

**THE PUBLIC DEFENDERS
ANNUAL REVIEW
2015 – 2016**

The Hon. Gabrielle Upton MP
Attorney General
Level 18/52 Martin Place
SYDNEY NSW 2000

19 December 2016

Dear Attorney

2015 – 2016 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 2016 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

This year was particularly challenging for all criminal justice agencies involved in trials in the District Court, as the backlog of trials across the state continued to grow.

In last year's foreword, I noted that one of the steps taken to address the issue, the Rolling List Court operating out of the Downing Centre, had just been established. This was an initiative in which the Public Defenders played a central part. Legally-aided trials of an anticipated duration of a fortnight or less are briefed at the time of committal to the trial Prosecutor and a Public Defender (with specific Legal Aid and ODPP instructing solicitors), and are allocated to a specifically-nominated judge. The work-load was intensive. It became clear during the year that the court was achieving an outstanding rate of early guilty pleas. BOCSAR was due to issue an interim assessment of the Court's efficiency in October; more of that in next year's foreword. In the meantime, it is clear anecdotally that the Rolling List Court has demonstrated the efficiencies to be gained by the early briefing of trial matters to ultimate trial counsel as they come to the District Court, with early and full disclosure to the defence by police and flexibility in listing. These three factors facilitate informed negotiations, enabling early finalisation and shorter trials.

Another way in which we played our part in reducing the District Court trial backlog was by integral involvement in special call-overs of pending trials in certain regional and metropolitan locations. Two Public Defenders were allocated to each one and, in the case of Wagga and Newcastle, the results were outstanding, resulting in a total of more than sixty trials being finalised by no-bills, pleas of guilty or charge reductions.

During the year we maintained our usual services and operations, which are set out in some detail in this report. Public Defenders continued to appear in the High Court, the NSW Court of Criminal Appeal and Supreme Court, as well as the District Court.

There were some notable staff changes, including Paul Winch retiring after seventeen years as a Public Defender and Colin Longhurst retiring after nineteen years as our Chambers Clerk. We wish them well. We were also sorry that Deputy Senior Public Defender Kara Shead moved on, but delighted that it was to enable her appointment as a Deputy Director of the NSW ODPP.

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 principal duty of a Public Defender is to represent persons charged with serious criminal offences who have been granted legal assistance (generally referred to as 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 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 for professional conduct as other counsel.

Organisational Structure and Duties of Public Defenders

The Senior Public Defender

The Senior Public Defender, Mark Ierace SC, is responsible to the Attorney General for the proper 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.

The Senior Public Defender also conducts a Supreme Court trial and appellate practice in addition to his management and legal policy responsibilities.

Deputy Senior Public Defenders

The Act provides that the Governor may appoint one or more Deputy Senior Public Defenders. There are two Deputy Senior Public Defender positions. The functions of a Deputy Senior Public Defender include assisting the Senior Public Defender as required in addition to the conduct of trial and appellate practices. Craig Smith SC and Kara Shead occupied this role, with Ms Shead resigning in May 2016 to take up a position as Deputy Senior Crown Prosecutor.

The Senior and Deputy Senior Public Defenders form the management team for chambers and also work together on policy and law reform matters.

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 of the Public Defenders, however this does not derogate “from the authority of a Public Defender in respect of the conduct of any proceedings” (s6 (4)).

