

ANNUAL REVIEW

2009 – 2010



30 November 2010

The Hon. John Hatzistergos, MLC
Attorney General and Minister for Justice
GPO Box 5341
SYDNEY NSW 2001

Dear Attorney

2009 – 2010 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 2010 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

The highlight of this year was the appointment of two Public Defenders, Dina Yehia SC and Janet Manuell SC as senior counsel. Laura Wells SC, formerly a Deputy Crown Prosecutor and now a Judge of the District Court was also appointed senior counsel whilst on secondment here. We now have eight senior counsel - a significant achievement for a floor of 25 barristers.

Other achievements this year include the successful expansion of Public Defender placements in regional areas. We now have two Public Defenders based in Newcastle, covering Newcastle District and Supreme Courts, East Maitland and now Gosford Court, which has been added to this regional circuit. The position at Coffs Harbour was re-located to Lismore for a trial period and we have concluded recruitment for a permanent Public Defender position at Wagga Wagga to take effect early next year.

Two Public Defenders are now permanently allocated to Parramatta with a third available to cover additional work there as needed. Although initially instigated as a pilot program, the current arrangement is working very well and all three Public Defenders are kept very busy providing representation at the PJP, Campbelltown and Penrith courts.

Another outstanding accomplishment was the success of our annual criminal law conference, with 288 criminal law practitioners from NSW and interstate attending. The excellent speakers and the effort put in by the organising committee has resulted in our conference being very highly regarded by the profession. In addition to this, Public Defenders often give up their own time to present at other conferences and seminars as well as being a valuable and readily accessible source of advice for other practitioners.

A future challenge will be the relocation of our chambers by the end of 2011. Our lease expired this year with no prospect of renewal beyond 18 months. We have been located at our current Chambers since 1991 and now share the building with the Office of the Director of Public Prosecutions. The proximity of the Crown Prosecutors has enhanced our communication and opened up greater access to training, and we hope this will continue despite our move to other premises. We have commenced our search for new chambers in the CBD and hope to find a suitable location close to the courts. We have already commenced planning the move to ensure that this occurs with the least disruption to our service.

I am grateful for the hard work and support of Public Defenders and staff, in particular, the Deputy Senior Public Defenders, John Stratton SC and Andrew Haesler SC who have given me invaluable assistance throughout the year.



Mark Ierace SC
Senior Public Defender

Our Role

Public Defenders are barristers and members of the New South Wales Bar Association. All Public Defenders are independent statutory officers, appointed by the Governor in Council under the *Public Defenders Act 1995* ("the Act").

The terms of appointment under the Act were changed in 2007 to remove life tenure for Public Defenders appointed after the commencement of the new provisions. Under the amendments, Public Defenders may now be appointed for a period of up to seven years and may be reappointed after that term expires. The Senior and Deputy Senior Public Defenders are appointed for set but renewable terms currently of seven and five years respectively. Reappointment of senior positions at the expiry of their terms will be under the new provisions.

The principal duty of a Public Defender under the Act is to represent people charged with serious criminal offences who have been granted legal aid by the Legal Aid Commission of New South Wales ("LAC"), the Aboriginal Legal Service (NSW/ACT) Limited ("ALS") or Community Legal Centres ("CLCs"). Public Defenders may also assist in other matters such as inquests and government inquiries.

As barristers, Public Defenders operate in a manner conforming to the rules and customs of the New South Wales Bar. The head of Chambers is the Senior Public Defender. Public Defenders are bound by the Bar Rules and are subject to the same disciplinary regime in relation to professional conduct as other counsel.

Functions of the Senior Public Defender

The Senior Public Defender is responsible to the Attorney General for the due exercise of his functions under the Act. Those functions are set out in detail in Section 8(1) and include:

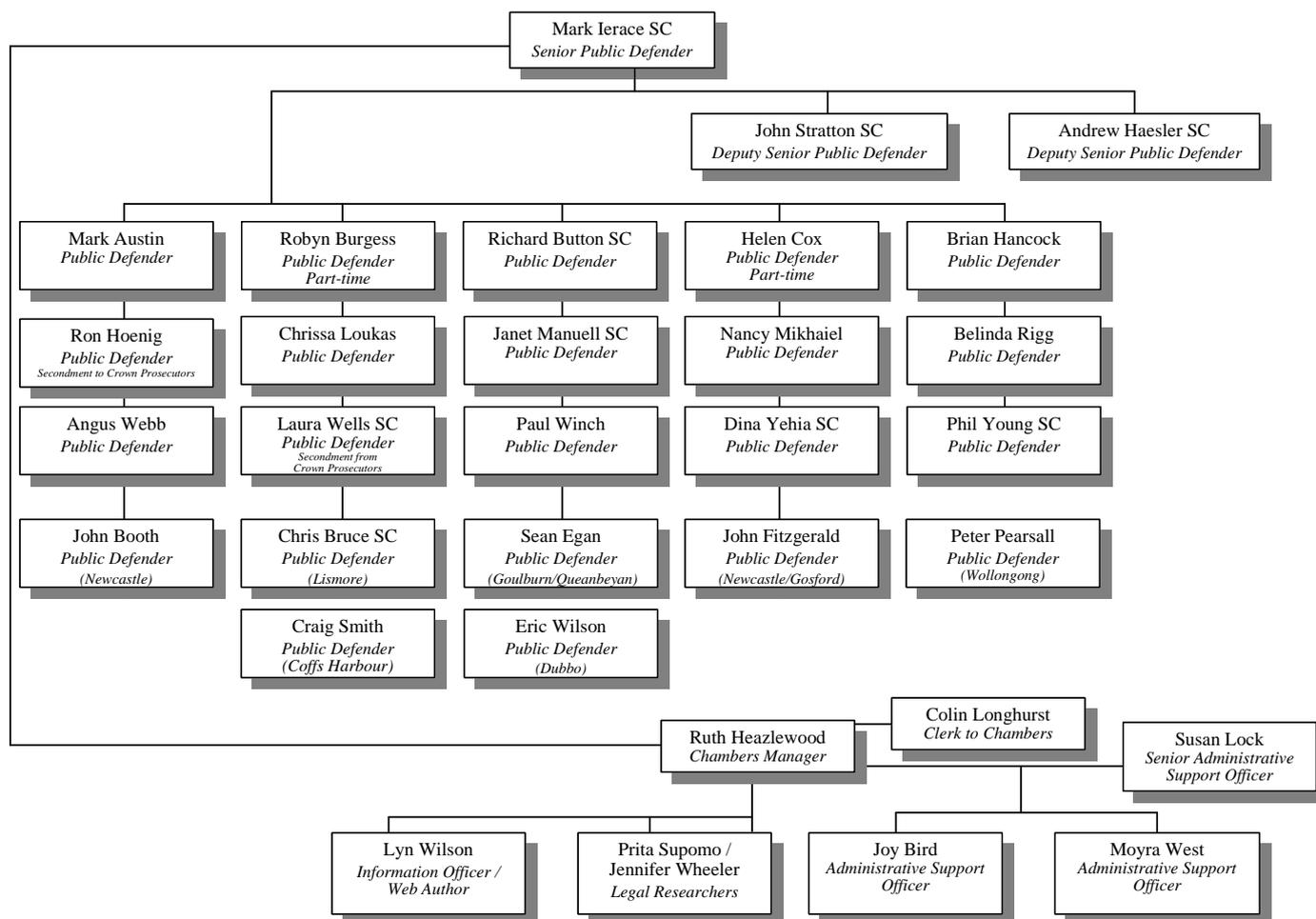
- the making of arrangements and giving of directions to ensure the effective and efficient conduct of Public Defenders' work;
- providing advice and assistance to Public Defenders and monitoring their work;
- consulting with the LAC, the CLCs and the ALS on the provision of legal assistance to legally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

Two Deputy Senior Public Defenders, John Stratton SC and Andrew Haesler SC assisted the Senior Public Defender in his duties in this reporting period.

Functions of Public Defenders

- The functions of a Public Defender are set out at Section 10 of the Act and include:
 - advising and appearing in criminal proceedings;
 - advising on matters referred by the Senior Public Defender;
 - carrying out other related functions as may be specified by the Attorney General in consultation with the Senior Public Defender; and
 - providing representation in Parole Board and *Mental Health Act* proceedings and related matters.

The Senior Public Defender may also establish written guidelines on the exercise of the above functions by the Public Defenders.



