

# The Public Defenders

Annual Review

2021 – 2022

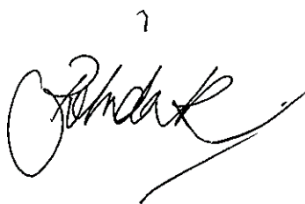
The Hon. Mark Speakman MP  
Attorney General  
52 Martin Place  
SYDNEY NSW 2000

Dear Attorney General,

**2021 – 2022 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 2022 for tabling in Parliament.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Belinda Rigg', with a small mark above the first letter.

Belinda Rigg SC  
Senior Public Defender

# Table of Contents

Foreword .....	1
The Role of Public Defenders .....	2
Organisational Structure and Duties of Public Defenders .....	2
Appointment of Public Defenders .....	3
Highlights of the year .....	3
The “Rolling List Court” (RLC) program .....	4
Annual Statistics for matters completed 2021-22.....	4
Service Level Agreements .....	6
Funding and Accountability .....	7
Continuing Professional Education.....	8
The <i>Bugmy</i> Bar Book.....	8
Significant Cases .....	9
Law Reform .....	12
Committees .....	13
Government Information (Public Access) Act 2009 (GIPAA) .....	14
Organisation Chart as at 30 June 2022 .....	15
Public Defenders 2021-22.....	16

## Foreword


This year we were sorry to lose two highly regarded Public Defenders, Janet Manuell SC and Eric Wilson SC, who retired after 15 and 24 years of service respectively. Janet Manuell also served as a Deputy Senior Public Defender from 2019 and I will miss her invaluable support in this role. Eric Wilson worked initially in Dubbo and then latterly as our senior counsel for the western region, based in Wagga Wagga. Both started their careers with the Aboriginal Legal Service and their ongoing commitment to First Nations people was truly phenomenal, with brilliant advocacy in court coupled with extensive work in policy and committee roles.

In celebrating their careers, we also noted the many difficult and challenging cases they appeared in and the toll this can take on all practitioners. The psychological and physical impact of running long trials and the constant exposure to confronting material is well recognised as a potential risk to the health and wellbeing of criminal law practitioners. In acknowledging this risk, we have put considerable thought, time and research into developing a wellbeing strategy, led by Michael King and the executive team. The formal launch of this package of resources, which includes a peer mentoring program, will occur early in the new financial year.

The DSPD role vacated by Ms Manuell was filled by Troy Anderson SC, who also chairs our annual conference committee and has been a valuable addition to our executive team.

The statistical component of this report regrettably does not truly reflect the hard work and many personal hours expended by Public Defenders this year as too many trials were delayed or stood over due to the ongoing effect of the pandemic, despite the best efforts of everyone involved in the criminal justice system to return to business as usual. We have continued our work with other justice agencies to find solutions to delay and increase our own efficiencies where we can.

We grieved the loss of Judge Peter Zahra SC, who was the Senior Public Defender from 2001 -2007. He was greatly respected and admired for his commitment to the work of Public Defenders and for his subsequent role as Judge of the District Court. He is very sadly missed by all who knew him.

A handwritten signature in black ink, appearing to read 'Belinda Rigg', with a stylized flourish extending from the end.

Belinda Rigg SC  
**Senior Public Defender**

## **The Role of Public Defenders**

Public Defenders are barristers who appear for legally assisted persons who have been charged with serious criminal offences. A legally assisted person is someone who has been granted legal aid by Legal Aid NSW, the Aboriginal Legal Service NSW/ACT or another community legal service.

Public Defenders are appointed as independent statutory officers by the Governor of NSW under the [Public Defenders Act 1995](#) ("the Act").

## **Organisational Structure and Duties of Public Defenders**

### **The Senior Public Defender**

The Senior Public Defender is responsible to the Attorney General for the proper exercise of the functions set out in section 8(1) of the Act which 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 Legal Aid NSW (LACNSW), the Aboriginal Legal Service NSW/ACT (ALS) and other community legal centres (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 attending to management and legal policy responsibilities.

Belinda Rigg SC was appointed as Senior Public Defender on 29 May 2019.

### **Deputy Senior Public Defenders**

The Act provides that the Governor may appoint one or more Deputy Senior Public Defenders. There are currently three Deputy Senior Public Defenders positions. Janet Manuell SC retired this year and Troy Anderson SC was appointed as her replacement in this role. Richard Wilson SC and Michael King, who is responsible for regional Public Defenders, continue in their roles as Deputy Senior Public Defenders.