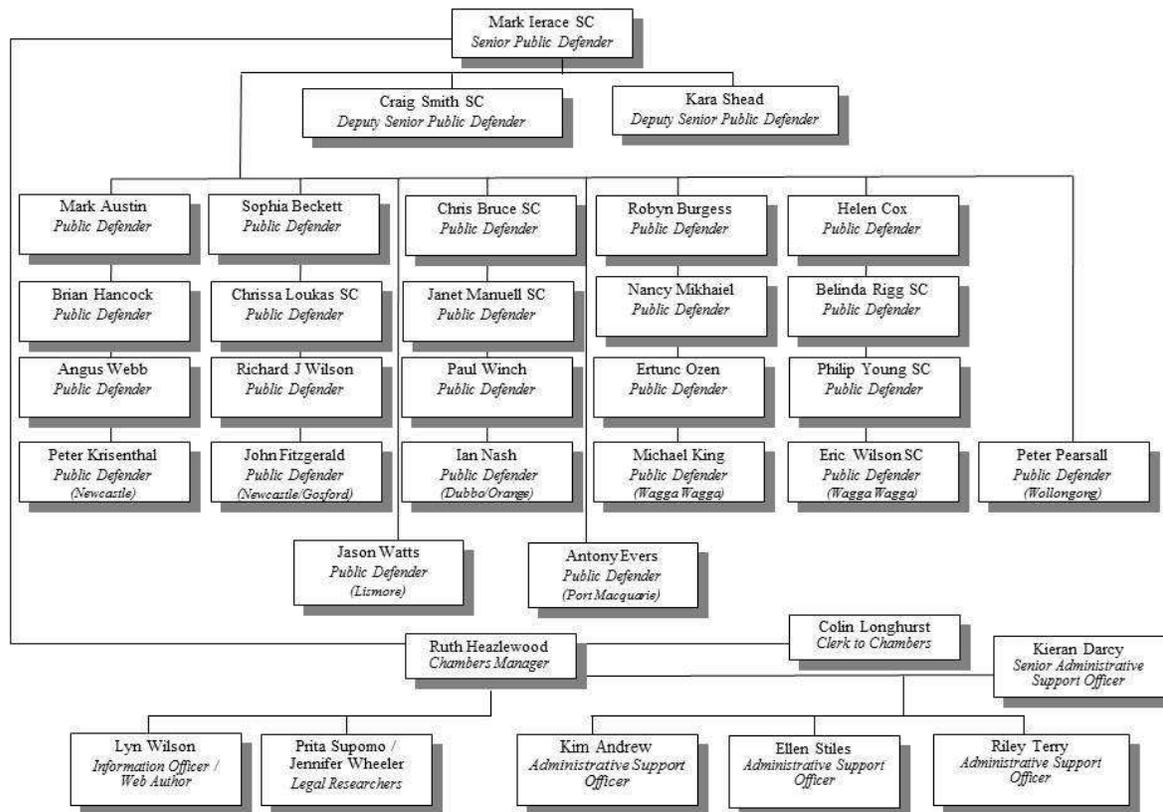
Appointment of Public Defenders

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 following a probationary period of 12 months as an Acting Public Defender. Public Defenders appointed for a seven year term must have their performance reviewed under the *Guidelines for the appointment of Public Defenders* by a review committee at the conclusion of each seven year period. They may be appointed for a further seven years if recommended by the review committee. The Senior Public Defender and Deputy Senior Public Defenders are appointed for renewable terms of seven years.

There are now 27 Public Defender positions for the whole of NSW with recruitment completed for two new Public Defenders to be located at Tamworth and Port Macquarie at the beginning of the next financial year.

Two Public Defender positions are fully funded by the LAC on an ongoing basis as set out in our service level agreement. An additional Acting Public Defender was funded by LAC to provide representation at Port Macquarie and Taree District Courts to the end of this financial year and the newly appointed Public Defender will continue to provide representation in this region, funded by the Department of Justice.

Organisational Chart as at June 2015



Legal Representation

Public Defenders represent legally assisted people defined by the Act as “a person who is a legally assisted person within the meaning of the *Legal Aid Commission Act 1979* or who is receiving legal assistance through a community legal centre”.

The definition of community legal centre includes an “Aboriginal legal service or other community legal centre within the meaning of section 48H of the *Legal Profession Act 1987*.”

About 85 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 approximately 15 per cent of Public Defenders’ work.

This year Public Defenders **accepted 893 requests** for assistance and **declined 1,952 requests**. Matters are declined for a number of reasons, including conflict of interest or more commonly, due to the unavailability of a Public Defender.

Highlights of the year

The “Rolling List Court” (RLC) pilot program

The aim of this program is to resolve matters by early case management, thus reducing the time taken from committal to finalisation and ultimately addressing some of the factors leading to the current backlog of cases in the District Court.

This initiative was developed in collaboration with the Chief Judge of the District Court, the Office of the Director of Public Prosecution (ODPP), LAC and Public Defenders. It is based on the successful model in place in certain regional courts with a local Public Defender and Crown Prosecutors. These counsel are typically briefed earlier than in the metropolitan courts, and the ongoing working relationships between them and their respective instructing solicitors from the local Legal Aid offices and ODPP leads to a more efficient disposition of matters. The close and daily interaction of these personnel builds a level of professional trust and communication which enables issues in a trial or sentence matter to be identified at an earlier stage, thus saving time and expense, particularly if the matter can be resolved before trial by an early plea of guilty or appropriate charge modification.

The pilot program began in the Sydney District Court (the Downing Centre) in April 2015, with two Public Defenders and two Crown Prosecutors, instructed by a specific team of Legal Aid and ODPP solicitors. One Judge is allocated to manage the work of the court. The criteria for referral of a trial to the Rolling List Court is that it is an in-house legal aid matter with an estimate of no more than two weeks, no co-accused, no fitness issues and that it is a state prosecution.