Service Level Agreements

Public Defenders represent legally assisted people as defined by the Act. Most Public Defenders matters are briefed by the LAC (about 85 per cent), either directly or by private solicitors acting under a grant of legal aid. Matters referred by the ALS account for nearly 15 per cent of Public Defenders' work, with a small number of matters briefed by community legal centres. 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 types of work undertaken by Public Defenders, with priority given to more serious and complex matters, such as appellate work and Supreme Court trials. By focusing on these high-cost matters, Public Defender services are used in the most efficient and effective manner. An added benefit of the SLAs is that they enhance the level of communication between the parties. The agreements require regular consultation, which helps 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.

This year, six full-time Public Defenders were based at Dubbo, Lismore, Newcastle, Coffs Harbour, Port Macquarie and Wollongong. One part-time Public Defender attended Goulburn and Queanbeyan District Courts. The Port Macquarie position was redirected to Newcastle and Gosford courts mid-way through the year due to the reduction in court sitting times achieved at Port Macquarie – largely due to the hard work of the Public Defender located there. Newcastle and Gosford courts both carry a high workload and the relocation has succeeded in meeting much of the demand for Public Defender services in those locations.

Regional Public Defenders appear predominantly in the District Court sittings and to a lesser extent in Supreme Court matters. Sydney-based Public Defenders attend regional District and Supreme Court sittings across NSW as determined by the SLAs and their availability.

Public Defenders receive funding from both the LAC and ALS under these agreements.

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 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. The Senior Public Defender and Deputy Senior Public Defenders participate in the District and Supreme Court User Groups in addition to other committees listed in this report.

The Senior Public Defender is a member of the Sentencing Council, the Supreme Court Media Consultation Committee and other Court committees that aim to improve the administration of the criminal justice system in NSW. He was also a member of the Trial Efficiency Working Group.

Public Defenders also work closely with the NSW Bar Association and are actively involved in the Association's committees as well as being consulted on criminal law issues.

Funding and Accountability

Funding

The primary source of funding is the Department of Justice and Attorney General. The Public Defenders' budget for this financial year was \$7,063,818, which represents the net cost of services. Employee-related expenses continue to represent about 85 per cent of the total cost of services.

Additional revenue is derived from:

- LAC providing \$674,918 under the current SLA - this provides funding for two Public Defender positions and partial funding for one Legal Research Officer. This amount includes Commonwealth funding equivalent to one Public Defender salary plus on-costs;
- ALS providing \$160,000 under the current SLA;
- fees for the Public Defenders annual criminal law conference; and
- fees for use of the Public Defenders' conference room and private use of our video conferencing facility (AVL).

The Department of Justice and Attorney General manages the Public Defenders' finances. No separate accounting facility exists at Chambers.

This year, expenditure was well within budget due to careful monitoring of travel and related costs, revenue raised from the annual conference and funds received under the Service Level Agreements. Delays in filling vacancies also reduced salary costs.

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

Accountability

The Public Defenders are accountable to the Attorney General and his Department through the provision of standard quarterly reports on agreed performance indicators, including human resources and financial information.

Public Defenders are regularly audited and make progress reports to the Department on issues identified by internal audit reports.

We also contribute information for the Department's Annual Report.

Reports are provided to the LAC and ALS as required under the SLAs. Public Defenders are not public servants under the *Public Sector Employment and Management Act 2002*. However, Public Defenders have adopted the administrative policies and procedures of the Department. Support staff are public servants and are therefore bound by both the *Public Sector Employment and Management Act 2002* and *Public Finance and Audit Act 1983*.

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

Business Plan

The Business Plan for 2009/10 focussed on three initiatives:

- implementation of audit report recommendations;
- meeting demand for services in rural and regional areas; and
- locating alternate accommodation for chambers.

The Audit Report confirmed the need to update our current system of tracking and recording our work. Public Defenders identified the need to streamline and improve its data systems some years ago and put forward a proposal to adapt the current software used by LAC and the Office of the Director of Public Prosecutions.

Due to careful management we are now in a position to fund this project and hope to have it fully implemented by the beginning of 2011.

Public Defenders administrative support staff, in particular the senior administrative support officer, have worked hard this year to produce a comprehensive policy and procedure manual in response to another audit recommendation. This manual is available electronically and in hard copy.

