

SERVICE LEVEL AGREEMENT BETWEEN THE PUBLIC DEFENDERS AND THE ABORIGINAL LEGAL SERVICE (NSW/ACT) LIMITED FOR THE PERIOD 1 JULY 2008 TO 30 JUNE 2009

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 2008 to 30 June 2009.

2.2 This agreement will be reviewed by no later than 31 May 2009 with a commitment to enter a further service level agreement covering the period 1 July 2009 to 30 June 2010 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 2008 to 30 June 2009 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 Court sittings 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 fifty thousand dollars (\$150,000.00) plus GST. In addition, the ALS undertakes to apply on behalf of Public Defenders to the Commonwealth Government for additional funds under the contingent funding guidelines for any large and/or complex cases in which a Public Defender is briefed and, if received, to reimburse agreed costs to the Public Defenders for travel and related expenses arising from the matter.

6.2 The Public Defenders will invoice the ALS (NSW/ACT) Limited on 15th October 2008 and 15th April 2009 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.

Annexure A