As the program progressed, Campbelltown, Parramatta and Penrith District Courts were added to the court catchment area.

This year **72 matters were completed in the RLC**. This is a considerable effort for all involved and represents savings in time and money for the justice system. Ongoing evaluation of the program by The Bureau of Crime Statistics and Research (BOCSAR) has suggested this is a very effective method for dealing with certain cases in the District Court, with a full report to be released next financial year.

Special call-overs in the District Court

Public Defenders assisted with special call-overs at Wagga Wagga, Newcastle and Parramatta District Courts. The success of these special call-overs is due to the close co-operation between Public Defenders, Legal Aid, the ODPP and Crown Prosecutors, Judges, Courts and Corrections in ensuring the whole process runs as efficiently as possible. It is estimated **over 80 matters were resolved** before trial as a result of the call-overs resulting in a significant reduction of pending trials in the District Court and overall savings to the justice budget.

Service Level Agreements

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 in the District, Supreme and higher appellate courts. 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 51:49 this year.**

Regional Public Defenders appear predominantly in the District Court 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 service level agreements.

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

Determining Priorities by Service Level Agreements

The acceptance and allocation of briefs to Public Defenders is largely determined by the service level agreements 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 may 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 this year) across the various court jurisdictions is approximately as follows:

- District Court, 66%;
- Supreme Court, 9%;
- High Court and Court of Criminal Appeal, 15%; and
- Local, Coroner's and Children's Courts, 8%.

Preparation time amounted to 2,465 days with an additional **2,421 conference hours** spent with solicitors, clients and witnesses. This year Public Defenders spent **1,292 days in court.**

Representation in regional and non-metropolitan court sittings accounts for approximately 49 per cent of our work. Public Defenders are located at Orange/Dubbo (1), Lismore (1), Newcastle (2), Wollongong (1) and Wagga Wagga (2). One Public Defender is located at the Parramatta Justice Precinct and an acting Public Defender provided representation at Port Macquarie and Taree District Courts.

Public Defenders also provide representation at other circuit sittings of regional District Courts and Supreme Court sittings as needed.

Annual Statistics for matters completed 2015-16

	STATE	C'WEALTH	TOTAL
Children's Court	7	0	7
Coroner's Court	0	0	0
Local Court	52	1	53
Drug Court	1	0	1
District Court	467	1	468
State Parole Authority	1	0	1
Supreme Court	65	1	66
Mental Health Review Tribunal	0	0	0
CCA Advices	73	2	75
Court of Appeal Advices	0	0	0
High Court Advices	7	0	7
CCA Appeals	21	2	23
Court of Appeal Appeals	2	0	2
High Court Appeals	0	0	0
GRAND TOTAL			703

Impact of long and complex trials

Public Defenders are often briefed in lengthy and complex trials to help contain the cost of such matters. This year, one trial with multiple accused and charges has taken at least seven months and was still not finalised by the end of this financial year. Two trials ran for 13 weeks and nine weeks, with many other matters taking at least four to six weeks to complete.

The allocation of a Public Defender to such long trials will have an impact on the total number of matters completed in the year as they are not available to do other trials. Preparation time is also extensive given the voluminous briefs provided in such matters.

Comparison of matters completed over consecutive financial years are therefore not necessarily indicative of increasing or decreasing workloads or productivity and any comparison of annual figures should be treated with caution.

Other Assistance Provided

Public Defenders are an important resource for the legal profession. This year they provided **251 instances of assistance** to the profession on legal, ethical and practice issues either by telephone or brief written advices.

Our 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.

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:

- NSW Sentencing Council
- Department of Justice Criminal Justice Transformation Board
- District Court Criminal Business Sub-committee
- Legal Aid Crime and Grants Sub-committee
- District Court Backlog Committee
- Department of Corrective Services Legal Users Group

Public Defenders work closely with the NSW Bar Association at many different levels. Chrissa Loukas SC and Kara Shead were both elected to the NSW Bar Council. Ms Loukas was appointed as Treasurer for the Bar Council and is also a Director of the Law Council of Australia.

