

SERVICE LEVEL AGREEMENT
BETWEEN
THE PUBLIC DEFENDERS
AND
THE ABORIGINAL LEGAL SERVICE (NSW/ACT) LIMITED
FOR THE PERIOD 1 JULY 2017 TO 30 JUNE 2018

This agreement is made on 2017 between the Public Defenders and the Aboriginal Legal Service (NSW/ACT) Limited.

1. PREAMBLE

- 1.1 The role of the Aboriginal Legal Service (NSW/ACT) Limited (hereinafter referred to as the ALS) is to provide legal aid services to Aboriginal people (including people of Torres Strait Island descent, hereinafter referred to collectively as Aboriginal people), in the most effective, efficient and economical manner.
- 1.2 The role of Public Defenders is to advise and appear in criminal proceedings on behalf of legally assisted persons.
- 1.3 Public Defenders are a scarce and valuable resource. Demand for the services of Public Defenders outstrips available resources. The purpose of this service level agreement is to provide for the efficient and effective use of limited Public Defender's resources and to make best use of limited funds available to the ALS. The parties commit themselves, as far as possible, to providing equitable access to the services of Public Defenders in metropolitan, regional and rural New South Wales.
- 1.4 Both parties acknowledge the special need for Aboriginal people within New South Wales to have access to the services of Public Defenders.

1.5 In recognition of the above, it is agreed between the parties that:

2. DURATION OF AGREEMENT AND CONSULTATION PRINCIPLES

2.1 This service level agreement covers the period 1 July 2017 to 30 June 2018.

2.2 This agreement will be reviewed by no later than 31 May 2018 with a commitment to enter a further service level agreement covering the period 1 July 2018 to 30 June 2019 by that date. Should the agreement for this further period not be entered by this date, then the present agreement shall continue in force in the present terms and pending notice by either party to terminate the agreement, such notice to be not less than three months prior to the date of termination to be nominated by the terminating party in writing.

2.3 The Senior Public Defender or his nominee and an officer nominated by the ALS shall consult on a regular basis, to review the implementation of this agreement, including allocations of Public Defenders. Priorities of work and allocations are only to be changed following agreement by both parties.

2.4 The parties agree to exchange such information as each may regard as necessary for the full consultation and implementation of this agreement.

2.5 Any formal consultation about this agreement shall be minuted.

3. PRIORITY OF WORK AND ALLOCATION OF PUBLIC DEFENDERS

3.1 It is acknowledged that it is within the discretion of the ALS to brief and retain Public Defenders in such matters as it may determine from time to time.

- 3.2 In the period 1 July 2017 to 30 June 2018 work will be briefed as follows in priority order:
- Provision of services at nominated District Court locations;
 - Circuit work at nominated regional centres;
 - Supreme Court trials; and
 - Appellate work.
- 3.3 The provision of advice in appellate matters may be undertaken by any Public Defender.
- 3.4 It is acknowledged that in providing advice on merit in appellate matters, a Public Defender is providing advice to the ALS and not providing legal services to a legally assisted person. Public Defenders, consistent with their ethical obligations, may provide advice on merit for more than one co-accused in a matter. The usual rules relating to conflict of interest however, may prevent a Public Defender representing more than one party where aid is granted in an appellate matter.
- 3.5 It is agreed that the solicitors and staff of the ALS will make their best endeavours to provide briefs and other relevant material to the Public Defenders at the earliest opportunity to ensure the most efficient and effective use of the Public Defenders' time. Such briefs as are provided shall be in the proper form.
- 3.6 The parties acknowledge that in matters where clients are likely to be committed for trial and sentence, early involvement of Public Defenders may result in early and favourable resolution of matters. The ALS agrees that its solicitors will attempt to identify such matters and brief Public Defenders at an early stage.

- 3.7 The Public Defenders agree to provide advance notice to the Chief Legal Officer ALS of the details of any allocations of Public Defenders to appear at regional District Courts in addition to those sittings set out in Annexure 'A' to enable the ALS to brief such Public Defenders in matters for those sittings, if available.
- 3.8 Attached hereto, marked as Annexure "B", are agreed guidelines which together with this agreement comprise the arrangement between the parties for the term of this agreement.

4. OTHER ASSISTANCE AND SUPPORT

- 4.1 It is acknowledged and agreed that the Public Defenders will continue to assist and support the ALS in the provision of legal services by:
- The provision of ad hoc advice to ALS staff either by telephone or other means;
 - The provision of research materials and access to Public Defender's research officers, and provision of other legal material;
 - The provision of speakers and materials for continuing legal education for ALS staff and private solicitors undertaking ALS matters; and
 - Advice in the preparation of law reform submissions made by the ALS.
- 4.2 It is further agreed that the provision of continuing legal education by Public Defenders to ALS staff shall either be without charge or provided at cost where the Public Defenders are required to pay a fee or other amount to another body to conduct this training. The number of ALS staff permitted to attend continuing legal education at cost or without charge is solely at the discretion of the Public Defenders.