The Business Plan recognises the importance of providing Public Defenders in rural and regional areas, which often suffer greater financial hardship than metropolitan locations. Achieving an equitable balance of our services is a constant challenge. The placement of regional Public Defenders is determined in consultation with LAC and ALS and has proved an effective strategy on a number of occasions by reducing the number of overall court sitting days.

A Public Defender position previously based at Port Macquarie has been relocated to Newcastle and Gosford - both very busy courts. Recruitment is also under way to place a Public Defender at Wagga Wagga at the beginning of next financial year.

Public Defenders are planning to relocate by the end of 2011 following the decision of the current landlord not to renew the lease beyond 18 months. This is a particular challenge given our need to remain within the CBD and close to the courts. We have already been working with the Department and the State Property Authority on this project for most of this year to clarify our needs and attempt to locate suitable accommodation.

Legal Representation

There are 25 Public Defenders for the whole of NSW, however this number fluctuates in any given year because of unfilled vacancies, long service leave and other leave. This year two Public Defenders were on maternity leave and two others took long service leave. There was also an unfilled vacancy for some months. Four Public Defenders work part-time.

It is inevitable that the demand for Public Defender services always exceeds our capacity. This year Public Defenders accepted 1,023 requests for assistance and declined 946 requests. Matters are declined for a number of reasons, including conflict of interest and unavailability of a Public Defender.

The acceptance and allocation of briefs to Public Defenders is largely determined by the SLAs with the LAC and ALS. The aim of these agreements is to ensure the most cost effective use of our mutual resources. The types of matters where Public Defenders are briefed include:

- Supreme Court trials;
- long and/or complex District Court trials;
- circuit work at nominated regional centres;
- appellate work in the High Court, Court of Criminal Appeal and Court of Appeal; and
- murder committal hearings and other committals involving serious charges.

Public Defenders also appear in coronial inquiries either at the request of the LAC, the ALS or the Crown Solicitor's Office. The distribution of work across the various court jurisdictions is as follows:

- District Court matters - 50%;
- Supreme Court - 14%;
- Court of Criminal Appeal matters - 27%;
- High Court matters - 1%; and
- Local, Coroner's and Children's Courts comprise 8% of finalised cases.

Preparation time amounted to 2,784 days with an additional 2,412 conference hours spent with solicitors, clients and witnesses. This year, Public Defenders spent 1,787 days in court.

Representation in regional and non-metropolitan court sittings accounts for approximately 43 per cent of our work. In addition to the placement of Public Defenders in the regional areas of Coffs Harbour, Dubbo, Goulburn, Lismore, Newcastle, Gosford, East Maitland, Port Macquarie and Wollongong, Public Defenders spend many weeks attending regional court sittings. Regular country circuits include Wagga Wagga, Tamworth and Bega, as well as many other regional courts.

Matters Completed 2009 – 2010		
Jurisdiction	State	Commonwealth
High Court advices & appeals	8	2
Court of Criminal Appeal advices & appeals	237	6
Court of Appeal	4	-
Supreme Court trial & sentence matters	110	21
District Court trial & sentence matters	455	-
Local Court committals & related matters	87	-
Coroner's Court	10	-
Children's Court	11	-
Total	919	33
Total matters	952	
Other assistance (non-court)	746	

Public Defenders successfully defended a Crown Appeal to the High Court in *The Queen v LK:RK* [2010] HCA 17, 26 May 2010, on the issue of the requisite mental element for conspiracy under the Commonwealth Criminal Code.

Secondments

The Attorney General, the Honourable John Hatzistergos MLC, promoted the reintroduction of secondments in 2007. Secondments of Public Defenders have occurred in previous years and have included transfers to the Criminal Law Review Division of the Department of Justice and Attorney General as well as to the Crown Prosecutors.

The section of the *Crown Prosecutors Act* 1986, which provides for the Attorney General to arrange for secondments is section 7A and was inserted into that Act in 1995. The corresponding section in the *Public Defenders Act* 1995 is section 15 and was also enacted in 1995.

The secondment is seen as an acting appointment and, as such, is limited in time by each of the relevant Acts to no more than 12 months at a time, but may be extended by the Attorney General.