The functions of a Deputy Senior Public Defender include assisting the Senior Public Defender as part of the executive management team and providing support and guidance to Public Defenders, in addition to conducting their own trial and appellate practices.

### **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 legislation 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” (section 6 (4)). This means that Public Defenders act independently of any external influence in the conduct of their cases.

## **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 29 Public Defender positions for the whole of NSW. Four of these positions were initially funded as part of the criminal justice reforms to clear the longstanding District Court trial backlog but are now fully funded on an ongoing basis and incorporated as part of the annual budget.

Two Public Defender positions are fully funded by Legal Aid NSW as set out in the annual service level agreement available on our [website](#).

As barristers, Public Defenders are bound by the *Legal Profession Uniform Conduct (Barristers) Rules 2015* and related legislation and are therefore subject to the same disciplinary regime for professional conduct as other counsel.

## **Highlights of the year**

- Appeared in 14 leading High Court and Court of Criminal Appeal cases.
- Provided submissions to 20 law reform criminal justice reviews and participated in over 25 departmental and external committees.
- Held our first fully live-streamed annual criminal law conference for more than 400 delegates from NSW and interstate.
- Implemented the first Aboriginal legal undergraduate cadet role as an adjunct to the longstanding PD Aboriginal and Torres Strait Islander law graduate program.

## **The “Rolling List Court” (RLC) program**

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

This initiative was developed in collaboration with the Chief Judge of the NSW District Court, the Office of the Director of Public Prosecution (ODPP), Legal Aid NSW and Public Defenders. It commenced as a pilot program in 2015 at the Downing Centre District Court and has continued as an established program following a positive assessment by the Bureau of Crime Statistics and Research (BOCSAR).

The RLC has proved to be an extremely valuable adjunct in reducing court time by the early resolution of trials and reduction in hearing times in many cases. The introduction of the Early Appropriate Guilty Plea (EAGP) legislation has had some impact on the number of matters now referred to this program as both work on similar models. In addition, the presiding Judge allocated to the RLC was away on extended leave for part of the year, which also reduced the number of sitting days. This year, 27 matters were referred to the Public Defenders RLC practice, with 20 matters completed. Of these, two matters went to trial and two matters were no-billed with the balance resolved as guilty pleas before trial.

## **Super Call-Overs in the District Court**

The scheduling of super call-overs in the NSW District Criminal Courts is one of the strategies employed by NSW justice agencies to help reduce the District Court trial backlog. The aim of the super call-overs is to target unresolved trials listed at designated courts with the aim of encouraging appropriate guilty pleas by defendants on the advice of defence counsel and in negotiation with Crown Prosecutors and the ODPP.

Public Defenders assisted with four super call-overs held in the District Courts at Albury, Parramatta, Port Macquarie and Sydney. With the advent of EAGP, Public Defender involvement has significantly declined given the emphasis on early briefing with the aim of resolving matters more efficiently in the local court where possible. Most matters before the District Court now have counsel briefed which precludes Public Defender involvement. Seventeen matters were briefed with an average resolution rate above 50 percent.

## **Annual Statistics for matters completed 2021-22**

The below figures are based on the number of matters completed in this financial year. Each stage of a case is counted as a separate matter, such as committal, sentence, trial or appeal. This better reflects the work done in different jurisdictions and the different complexities that apply at each stage as cases progress from the local court to the superior courts.

Public Defenders are often briefed in lengthy and complex trials to help contain the cost of such matters. The allocation of a Public Defender to these 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.

The continuing impact of Covid on trials has resulted in fewer matters being completed, as well as increasing the time needed to finalise these cases where jurors, witnesses and the profession have not been able to attend due to illness or isolation requirements.

We have also had up to four Public Defenders unavailable throughout the year due to long-term health-related issues and two resignations, where recruitment had not been completed before the end of this financial year.

	STATE	C'WEALTH	TOTAL
Children's Court	15	0	15
Coroner's Court	1	0	1
Local Court	232	8	240
Drug Court	0	0	0
District Court	265	13	278
State Parole Authority	3	0	3
Supreme Court	90	13	103
Mental Health Review Tribunal	0	0	0
Court of Criminal Appeal Advices	68	18	86
Court of Appeal Advices	1	0	1
High Court Advices	7	3	10
Court of Criminal Appeal Hearings	46	11	57
Court of Appeal Hearings	2	0	2
High Court Appeals	1	1	2
<b>GRAND TOTAL</b>			<b>795</b>

**Preparation time amounted to 3,339 days** with an additional **3,256 conference hours** spent with solicitors, clients and witnesses. Public Defenders spent **1,481 days in court**, including virtual court appearances.