5. FURTHER WORK TO BE UNDERTAKEN

- 5.1 The parties agree to undertake further work during the currency of this agreement to develop and refine quantifiable measures of workload, efficiency and cost with a view to including these in any subsequent agreements.

6. CONSIDERATION

- 6.1 In consideration of the performance of this service level agreement the Public Defenders shall be paid the sum of one hundred and seventy thousand dollars \$177,000 plus GST.
- 6.2 The Public Defenders will invoice the ALS (NSW/ACT) Limited on 15 October 2017 and 15 April 2018, or as soon after as is practicable, for an amount equivalent to half the agreed payment, plus GST.
- 6.3 In default of the ALS or the Public Defenders executing written renewal of this Agreement, the agreement between the ALS and the Public Defenders shall continue unless the ALS or the Public Defenders gives notice in writing of repudiation of the Agreement, such notice to have effect not less than 21 days after the date of service of such notice upon the other party.

7. TERMINATION OF AGREEMENT

- 7.1 Notwithstanding the preceding terms of this agreement, the Public Defenders reserves the right to terminate this agreement should the current funding arrangements for ALS be altered in any substantial manner. Termination shall not occur until all parties to this agreement are consulted.

8. CONTRACT NOT TRANSFERABLE

8.1 The terms and conditions of this agreement are not transferable to any other entity (either currently existing or coming into existence during the currency of this agreement) providing legal services to Aboriginal people as a franchisee.

Signed by:

Senior Public Defender

**who certifies he is duly authorised
to sign on behalf of the Public Defenders
in the presence of:**

Signature:

Signed by:

**Chief Executive Officer
Aboriginal Legal Service (NSW/ACT)
Limited**

**who certifies he is duly authorised
to sign on behalf of the ALS
(NSW/ACT) Limited in the presence of:**

Signature:

COURTS SERVICED BY PUBLIC DEFENDERS 2017-2018

CITY COURTS

SYDNEY DC, SC, CCA..... FULL TIME	47 WEEKS.....	All
SYDNEY ROLLING LIST FULL TIME	47 WEEKS.....	EO,TA
PARRAMATTA DC FULL TIME (8 COURTS).....	43 WEEKS	BH
PARRAMATTA ROLLING LIST ...FULL TIME.....	TBA	
PENRITH DC FULL TIME (1 COURT).....	3 WEEKS.....	BH (if available)

COUNTRY COURTS with allocated Public Defender

ALBURY	16 WEEKS	MK
ARMIDALE	17 WEEKS.....	SAB
BATHURST	14 WEEKS	IN
BOURKE.....	4 WEEKS	IN
BROKEN HILL	6 WEEKS	IN
COONAMBLE	2 WEEKS	IN
DUBBO.....	40 WEEKS	IN
GOSFORD.....	48 WEEKS	JF/PK
GRIFFITH	23 WEEKS	MK/EW*
LISMORE.....	50 WEEKS	JW
NEWCASTLE.....	48 WEEKS	PK/JF
NOWRA.....	14 WEEKS	PP
ORANGE	8 WEEKS	IN
PARKES	4 WEEKS	IN
PORT MACQUARIE	20 WEEKS	BN
TAMWORTH.....	17 WEEKS	SAB
TAREE.....	20 WEEKS	BN
WAGGA WAGGA	30 WEEKS	MK/EW*
WOLLONGONG	48 WEEKS	PP

COUNTRY COURTS No allocated Public Defender

BEGA..... 11 WEEK
COFFS HARBOUR..... 23 WEEKS
GOULBURN 14 WEEKS
GRAFTON 9 WEEKS
MOREE..... 8 WEEKS
QUEANBEYAN 10 WEEKS

Notes: Regional Supreme Courts sittings as required.

*Eric Wilson SC – Supreme Court matters but able to assist with DC matters at Wagga and related courts.

LEGEND

TROY ANDERSON.....	TA
MARK AUSTIN	MA
SOPHIA BECKETT.....	SB
STUART BOUVENG.....	SAB
CHRIS BRUCE SC	CB
ROBYN BURGESS.....	RB
HELEN COX	HC
ANTONY EVERS.....	AE
JOHN FITZPATRICK	JF
BRIAN HANCOCK	BH
MARK IERACE SC	MI
MICHAEL KING	MK
PETER KRISENTHAL.....	PK
CHRIS LOUKAS SC.....	CL
JANET MANUELL SC.....	JM
IAN NASH.....	IN
BILL NEILD.....	BN
ERTUNC OZEN	EO
PETER PEARSALL	PP
TOM QUILTER.....	TQ
BELINDA RIGG SC	BR
CRAIG SMITH SC	CS
JASON WATTS	JW
ANGUS WEBB.....	AW
ERIC WILSON SC	EW
RICHARD WILSON	RW
PHILIP YOUNG SC	PY

**GUIDELINES FOR ABORIGINAL LEGAL SERVICE (NSW/ACT) LIMITED
and PUBLIC DEFENDERS SERVICE LEVEL AGREEMENT 2017-2018**

PREAMBLE

These guidelines have been developed to be used by the Aboriginal Legal Service (NSW/ACT) Limited (hereinafter referred to as the ALS) and the Public Defenders in connection with the Public Defender Service Level Agreement for the period 1 July 2017 to 30 June 2018.