Laura Wells SC, Deputy Senior Crown Prosecutor, continued her secondment with Public Defenders and during that time was appointed as senior counsel in September 2009. Ms Wells concluded her secondment at the end of this year, just prior to her appointment as a Judge of the District Court. Ron Hoenig, Public Defender concluded his secondment as a Crown Prosecutor at the same time.

Other Assistance Provided

Public Defenders are an important resource for the legal profession and this year they provided 637 instances of telephone and brief written advice to the profession on legal, ethical and practice issues. Often Public Defenders are asked to provide urgent telephone advice to practitioners calling from Court. Although this is often an interruption to their own work, all calls are taken and dealt with as soon as possible by a Public Defender.

The Public Defenders website is also a valuable resource for the profession, students and the general public with the site receiving at least 363,089 "hits" this year. The sentencing tables and other resources on the website are used by both practitioners and the judiciary, who regularly comment on the usefulness of this resource.

Law Reform

An important function of Public Defenders under the Act is the provision of advice to the Attorney General and others on law reform. We regularly make submissions on criminal law reform at the request of the NSW and Australian Law Reform Commissions, Criminal Law Review and Parliamentary Committees of Inquiry. In addition, a number of Public Defenders participate in law reform committees and advisory groups.

The Senior Public Defender (or his delegate) has a statutory right as intervener in Guideline Judgments under the *Crimes (Sentencing Procedure) Act* 1999. No applications were made under these provisions this year.

Mark Ierace SC, Senior Public Defender, is a member of the NSW Sentencing Council and was a member of the NSW Trial Efficiency Working Group.

Written submissions were made on the following:

- Judge alone trials under s.132 *Criminal Procedure Act* 1986.
- Sentencing for multiple offences.
- Review of Part 1D *Crimes Act* 1914.
- Review of protocol of appointment of senior counsel.
- Public Interest and the Rule of Law.
- Inquiry into the eligibility of Members of Parliament to serve as jurors.
- ALRC Consultation Paper: Family Violence and Improving Legal Frameworks.

Participation in Committees

Public Defenders are frequently invited to participate on various committees involved with the administration of justice. This year Public Defenders were members of the following committees:

- The NSW Bar Association Criminal Law Committee.
- The NSW Bar Association Human Rights Committee.
- The NSW Bar Council.
- The Court of Criminal Appeal and Common Law Division Court Users Group.
- The Supreme Court Media Consultation Group.
- NSW Trial Efficiency Working Group.
- NSW Sentencing Council.
- The DNA Review Panel.
- District Court Criminal Listing Committee.
- Western NSW Community Legal Centre Committee.
- DJAG Sexual Assault Task Force.
- Sydney University Institute of Criminology Advisory Committee.
- University of Wollongong Law School Advisory Committee.
- Crime and Justice Reform Committee.
- Corrective Services NSW Legal Practitioners Committee.
- DJAG Forensic Procedures Working Group.

Aboriginal Lawyers Program

Since 2001, Public Defenders have provided an Aboriginal Law Graduates Program following approval by the then Attorney General for funding under the Indigenous Justice Strategy. Funding of \$45,612 was provided under the Department's Aboriginal Program. The aim of the program was initially to assist Aboriginal law graduates establish themselves at the NSW Bar.

The program was expanded in 2006 to include all Aboriginal law graduates needing assistance to move into a legal career, not just those wishing to go to the Bar. Funding can now be directed to pay for the practical legal training component necessary for admission to practise as a solicitor. Under this program, Public Defenders may pay the course fees and salary for up to six months for successful applicants. Five graduates have completed the program following the changes to the guidelines in 2006 and have been admitted as legal practitioners in NSW.

Applications are considered by one of the Deputy Senior Public Defenders and the Chambers Manager who also consult with the NSW Bar Association, and, where relevant, the head of the law faculty of the tertiary institution. We had no applications from students this financial year but anticipate that two students will commence the program next year.

Continuing Professional Education

The Public Defenders Annual Criminal Law Conference continues to be a highlight of the continuing legal education calendar for NSW and interstate practitioners. This year we had 288 practitioners attending, which broke last year's attendance record of 272.