We **accepted 905 requests** for assistance and **declined 2,221 requests**. Matters are declined for a number of reasons, including conflict of interest or more commonly, due to the unavailability of a Public Defender to accept the brief because of other work commitments.

The distribution of work (matters completed this year) across the various court jurisdictions is approximately as follows:

Jurisdiction	Percentage
District Court	35
Court of Criminal Appeal	17
Local Court	30
Supreme Court	13
High Court	less than 2



There is a notable increase in completed matters in the local court compared with the last two years. This reflects the additional work now conducted in this jurisdiction under the EAGP provisions before committal of the matter to the District or Supreme Court. The number of matters completed in the District Court declined and this may be attributed to the cancellation of trials due to Covid-19 and temporary reduction in the number of Public Defenders as noted above.

The ratio of matters heard in Sydney compared with regional and non-metropolitan courts is **49:51** which reflects the additional Public Defenders allocated to regional locations.

### **Other Assistance Provided**

Public Defenders are an important point of contact for the legal profession. This year they provided **85 recorded instances of assistance** to the profession on legal, ethical and practice issues, either by telephone or brief written advices. It is likely that this level of assistance is significantly under-recorded given many Public Defenders were working away from chambers due to Covid safety measures for a large part of the year and may not have recorded all requests for advice.

Our website is a valuable research tool for the profession, students and the general public, and includes:

- Annual Criminal Law Update paper
- Table of Common Charge Options
- A guide to mental health law and accompanying flow charts and tables
- Covid-19 resources
- Sentencing tables

### **Service Level Agreements**

Formal arrangements for access to our services are contained in [Service Level Agreements](#) ("SLAs"), which are negotiated annually with Legal Aid NSW and the ALS.

The SLAs provide 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 Legal Aid NSW and the ALS.

The types of matters where Public Defenders are briefed include:

- Supreme Court trials;
- District Court trials with priority given to long and/or complex matters;
- circuit work at nominated regional centres;
- appellate work in the High Court, Court of Criminal Appeal and Court of Appeal; and
- EAGP committal hearings involving serious criminal charges.

Public Defenders may also appear in coronial inquiries either at the request of Legal Aid NSW, the ALS or the Crown Solicitor's Office.

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.

Public Defenders are located at Albury (1), Coffs Harbour (1) Dubbo (1), Orange (1), Lismore (1), Newcastle (2), Tamworth (1), Wollongong (1) and Wagga Wagga (2). One Public Defender has been allocated to cover Campbelltown District Court and we also maintain a presence at the Parramatta Justice Precinct.

Representation in regional and non-metropolitan court sittings now accounts for over 50 per cent of our work (excluding Commonwealth matters which are mostly heard in Sydney).

About 85 per cent of the work briefed to Public Defenders comes directly from Legal Aid NSW lawyers, or from private lawyers who have obtained a grant of legal aid for their client. The remaining 15 per cent is briefed by the ALS or other community legal centres.

## **Funding and Accountability**

### **Funding**

The primary source of funding is the Department of Communities and Justice. **The budget for this financial year was \$12,923,180.**

Additional revenue is obtained under the SLAs from:

- **Legal Aid NSW**, which provided **\$952,851**. This amount funds two Public Defender positions and provides partial funding for one legal research officer.
- The **ALS**, which provided **\$182,350**.

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

### **Accountability**

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

Annual statistics are provided to Legal Aid NSW and the 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.

## Continuing Professional Education

Public Defenders continued to speak at seminars and conferences conducted by Legal Aid NSW, the Aboriginal Legal Service, Young Lawyers, the NSW Bar Association and tertiary institutions, although most of these were conducted via various audio-visual platforms this year.

We provide tutors for readers at the Bar, internships for law students undertaking external placement programs and practical legal training, as well as year 10 high school work experience opportunities. Public Defenders provide mentoring under various programs including the Lucy Mentoring Program, the NSW Bar Association's Aboriginal Mentoring Program and the Diverse Women in Law association.

## Annual Conference

The conference was formally opened by the Attorney General, the Hon. Mark Speakman. A full copy of the program and conference papers can be located on our [website](#).

## The *Bugmy Bar Book*

The [Bugmy Bar Book](#) is a free, evidence-based resource for the profession comprised of accessible summaries of key research about the impacts of disadvantage and the benefits of strengths-based rehabilitation. The purpose of the resource is to provide an evidence base to support submissions made to courts and other decision-makers to establish the application of the *Bugmy v The Queen* (2013) 249 CLR 571 principles, and to promote improved understanding of the lived experiences of people coming into contact with the legal system within the legal profession. We host this resource on our [website](#).

