

## **Service Level Agreement between the Public Defenders and the Legal Aid Commission of NSW and the Attorney General's Department for the period 1 July 2007 to 30 June 2008**

This agreement is made on 14th September 2007 between the Legal Aid Commission of NSW, the Public Defenders and the New South Wales Attorney General's Department.

### **1 Preamble**

1.1 The Legal Aid Commission of NSW (hereinafter referred to as "Legal Aid NSW") is the principal entity briefing the Public Defenders. The Public Defenders are the primary source of Counsel's services to Legal Aid NSW in indictable matters. The New South Wales Attorney General's Department is the funding body of the Public Defenders. It is expedient from time to time to record the mutual obligations arising from the relationship that exists between the entities as agreed to in this document.

1.2 The parties recognise that Legal Aid NSW and the Public Defenders are independent and complementary providers of legally-aided representation with a common commitment to provide competent, high quality advocacy and advice for indigent persons charged before courts of criminal jurisdiction.

1.3 The parties agree that the Public Defenders are a scarce and valuable resource. Demand for the services of Public Defenders exceeds available resources. The purpose of this Service Level Agreement is to provide for the efficient and effective use of limited Public Defender resources in a manner mutually assessed by the parties as representing the best use of both the Public Defender resources and those of Legal Aid NSW. The parties, by this document, commit themselves, as far as is consistent with mutual efficiency, to provide equity in access to the services of Public Defenders at all levels of indictable jurisdiction in metropolitan, regional and rural New South Wales.

1.4 It is acknowledged that in all legally aided matters, it is a condition of the grant of aid that a Public Defender be briefed in the first instance if available.

1.5 All parties acknowledge the special needs of Aboriginal people within New South Wales for access to the services of Public Defenders. The parties acknowledge the separate but complementary arrangements that exist between the Public Defenders and the Aboriginal Legal Services (NSW/ACT) Limited and Legal Aid NSW. In acknowledging these relationships, the parties commit themselves to assisting the efforts of the Aboriginal Legal Services (NSW/ACT) Limited to provide quality legal services to Aboriginal people across New South Wales. Activities by the parties in this regard are to be mutually supported as being within the spirit and intention of this agreement.

### **2 Duration of agreement and consultation principles**

2.1 This Service Level Agreement covers the period 1 July 2007 to 30 June 2008.

2.2 This Agreement will be reviewed prior to 31 May 2008 with a commitment to negotiating a further Service Level Agreement for the period 1 July 2008 and 30 June 2009 by that date.

2.3 The Senior Public Defender and an officer nominated by the Chief Executive Officer of Legal Aid NSW shall meet and consult on a regular basis, but no less frequently than once per quarter, to review the implementation of this Agreement, including allocations of Public Defenders. Changes to the priorities of work and allocations are only to be effected after consultation between the 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. To advance the processes of consultation, it is agreed that the Public Defenders shall provide figures on a quarterly basis as set out in Annexure 'A'. Annual figures for briefs completed in the 2006/07 financial years are attached with Annexure 'A'.

2.5 Consultation of 2.3 above is to be formal and minuted. This does not preclude additional or informal consultations as may be mutually convenient.

2.6 Consultation between Legal Aid NSW, the Public Defenders and the New South Wales Attorney General's Department shall occur on a regular basis. The Assistant Director General, Policy and Legal Services, Attorney General's Department, or his/her nominee, may attend meetings as set out at 2.3 above if they so desire.

### **3 Priority of work and allocation of Public Defenders**

3.1 For the period 1 July 2007 to 30 June 2008, the priority of work that will be briefed is as follows:

- Supreme Court trials;
- Long and/or complex District Court trials;
- Circuit work and nominated regional centres;
- Appellate work;
- Provision of services at nominated locations; and
- Long or complex committal proceedings where both parties agree that representation by a Public Defender is appropriate.

3.2 It is acknowledged that within each of these priority areas, Commonwealth work will be undertaken, and should be given priority consistent with the funding provided by Legal Aid NSW for one Public Defender to undertake Commonwealth matters. It is acknowledged that this work will be allocated to such Public Defender as may be available at any given time, rather than to a particular Public Defender allocated to do only Commonwealth work.

3.3 The parties note with satisfaction the successful implementation of this arrangement to date in current complex Commonwealth terrorism prosecutions and will continue and develop such arrangements in the future as agreed between the parties.