A number of other Public Defenders are also actively involved in committees including;

- The NSW Bar Association's Criminal Law Committee; Indigenous Barristers Strategy Working Party; Professional Conduct Committee and Legal Aid Committee
- Law Council of Australia National Law Committee
- Crime and Justice Reform Committee
- Royal Commission into Institutional Responses to Child Sexual Abuse Criminal Justice Working Group
- Child Sexual Assault Evidence Pilot Committee
- Child Sexual Assault Judicial Reforms and Monitoring Implementation Group
- District Court Criminal Listing Committee
- District Koori Court working group
- LAC Specialist Barristers and Solicitors panels, including the Children's Criminal Law panel
- Western NSW Community Legal Centre Committee

Funding and Accountability

Funding

The primary source of funding is the Department of Justice. The Public Defenders' **budget for this financial year was \$8,887,624** which represents the net cost of services. Employee-related expenses continue to represent about 85 per cent of the budget.

Additional funding of \$1,099,631 was provided by the NSW Government as part of the funding strategy to address the District Court backlog. This enabled the recruitment of two additional Public Defender positions for Port Macquarie and Tamworth.

Additional revenue is obtained under the SLAs from:

- The **LAC**, which provided **\$835,858**. This amount funds two Public Defender positions and provides partial funding for one legal research officer.
- An additional grant of **\$403,980** was made by LAC for the provision of an acting Public Defender for Port Macquarie District Court for a further period of 12 months until recruitment is finalised for the on-going position at that location.
- The **ALS**, which provided **\$177,000**.

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

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

Accountability

The Public Defenders are accountable to the Attorney General and her Department through the provision of reports on agreed performance indicators which are based on the number of completed briefs within defined jurisdictions. Regular reports may also be provided on the progress of business plan initiatives, financial management and risk assessments.

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

Although Public Defenders are not public servants the office has adopted the administrative policies and procedures of the Department. Administrative support staff are public servants and therefore bound by both the *Government Sector Employment Act 2013* and *Public Finance and Audit Act 1983*.

Senior clerks employed by the Public Defenders are responsible for the day-to-day management of administrative, human resources and financial matters.

Business Plan

A major focus has been working with justice agencies to develop and apply strategies to reduce the District Court backlog. We have continued to provide Public Defenders and other resources for the rolling list court and for special call-overs at regional District Courts. Recruitment for additional Public Defenders and re-positioning of existing Public Defender practices will continue into next financial year with the aim of providing further assistance in reducing the backlog.

The online *Request for Public Defender* booking form for practitioners will go live early in the next financial year with initial testing completed. Essential and ongoing upgrades to the Department's computer and software systems have resulted in further delays as these have impacted on the functionality of the system. The new request form will reduce duplication of activities and save time for both practitioners and Public Defender staff when processing requests.

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. Public Defenders are routinely invited to make submissions on criminal law reform at the request of the NSW and Australian Law Reform Commissions, Criminal Law Review, the NSW Sentencing Council and Parliamentary Committees of Inquiry. In addition, a number of Public Defenders participate in law reform committees and advisory groups.

Written submissions made during the year include the following:

- Review of mandatory pre-trial defence disclosure legislation
- Indefinite detention of persons found unfit to be tried
- Review of Terrorism (Police Powers) Act 2002
- Sentencing Council review of alcohol and drug fuelled violence
- Review of offences applying to fatalities on private land

Aboriginal Graduate 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. The Department provided funding of \$50,740 this year.

The initial aim of the program was to provide financial and mentoring assistance to Aboriginal law graduates wishing to 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 (PLT) 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.

This year we provided a placement for one law graduate, Emma Hudson- Buhagiar, who commenced in early February 2016 and has provided invaluable para-legal support to the rolling list court team and to other staff in Chambers. Emma's comments on the program are as follows:

"I commenced the Aboriginal Law Graduates Program at the Public Defenders Chambers in early February 2016 with the aim of completing my PLT studies in October 2016. This program provides financial and mentoring assistance to Aboriginal law graduates under the supervision of highly regarded barristers.

At the Public Defenders Chambers I was given an invaluable insight into the workings of the courtroom, the preparation that goes into each individual case and the importance of

advocacy. I have specifically worked with the Rolling List Court team and have also taken on any tasks in addition to these duties.

However, it is not only the legal abilities of each barrister at the Public Defenders that makes this an excellent Chambers. For me, it goes far beyond technical ability and legal frameworks. At the heart of The Public Defenders Chambers is the notion of diversity, human connections and equality. These fundamental values have propelled a culture of openness and authenticity, allowing me to perform at the best of my ability.

Therefore, my role at the Public Defenders Chambers has demanded that I establish my own voice, particularly as an Aboriginal woman and prospective legal practitioner. This has allowed me to project a sense of what is possible not only in the legal world, but also for my peoples, and my Community.”

Two further graduates have been approved for placement for next year.