Public Defenders provide support and participate on the *Bugmy Bar Book* committee which is comprised of a multi-disciplinary team of professionals who develop and manage this resource with input from the profession, academics, legal researchers and students.

In November 2021, the Public Defenders entered into a Co-Operation Agreement with the *Bugmy Bar Book* Project Committee ('Project Committee') and the Aboriginal Legal Service (NSW/ACT) Limited ('ALS') for the administration of a grant of philanthropic funding from the Paul Ramsay Foundation to further the work of the project. The purpose of the grant is to employ a lawyer to achieve the objectives of the Project Committee by increasing awareness and understanding of the project in Australia, commissioning new research, developing new chapters and designing and rolling out an education program for the profession. As the Project Committee is not an incorporated entity, the ALS has agreed to auspice the grant funds and employ the lawyer, and the Public Defenders have agreed to accommodate the lawyer within the Public Defenders Chambers in Sydney.

In April 2022, two part-time Legal and Program Managers were employed in accordance with this agreement. As at 30 June 2022, the following work towards improving the quality and scope of the project had been undertaken:

- Consultation with stakeholder organisations was conducted, and a planning and strategy day was held at the Public Defenders Chambers in Sydney in May 2022. The session was attended by members of the Project Committee as representatives of the various stakeholder organisations in the project to workshop and develop objectives for the next phase of the project.

- A comprehensive work plan for the 18-month funding period was produced by the Legal and Program Managers, incorporating the goals identified through the planning, strategy and consultation process.
- The Legal and Program Managers and several members of the Project Committee attended the 2022 Criminal Lawyers of the Northern Territory (CLANT) Conference in Darwin to present about the *Bugmy* Bar Book and promote awareness of the resource in the Northern Territory. They were also invited to meet with Judges of the Northern Territory Supreme Court and Local Court to present about the project to the Northern Territory judiciary.
- Work was commenced to review and update 13 existing ‘chapters’ of the Bar Book, produce 3 new chapters, and finalise publication of a new research paper (‘Incarceration in NSW since 1967’), as well as develop and roll out an education program for the profession. The education program will include promoting awareness and use of the resource in practice areas beyond criminal law, and in jurisdictions beyond NSW.

## Significant Cases

***Park v The Queen*** [\[2021\] SCA 37; 95 ALJR 968](#)

***Sentence that the court "would otherwise have imposed"***

The High Court held that the sentence that a court “would otherwise have imposed” in section 22(1) *Crimes (Sentencing Procedure) Act 1999* is the sentence that the court would otherwise have imposed in accordance with the *CSP Act*, determined without regard to any jurisdictional limit under the *Criminal Procedure Act 1986*. Any relevant jurisdictional limit is applied after the judge has determined the appropriate sentence for the offence. Therefore, the sentencing judge did not err by indicating a sentence higher than the jurisdictional limit. The High Court dismissed the applicant’s appeal.

***Stanley v DPP (NSW)*** [\[2021\] NSWCA 337](#)

***Intensive Correction Order (ICO)***

**Note:** The High Court granted Special Leave to Appeal in this matter.

A five-judge bench of the Court of Appeal held that the sentencing judge’s failure to make an assessment under s 66(2) of the *Crimes (Sentencing Procedure) Act 1999* (whether, when considering community safety, an Intensive Correction Order is more likely to address risk of re-offending), did not amount to jurisdictional error nor mean that the judge misconstrued her function.

***Donovan*** [\[2021\] NSWCCA 323](#); ***Lloyd v R*** [\[2022\] NSWCCA 18](#)

***Bugmy v The Queen (2013) 249 CLR 571***

The CCA allowed the applicants’ sentence appeals. In ***Donovan***, the sentencing judge erred in rejecting application of *Bugmy* principles by finding that when the applicant committed the offences at age 19, his prosocial behaviour and social achievements was evidence of an absence of lasting damage from his “disadvantaged upbringing”. Uncontradicted expert evidence identified a link between childhood exposure to abuse and the offences.

In ***Lloyd***, the sentencing judge found the *Bugmy* principles enlivened thereby accepting that a background of childhood deprivation was established on the evidence, but then failed to consider whether the applicant’s deprived upbringing contributed to the cause of his offending or otherwise reduced moral culpability.