In keeping with tradition, the Attorney General, the Honourable John Hatzistergos MLC, opened the conference. Speakers included; Justice Howie, who spoke on "the Commonwealth Criminal Code"; Peter Hamill SC on "Opening and Closing Addresses"; Fr Frank Brennan talked about the "Human Rights Bill"; Professor Ian Hickie presented a very interesting and thought provoking session on "Brain Development"; Phillip Boulten SC discussed "Ethics" and there was a very interactive session with Phillipa Ryan on "EEO/Anti-Discrimination/Affirmative action and employment law"; Associate Professor Eileen Baldry and Melinda Smith spoke on "Current Developments within Intellectual Disability & the Mental Health". Dina Yehia SC and Richard Button SC discussed their experiences on appearing in the first terrorism trial in NSW.

Public Defenders are highly sought after to speak at seminars and conferences conducted by the LAC, ALS, Young Lawyers, the NSW Bar Association, College of Law and other tertiary institutions. This year Public Defenders spoke at 91 conferences, talks, seminars and similar events, often in their own time.

We also welcomed a delegation from the Vietnamese Lawyers Association who travelled here under the auspices of the Australian Human Rights Commission Vietnam - Australia Human Rights Technical Cooperation Program.

Public Defenders also play an important role in providing tutors for criminal readers at the NSW Bar, as well as providing instructors for the Bar Association's Readers course, and tutors for the Australian Institute of Advocacy.

Public Defenders continue to support law students with their external placement programs by offering volunteer opportunities throughout the year. We regularly provide work experience placements for at least four students each semester from the University of Sydney and University of New South Wales and one student per semester from the University of Wollongong. These placements are highly prized by students and we receive many applications from students wishing to work with Public Defenders. These placements are a very rewarding experience for everyone involved. We also provide work experience placements for year 10 high school students.

Public Defenders also provide an annual prize for a high achieving student at the UNSW Law Faculty prize giving ceremony.

For copies of conference papers and papers prepared by Public Defenders go to www.publicdefenders.nsw.gov.au.

Movements and Appointments as at the time of publication

		Appointed
Senior Public Defender (SPD)		
Mark Ierace SC	SPD	16.07.07
Deputy Senior Public Defenders (DSPD)		
Andrew Haesler SC	DSPD originally appointed	28.07.05 24.01.95
John Stratton SC	DSPD originally appointed	28.07.05 10.03.97
Public Defenders		
Mark Austin	permanently appointed	05.06.95
James Barnett	acting	19.01.09 18.01.10
John Booth	acting permanently appointed	07.01.98 09.08.01
Chris Bruce SC	permanently appointed	26.04.88
Robyn Burgess	acting (part-time) permanently appointed (currently part-time)	13.12.00 10.11.05
Richard Button SC	permanently appointed	06.05.91
Helen Cox	permanently appointed (currently part-time)	17.07.95
Sean Egan	Permanently appointed (currently part-time)	19.06.96
John Fitzgerald	acting (pending fixed term appointment)	25.01.10
Brian Hancock	acting fixed term appointment*	29.08.05 29.10.09
Ron Hoenig	permanently appointed (seconded to Crown)	06.10.87
Chrissa Loukas	permanently appointed	17.07.95
Janet Manuell SC	acting fixed term appointment*	06.02.07 13.06.08
Nancy Mikhaiel	acting fixed term appointment*	12.05.08 12.05.09
Peter Pearsall	permanently appointed	06.12.01
Belinda Rigg	acting permanently appointed (currently part-time)	27.01.04 13.07.06
Craig Smith	acting fixed term appointment*	13.06.06 13.06.08
Angus Webb	permanently appointed	15.07.96
Laura Wells SC	secondment (from Crown Prosecutors)	01.01.09 30.06.09
Eric Wilson	acting permanently appointed	27.01.98 09.08.01
Paul Winch	permanently appointed	21.10.99
Dina Yehia SC	acting permanently appointed	28.07.99 08.05.03
Philip Young SC	permanently appointed	24.07.02

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

Contact Details

The Public Defenders' Chambers are located at

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NSW 2000

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SYDNEY DOWNTOWN

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(02) 9268 3168

Website

www.publicdefenders.nsw.gov.au

Chambers Manager

Ruth Heazlewood

Clerk to Chambers

Colin Longhurst

Hours

Chambers are accessible to the public
Monday to Friday between the hours of 9.00am and 5.00pm.