1. RELATIONSHIP

- 1.1 The relationship between the Public Defenders and the ALS shall be one of barrister and solicitor.
- 1.2 Public Defenders will only undertake barristers' work in accordance with the **Legal Profession Uniform Conduct (Barristers) Rules 2015**, the *Public Defenders Act 1995* and Public Defenders guidelines.
- 1.3 Public Defenders will only appear briefed by a solicitor. There will be no direct client access.
- 1.4 Public Defenders should be instructed at the hearing of a matter by a solicitor, or where a Public Defender so agrees, by a Field Officer or volunteer graduate law student. A Public Defender may request the personal attendance of the solicitor at a hearing (or part thereof) or conference if the Public Defender considers it necessary in the interests of all concerned including the client.
- 1.5 The Public Defenders acknowledge that Field Officers or volunteer graduate law students will be assisting ALS solicitors to a significant degree in the discharge of the solicitor's duties and functions (including being present with the Public Defender during hearings and conferences without the solicitor). However, the ultimate responsibility for taking instructions rests with the solicitor.

2. BRIEFS

- 2.1 ALS briefs delivered to Public Defenders should be complete and prepared in accordance with accepted standards between the parties to this agreement.
- 2.2 ALS briefs should be delivered to Public Defenders at the earliest opportunity.

2.3 The ALS may retain a Public Defender for a particular matter prior to formally briefing him/her. However, the ALS must deliver the brief at the earliest opportunity.

3. ACCEPTANCE OF BRIEFS

3.1 The ALS will only brief Public Defenders in criminal proceedings and other proceedings in the nature of criminal proceedings¹ or other matters permitted by *The Public Defenders Act 1995*.

3.2 Otherwise the Legal Profession Uniform Conduct Rules 2015 apply (see Rules 17-22 inclusive), subject to *The Public Defenders Act 1995*.

3.3 The Public Defenders will appear (subject to availability) in the Local Court and Children's Court for committals in serious matters and in the Coroner's Court or before the NSW Crime Commission where the matter has special significance.

3.4 Where it has been indicated that a Public Defender will be available to accept an ALS brief to appear on hearing, that indication will be noted in the diary of the Public Defender available to accept the brief. That Public Defender will not be allocated other work likely to conflict with that hearing where the matter is listed in a multiple court complex. However, the Public Defender, so allocated, may accept other work in conflict with the ALS brief, if the ALS brief has not been delivered to the Public Defender within a reasonable time (see 3.6) before the first appearance date. The Public Defender will notify the ALS if a brief has not been delivered within a reasonable time, before accepting a brief for a conflicting date.

3.5 An indication that a brief will be accepted by a Public Defender will be given as soon as practicable after a request for such an indication has been made.

3.6 In determining what is reasonable for the purposes of 3.4, regard shall be had to the following:

- The estimated length of the hearing.
- The time that has elapsed since the indication was given that the brief would be accepted and the hearing date of the matter.
- Any discussions and communications between the Public Defender and the ALS.
- The need to use Public Defenders efficiently.

¹ "Proceedings in the nature of criminal proceedings" extends to:

- a) committals, trials, appeals and ancillary proceedings (such as bail applications), and
- b) proceedings that are brought against a person for the purpose of obtaining an order for the detention of the person in prison, in a hospital or the detention of mentally incapacitated persons or in any other place of detention, and
- c) proceedings that are brought by a person for the purpose of securing the person's release from detention in a prison, in a hospital for the detention of mentally incapacitated persons, or in any other place of detention.

- The level of financial commitment to this agreement by the ALS, which sought the Public Defender's services.
- Other relevant circumstances.

3.7 Briefs to advise in connection with appeals to the High Court, the New South Wales Court of Criminal Appeal, New South Wales Court of Appeal and New South Wales Supreme Court:

- Should be delivered to the Public Defenders' Chambers, unless alternate arrangements have been made with a Public Defender or the Clerk to Chambers.
- Will be tentatively accepted upon receipt at the Public Defenders' Chambers.
- Shall be returned where a Public Defender has not been allocated the brief within 4 weeks of its receipt; or where it is unlikely that a Public Defender will be able to furnish an advice within 5 weeks of receipt, unless the ALS requests that it be retained.