## ***McKinley v R*** [\[2022\] NSWCCA 14](#)

### ***Voluntary disclosure of guilt***

The Court allowed the applicant's sentence appeal on the ground of an insufficient discount for voluntary disclosure of guilt where police were unaware of the applicant's involvement. The Court applied a 55 percent combined discount for plea of guilty and assistance. The Court observed that the view that a combined discount ought not exceed 40 percent, and that it would be a rare case where a discount of more than 60 percent would not result in a manifestly inadequate sentence, probably does not withstand later authority criticising an arithmetic approach to sentencing. However, this is not intended to suggest too great a discount so that the sentence is unreasonably disproportionate to the offence and offender.

## ***Black v R*** [\[2022\] NSWCCA 17](#)

### ***Early appropriate guilty plea scheme***

The applicant, charged with murder, offered to plead guilty to manslaughter before committal. The offer was rejected but later accepted by the Crown during negotiations before trial. Section 25E(3)(a) of the *Crimes (Sentencing Procedure) Act* 1999 provides that for an offer to plead guilty to a "different offence", a 25 percent discount applies if made before the offender was committed for trial. Allowing the applicant's appeal, the Court held the judge erred by applying a 10 percent discount under s 25D(2)(b)(ii) instead of 25 percent under s 25E(3)(a). Manslaughter was a "different offence" (not the offence the subject of the proceedings when the offer was made) for the purposes of s 25E(2)(b).

## ***BK v R*** [\[2022\] NSWCCA 51](#)

### ***Acquittal after Judge-alone trial***

The Court (by majority) dismissed the Crown appeal against acquittal by judge-alone for child sexual abuse offences. The Court held the judge had taken tendency evidence adduced by the Crown into account. However, the judge's reasoning process did not explain what use had been made of the unchallenged tendency evidence in reaching a verdict. While the judge failed to adequately expose his approach as to the tendency evidence, it was clear he was not satisfied beyond reasonable doubt as he could not exclude the reasonable possibility the accused's evidence was true. In light of that finding and nature of the error established, it would be wrong to put the respondent to trial again. The acquittals were affirmed.

## ***GS v R; DPP (NSW) v GS*** [\[2022\] NSWCCA 65](#)

### ***'Intentionally choking'***

The Court upheld a Crown appeal against a directed acquittal for an offence of intentional choking (s 37(1A) *Crimes Act* 1900). "Intentionally chokes" means to intentionally apply pressure to the neck so as to be capable of affecting the breath or the flow of blood to or from the head; pressure on the back of the neck is insufficient. The Court did not remit the matter for re-trial in exercise of the residual discretion.

## ***Haile v R*** [\[2022\] NSWCCA 71](#)

### ***Jury directions – murder trial***

The Court quashed the applicant's murder conviction and remitted the matter for retrial. The trial judge erred by giving repeated directions that created a clear risk the jury may have understood they were required to choose between the competing accounts of the appellant and principal Crown witness; refusing to give a *Liberato v The Queen* (1985) 159 CLR 507 direction; and failing to discharge the jury where erroneous directions gave jurors the

impression they only had the option of either seeking to be discharged or joining in a guilty verdict.

***Delzotto v R*** [\[2022\] NSWCCA 117](#)

***Commonwealth mandatory minimum penalties***

The Court allowed the Crown appeal against sentence. The sentencing judge failed to approach mandatory minimum penalties for possess child abuse material accessed by carriage service (s 474.22A *Criminal Code* (Cth)) in accordance with *Bahar v R* [2011] WASCA 249.

***Newburn v R*** [\[2022\] NSWCCA 139](#)

***Sentencing for manslaughter based on excessive self-defence***

The Court allowed the applicant's sentence appeal for manslaughter based on excessive self-defence. The sentencing judge erred in assessing objective criminality. The events leading to the confrontation between applicant and deceased were relevant only as context to the actual offence yet formed the basis of the judge's assessment. It was not open to find the applicant's response was one which "very significantly exceeded a reasonable response": at [40]-[47].

***DPP (NSW) v Presnell*** [\[2022\] NSWCCA 146](#)

***Intentionally carrying out a sexual act "towards" a child***

The Court (by majority) dismissed the interlocutory appeal by the Director of Public Prosecutions against the primary judge's order for a permanent stay of proceedings of an offence of intentionally carrying out a sexual act towards a child under 10 (s 66DC(a) *Crimes Act*). The offence could not be established: the respondent's act was not "towards" the complainant given the child's lack of awareness of the respondent, their physical positions, and the directions that they were facing supported the judge's conclusion that the respondent was hiding his act from the child.