Continuing Professional Education

Practical Advocacy Course

A one day practical advocacy seminar was held at Newcastle and was extremely well received by local and other practitioners. The program covered a range of advocacy topics including a presentation by Judge Ellis, the presiding judge at Newcastle District Court on “Advocacy – a perspective from the Bench”.

Both Newcastle Public Defenders spoke about cross-examination and judge alone trials with other Public Defenders, including the Senior and Deputy Senior Public Defenders, addressing the audience on cognitive impairment, covert recording of admissions and opening and closing addresses.

Given the success of this event, Public Defenders plan to provide regular continuing development programs at Newcastle and other major regional areas.

Annual Conference

The annual criminal law conference continues to be very popular with criminal law practitioners and was completely sold out this year, largely due to the high quality of the speakers and topics covered in the two day conference.

The conference was formally opened by the Attorney General, the Honourable Gabrielle Upton MP who spoke on the strategies being undertaken by the NSW government to help address current issues in the administration of justice, including the backlog of cases waiting determination in the District Court.

The key note speaker was Emeritus Professor Gillian Triggs, President of the Human Rights Commission who spoke about counter-terrorism laws and administrative detention. Robert Bromwich SC, Commonwealth Director of Public Prosecutions gave a presentation on “Discounts for Guilty Pleas” and Arthur Moses SC, Senior Vice-President of the Bar Council spoke about the importance of managing practitioners with mental health and related issues. A full copy of the program and conference papers can be located at our website www.publicdefenders@nsw.gov.au.

Our Contribution to Training

Public Defenders are invited to speak at seminars and conferences conducted by Legal Aid NSW, the Aboriginal Legal Service, Young Lawyers, the NSW Bar Association, the College of Law and other tertiary institutions.

Craig Smith SC, Deputy Senior Public Defender, provides advocacy training for the Australian Advocacy Institute to Australian and international lawyers. He initiated the "Under 5s Practical Advocacy Course" run by this office.

We also provide tutors for readers at the Bar, internships for law students undertaking external placement programs and practical legal training 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. At the same time, Public Defenders and staff benefit from the interaction and work of dedicated, intelligent and passionate students who demonstrate their commitment to social justice and the practice of criminal law by choosing a placement with us.

Public Defenders provide mentoring under various programs including the Lucy Mentoring program and the NSW Bar Association's Aboriginal mentoring program.

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.

We have had no requests made under GIPAA this year.

Public Defenders 2015-2016

Senior Public Defender (SPD)		
Mark Ierace SC	appointed 7 year term re-appointed 7 year term	16.07.2007 14.07.2014
Deputy Senior Public Defenders (DSPD)		
Craig Smith SC	acting fixed term appointment* appointed DSPD 7 year term	13.06.2006 13.06.2008 18.09.2014
Kara Shead	appointed DSPD 7 year term resigned	09.02.2015 30.05.2016
Public Defenders		
Mark Austin	permanently appointed	05.06.1995
Sophia Beckett	acting short term secondment as Crown Prosecutors	20.03.2016 30.05.201 - 01.07.2016
Chris Bruce SC	permanently appointed	26.04.1988
Robyn Burgess	acting (part-time) permanently appointed (part-time)	13.12.2000 10.11.2005
Helen Cox	permanently appointed (currently part-time)	17.07.1995
Antony Evers	acting	14.07.2014
John Fitzgerald	acting fixed term appointment*	25.01.2010 25.01.2011
Brian Hancock	acting fixed term appointment* re-appointed 7 year term	29.08.2005 29.10.2009 29.10.2016
Michael King	acting fixed term appointment*	30.08.2010 30.08.2011
Peter Krisenthal	acting fixed term appointment*	14.07.2014 09.09.2015
Chrissa Loukas SC	permanently appointed	17.07.1995
Janet Manuell SC	acting fixed term appointment* re-appointed 7 year term	06.02.2007 13.06.2008 24.06.2015
Nancy Mikhaiel	acting fixed term appointment* resigned	12.05.2008 12.05.2009 31.05.2016
Ian Nash	acting fixed term appointment*	23.01.2012 23.01.2013
Ertunc Ozen	acting fixed term appointment*	27.05.2013 03.06.2014
Peter Pearsall	permanently appointed	06.12.2001
Belinda Rigg SC	acting permanently appointed (currently part -time)	27.01.2004 13.07.2006
Jason Watts	acting fixed term appointment*	03.06.2013 27.05.2014
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 resigned	21.10.1999 02.10.2015
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

Renee Spinks

Hours

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