3.8 The Senior Public Defender reserves the right to decline a brief and to require any Public Defender to decline a brief from the ALS where the number of briefs from the Aboriginal Legal Services received by Public Defenders is disproportionate to the level of funding provided by the ALS, when compared to the level of funding from other sources.

4. COUNSEL OF CHOICE

4.1 The ALS may nominate to the Senior Public Defender or Clerk to Chambers, the Public Defender it seeks to brief, and subject to the Legal Profession Uniform Conduct (Barristers) Rules, that Public Defender shall accept or decline the brief.

4.2 In the event that the Public Defender of first choice is unavailable to accept the brief, the brief will be allocated to another Public Defender after consultation with the ALS.

4.3 Where the ALS chooses not to accept the Public Defender allocated, it may withdraw the brief.

5. DELIVERY OF BRIEFS

5.1 Where practicable, the ALS should deliver briefs to the Public Defenders' Chambers. Where that is not practicable and the brief is delivered directly to a Public Defender, the ALS should furnish the Clerk to Chambers with an "online request form" (or written notice to the same effect) confirming acceptance of the delivery of the brief including the name of the Public Defender and other relevant details as required.

- 5.2 Briefs for a Public Defender located permanently outside the Sydney metropolitan area should be delivered directly to that Public Defender and an online request form (or written notice to the same effect) should be forwarded to the Clerk at the Public Defenders' Chambers.

6. RETURN OF BRIEFS

- 6.1 The Legal Profession Uniform Conduct (Barristers) Rules 2015 apply.
- 6.2 Where a Public Defender has accepted a brief from the ALS but is unable to appear or advise in connection with that brief, it shall not be allocated to another Public Defender without first discussing the matter with the ALS.
- 6.3 Where a brief is to be returned, that fact should be communicated to the ALS as soon as practicable to permit the ALS to give directions as to the mode of return of the brief.
- 6.4 The Clerk to the Public Defenders Chambers is to decide upon the best method of return of briefs having regard to the urgency required.

7. COMMUNICATIONS

- 7.1. Every effort will be made by the Public Defenders and the ALS to communicate with each other in a timely fashion and to advise as promptly as possible of any change in circumstances so far as the offer of, acceptance of, or return of a brief is concerned.
- 7.2 The Senior Public Defender or his nominee will make every effort to attend meetings with the ALS on a regular basis, to enable discussion of relevant policy issues between the ALS and the Public Defenders.

8. PROFESSIONAL ASSISTANCE

- 8.1 Public Defenders will be available, to the extent that their practice permits, to give advice and guidance to ALS solicitors and Field Officers in connection with matters, including committals and arraignments. If it is intended to brief a Public Defender in any such matter in a higher court, assistance should be sought from the Public Defender to be briefed.
- 8.2 Public Defenders will, to the extent that their practice permits, assist in the preparation and delivery of a training program for ALS solicitors and/or Field Officers if requested.

9. ARRAIGNMENTS

- 9.1 Public Defenders will accept briefs to advise and appear upon arraignment in either the Supreme Court or District Court. When, following advice from a Public Defender a client pleads guilty, where possible the same Public Defender should appear at the sentence hearing unless the ALS requests otherwise.

- 9.2 A brief for arraignment should indicate whether the ALS expects to brief a Public Defender for the trial should the client plead not guilty.

10. STATISTICAL DATA

- 10.1 The Parties agree to exchange such statistical information available to facilitate the monitoring and allocation of Public Defenders' resources.
- 10.2 The Public Defenders are to co-operate with the ALS in the provision of information and data to assist the ALS in maintaining their data collection system. However, the prime responsibility for the collection of data for that system and its maintenance shall be upon the ALS.

11. DISPUTES

- 11.1 Where there is a dispute or disagreement between a client and a Public Defender or between the ALS and a Public Defender concerning the Public Defender's conduct of a particular case, every effort will be made for such dispute to be resolved by the parties. The principal solicitor with the briefing ALS office may assist in the resolution of the dispute if requested and if he/she considers that appropriate. The Senior Public Defender may assist in the resolution of the dispute if requested and if he/she considers it appropriate². However, it is acknowledged that the Public Defender briefed is responsible for forensic judgements made in connection with the brief and a barrister's duty to act in the interests of the client.
- 11.2 Where a dispute involves a personal disagreement between a Public Defender and client or staff member of the ALS, the parties involved should do all in their power to resolve the dispute, including calling for assistance of mediators (such as representatives of the local Aboriginal community or Community Justice Centre) to assist. However, where the dispute relates to the conduct and carriage of the brief, paragraph 11.1 applies.

² The Senior Public Defender is not permitted to give a Public Defender directions in connection with the conduct of a particular case see s.11 (2) Public Defenders Act 1995.