***Tran v DPP (Cth)*** [\[2022\] NSWSC 778](#)

***Appeal against new non-parole period following Commonwealth parole revocation***

The Court allowed the applicant's appeal against a new NPP imposed by the Local Court following Commonwealth parole revocation. The NPP was manifestly excessive given additional evidence regarding the applicant suffering a mental illness or disorder. The nature of such an appeal is by way of rehearing, with regard to other evidence (s 19AY(3) *Crimes Act* 1914 (Cth)). It is unnecessary to establish error at first instance in this case. It is necessary only for the Court to form the view that the additional evidence would produce a different result had it been available at trial (*CDJ v VAJ* (1998) 197 CLR 172).

***Mental Health and Cognitive Impairment Forensic Provisions Act 2020***

***R v Siemek (No. 1)*** [\[2021\] NSWSC 1292](#); ***R v Tonga*** [\[2021\] NSWSC 1064](#)

The judgments discuss transitional provisions and procedure under s 31 of the new *MHCIFP Act* generally and in the context of a judge-alone trial for murder. Section 31 permits a Court, where there is agreement by the Crown and accused's legal representative, to enter a special verdict at any stage in proceedings.



## ***R v Woodham* [\[2022\] NSWSC 1154](#)**

The Court held that “*will* not become fit to be tried” (in s 47(1)(b) *MHCIFP Act*) does not require a state of “absolute certainty”. Even so, it is a very high standard of satisfaction whether one applies the language of “real certainty” or “realistically inevitable”: at [23]; authorities cited.

## **Law Reform**

An important function of Public Defenders under the Act is the provision of advice to the Attorney General and the Department of Communities and Justice 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, NSW Sentencing Council and Parliamentary Committees of Inquiry. In addition, a number of Public Defenders participate in law reform committees and advisory groups.

### **Submissions made during the year include:**

- Consent - Sexual Offences; Further comments on Crimes Legislation Amendment (Sexual Consent Reforms) Bill 2021- Department of Communities and Justice
- Open Justice Review- NSW Law Reform Commission
- Juries Reform- Department of Communities and Justice
- Stronger Communities Legislation; *Amendment (Children) Bill 2021*- Department of Communities and Justice
- Consultation on Draft Criminal Procedure Legislation Amendment Bill 2021- Department of Communities and Justice
- COVID-19 Recovery Roadmap - COVID-19 Temporary Provisions- Department of Communities and Justice
- Amendments to consorting law under division 7 of part 3A of the Crimes Act 1900 (Criminal Legislation Amendment (Consorting and Restricted Premises) Bill 2018 – Department of Communities and Justice
- Draft Bill to reform Sentencing Practices for Historical Offences- s 25AA(1) *Crimes (Sentencing Procedure) Act 1999*
- Statutory Review of the Bail Act 2013- Department of Communities and Justice
- Criminal Procedure Legislation Amendment (Prosecution of Indictable Offences) Bill- Department of Communities and Justice
- Crimes (Appeal and Review) Amendment Bill- Department of Communities and Justice
- Dubbo Drug Court Expansion: Proposed Enabling Amendment to Regulations- Department of Communities and Justice
- Consultation on the proposed remake of the Crimes (Sentencing Procedure) Regulation 2017- Department of Communities and Justice
- Amendments to section 66EA of the *Crimes Act 1900*- Department of Communities and Justice
- Further protection for Legal Practitioners- Department of Communities and Justice

- Crimes Amendment (Prohibition of Display of Nazi Symbols) Bill 2022- Department of Communities and Justice
- Preliminary Consultation of Crimes Legislation Amendment (Coercive Control) Bill 2022- Department of Communities and Justice
- Surveillance Devices Regulation 2022- Consultation- Department of Communities and Justice
- Consultation on the statutory review of the *Evidence Amendment (Tendency and Coincidence) Act 2020*- Department of Communities and Justice
- Bail: Show Cause offences & the unacceptable risk test- Department of Communities and Justice

## **Committees**

### **NSW Bar Association**

Public Defenders work closely with the NSW Bar Association at many different levels, with a number of Public Defenders being members of the following committees:

- Criminal Law Committee
- First Nations Committee
- Indigenous Barristers Strategy Working Party and the Indigenous Barrister's Trust
- Joint Working Party on Over-representation of Indigenous People in the Criminal Justice System
- Professional Conduct Committees
- Legal Aid Committee
- Honorary Secretary role for NSW Bar Council

### **The Law Council of Australia**

- The Law Council of Australia National Criminal Law Committee as a nominee of the NSW Bar Association, with a Public Defender appointed as co-chair.

