into the realities of criminal practice. The program was a great success, with our student remarking on the excellence of the Public Defenders as advocates and the increased confidence he gained from participating in the program.

Looking ahead

As with many other government bodies, we are mindful of the need to manage within budgetary constraints. We have managed to do so for the last three financial years, by keeping a tight reign on expenditure and through revenue raising activities such as our annual conference.

Next year will be even more challenging as we endeavour to maintain our current high standard of service within a climate of increasing costs for goods and services. Our ability to meet the new demands arising from the expansion of justice services in the Parramatta Precinct will be a matter for serious consideration in the next two years.

A major project for next year is the implementation of the Matter Tracking System. This will create an integrated system for booking Public Defenders and data collection. It will result in significant efficiencies in workflow and serve as a valuable management tool in analysing our output and productivity.

We will also reassess our administrative support services to ensure they continue to meet the increasingly complex demands on our services.

Our involvement in terrorism trials will consume considerable resources, as the briefs are remarkably complex and voluminous. These matters must be balanced against the need to continue to provide the breadth of service to the community throughout NSW.

Movements and Appointments as of June 2006			
		Appointed	
Senior Public Defender (S	PD)		
Peter Zahra SC	SPD	25.10.01	
	originally appointed	03.04.89	
Deputy Senior Public Defe	enders (DSPD)		
Chris Craigie SC	DSPD (acting)	14.11.01	
	DSPD	20.01.02	
	originally appointed	05.09.94	
Andrew Haesler SC	DSPD	28.07.05	
	originally appointed	24.01.95	
John Stratton SC	DSPD	28.07.05	
	originally appointed	10.03.97	
Public Defenders			
Mark Austin		05.06.95	
Lloyd Babb	Acting – appointment delayed until 10/06	16.10.06	
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		15.07.96	
Terry Golding		24.11.03	
Brian Hancock	acting	29.08.05	
Ron Hoenig		06.10.87	
Chrissa Loukas		17.07.95	
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:

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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.