### **Justice Committees**

- Crime and Justice Reform Committee
- Criminal Business Committee
- Criminal Justice Transformation Board
- Child Sexual Assault Evidence Pilot Committee
- Child Sexual Assault Judicial Reforms and Monitoring Implementation Group
- Covid Response Committee
- District Court Backlog Senior Officers Group
- District Court Criminal Listing Committee
- EAGP Reform Committee
- JUSTConnect e-Brief Committee



- Legal Aid NSW Specialist Barristers and Solicitors Panels, including the Children's Criminal Law panel
- Corrective Services Legal Practitioners Consultative Group
- Mental Health Reforms
- Royal Commission into Institutional Responses to Child Sexual Abuse Criminal Justice Working Group
- Standing Inter-agency Advisory Committee on Court Security
- The Sentencing Council
- Walama Court Working Group (previously the Walama District Court Working Group)

#### **Other**

- Australian & New Zealand Association of Psychiatrists, Psychologists and Lawyers (NSW branch)
- The *Bugmy* Bar Book Committee
- The *Bugmy* Evidence Project – a joint project of Norton Rose Fulbright and the ALS
- Western NSW Community Legal Centre Committee

#### **Government Information (Public Access) Act 2009 (GIPAA)**

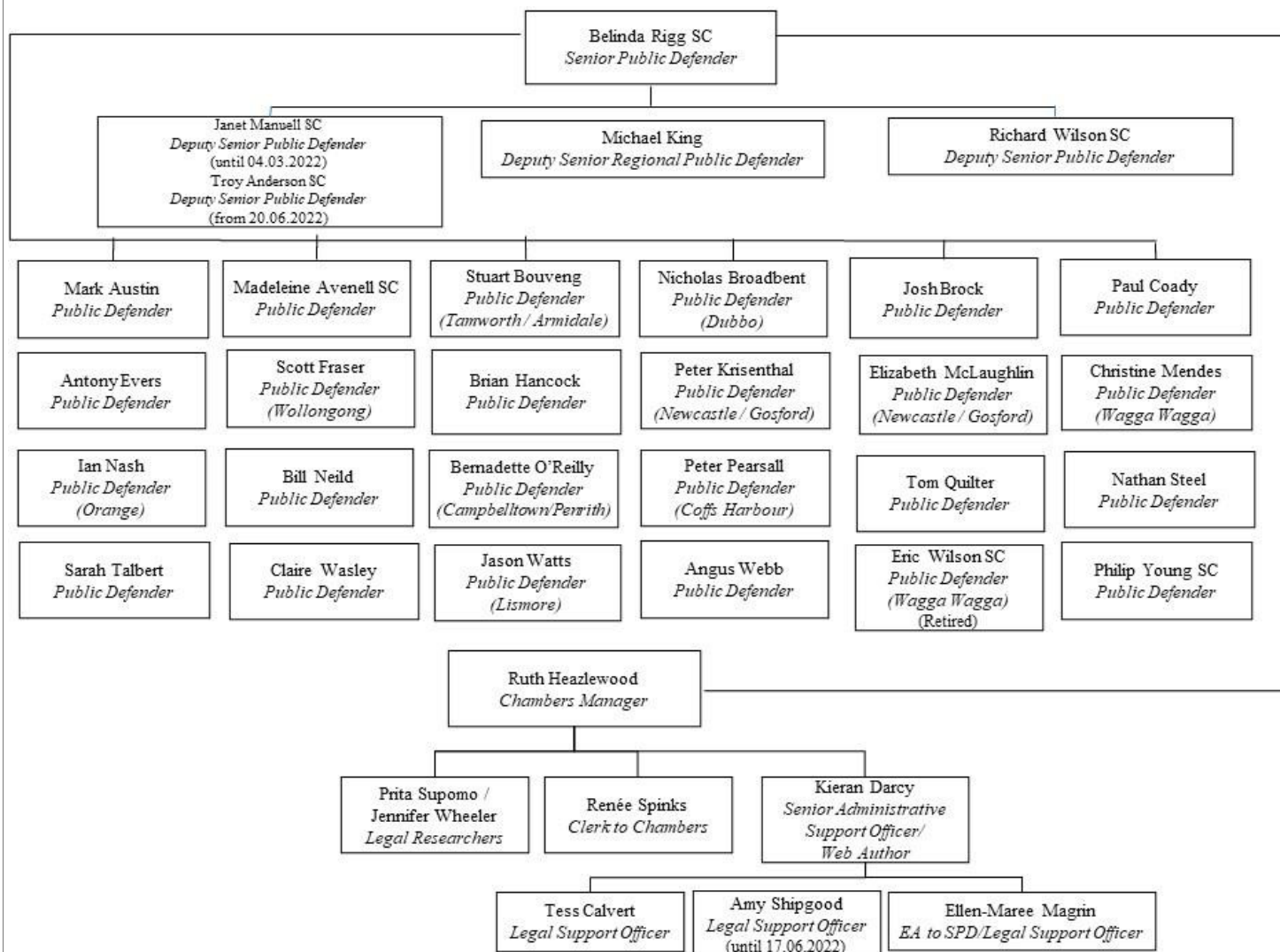
Public Defenders meet the requirements of the GIPA Act to provide open access to information for the public where possible and without charge. Our website provides access to the following documents:

- 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.

## Organisation Chart as at 30 June 2022



## Public Defenders 2021-22

<b>Senior Public Defender (SPD)</b>		
Belinda Rigg SC	appointed 7 year term	29.05.2019
<b>Deputy Senior Public Defenders (DSPD)</b>		
Troy Anderson SC	acting fixed-term appointment* appointed DSPD 7 year term	15.05.2017 15.05.2018 20.06.2022
Michael King	acting fixed-term appointment* appointed DSPD 7 year term	30.08.2010 30.08.2011 14.05.2018
Janet Manuell SC	acting fixed-term appointment* re-appointed 7 year term appointed DSPD 7 year term resigned	06.02.2007 13.06.2008 24.06.2015 12.12.2019 04.03.2022
Richard Wilson SC	acting fixed-term appointment* appointed DSPD 7 year term	23.01.2012 23.01.2013 14.05.2018
<b>Public Defenders</b>		
Mark Austin	permanently appointed	05.06.1995
Madeleine Avenell SC	acting fixed-term appointment*	29.01.2018 29.01.2019
Stuart Bouveng	acting fixed-term appointment*	15.08.2016 15.08.2017
Nicholas Broadbent	acting fixed-term appointment*	28.01.2020 28.01.2021
(Trevor) Josh Brock	acting fixed-term appointment*	21.01.2019 21.01.2020
Paul Coady	acting fixed-term appointment*	29.01.2018 29.01.2019
Antony Evers	acting fixed-term appointment*	14.07.2014 29.03.2017
Scott Fraser	acting fixed-term appointment*	21.01.2019 23.01.2020
Brian Hancock	acting fixed-term appointment* re-appointed 7 year term	29.08.2005 29.10.2009 29.10.2016
Peter Krisenthal	acting fixed-term appointment* re-appointed 7 year term	14.07.2014 09.09.2015 08.09.2022
Elizabeth McLaughlin	acting fixed-term appointment*	29.01.2019 29.01.2020
Christine Mendes	acting fixed-term appointment*	17.01.2020 17.02.2021
Ian Nash	acting fixed-term appointment* re-appointed 7 year term	23.01.2012 23.01.2013 23.01.2020
Bill Neild	acting fixed-term appointment*	05.09.2016 05.09.2017
Bernadette O'Reilly	acting fixed-term appointment	28.01.2020 28.01.2021
Peter Pearsall	permanently appointed	06.12.2001
(Hugh) Tom Quilter	acting fixed-term appointment*	08.05.2017 08.05.2018
Nathan Steel	acting fixed-term appointment*	02.10.2018 03.10.2019
Sarah Talbert	acting fixed-term appointment*	17.02.2020 17.02.2021
Claire Wasley	acting fixed-term appointment*	28.01.2020 28.01.2021
Jason Watts	acting fixed-term appointment* re-appointed 7 year term	03.06.2013 27.05.2014 26.05.2021
Angus Webb	acting permanently appointed	15.07.1996 27.01.1998
Eric Wilson SC	acting permanently appointed retired (official end date)	27.01.1998 09.08.2001 08.08.2023
Philip Young SC	permanently appointed	24.07.2002

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

## **Contact Details**

Public Defenders Chambers  
23/1 Oxford Street  
DARLINGHURST NSW 2010

### **Telephone**

(02) 9268 3111

### **Facsimile**

(02) 9268 3168

### **Email**

[pd-admin@justice.nsw.gov.au](mailto:pd-admin@justice.nsw.gov.au)

### **Website**

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

### **Chambers Manager**

Ruth Heazlewood

### **Clerk to Chambers**

Renee Spinks

### **Hours**

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