3.4 The provision of advice in appellate matters may be undertaken by any Public Defender. Representation is to be provided by the Public Defenders in a manner that is consistent with the Public Defenders' obligations to meet the order of priority of work in 3.1, whilst recognising the importance of appellate work. The Public Defenders will work with Legal Aid NSW to optimise efficiency in the Court of Criminal Appeal practice. This will be achieved via consultation with the Court User Group, participation in other forums, meetings and groups as necessary.

3.5 It is acknowledged that in providing advice on merit in all appellate matters, a Public Defender is providing advice to Legal Aid NSW, whether directly or through an assigned solicitor who in all instances is the agent of Legal Aid NSW. In all merit cases the Public Defender tendering advice on merit is not providing legal services to a legally assisted person. Public Defenders may, subject to the ethics of the Bar, provide merit advices for more than one accused following a joint trial. The usual rules relating to conflict of interest may prevent the Public Defender who has so advised from representing one or more of the parties where aid is subsequently granted. The Public Defenders will, when providing a merit advice to a private solicitor who has been assigned an appellate matter, provide at the same time a copy of that advice to Legal Aid NSW to enable it to consider the granting of legal aid in that matter. The parties acknowledge that such a practice will enhance the efficiency of the operations of Legal Aid NSW and in no way contravenes any rule of practice.

3.6 Annexed hereto and marked as Annexure "B" and "C" are schedules of allocations of Public Defenders for circuit and other work. These schedules have been agreed between the Public Defenders and Legal Aid NSW as representing the most desirable allocation of Public Defender resources, taking into account efficiency, equity of access and best use of limited Legal Aid funds. It is agreed that the allocations may be implemented by means of directions under Section 8 (1) of the *Public Defenders' Act 1995*.

3.7 Nothing in any of the above prevents the rotation, replacement or substitution of one Public Defender for another, provided every effort is made to meet the overall object of service and continuity under this Agreement.

3.8 Subject to the Attorney General's powers in such matters it is acknowledged that all reasonable steps will be taken by the Senior Public Defender to keep all funded Public Defender positions filled.

### **4 Funding for State-related work**

4.1 Legal Aid NSW acknowledges that it receives recurrent funding for pre-trial disclosure and has been allocated funding in this year's budget for the Criminal Case Processing initiative. Legal Aid NSW acknowledges that both of these initiatives impact on the criminal justice system and in particular require earlier preparation for which Legal Aid NSW will seek assistance from the Public Defenders.

4.2 Legal Aid NSW also acknowledges that it is assisted by a strong internal structure within the Public Defenders and consistent with this view, supports the continuation of an extra Deputy Senior Public Defender position, if required, during the funding year.

4.3 In support of these criminal justice and structural changes, Legal Aid NSW agrees to provide the following funding to the Public Defenders:

· \$316,333 (plus GST and any additional increase in salary awarded by SOORT from 1/10/07) to fully fund an extra Public Defender's position; and

· if required, \$19,340 (plus GST and any additional increase in salary awarded by SOORT from 1/10/07) to support the continuation of an extra Deputy Senior Public Defender from an existing Public Defender position, or part thereof, for the balance of the year from the time of such decision.

## **5 Funding for Commonwealth matters**

5.1 It is acknowledged by the parties that Legal Aid NSW receives funding from the Commonwealth Government for the provision of legal assistance in Commonwealth matters. A Commonwealth matter for this purpose means a prosecution pursuant to a Commonwealth Act generally carried out by the Commonwealth Director of Public Prosecutions.

5.2 It is noted that Legal Aid NSW is party to a four-year agreement with the Commonwealth for 2004/2005 to 2008/2009. Legal Aid NSW acknowledges that the Public Defenders undertake work in Commonwealth matters. The Public Defenders will continue this undertaking during the course of this agreement. It is further noted that the Public Defender will provide two counsel in the matter of *R v Hasan* and ors. It is intended that this representation will continue at trial.

5.3 In recognition of the Public Defenders' commitment to Commonwealth matters, Legal Aid NSW agrees to provide \$316,333 (plus GST and any additional increase in salary awarded by SOORT from 1/10/07) to continue full funding of an extra Public Defender position. It is acknowledged that Commonwealth work will be allocated across the Public Defenders. It is a condition of this extra funding being provided throughout the life of Legal Aid NSW's four-year Agreement with the Commonwealth, that the Public Defenders' office collects and provides such data and information in relation to Commonwealth matters as may be requested by Legal Aid NSW, including the name of the client, offence type, matter type and date the matter was completed. It is a condition of this extra funding being provided that Legal Aid NSW is satisfied that the volume of Commonwealth work undertaken is consistent with the funding provided.

## **6 Work undertaken by the Public Defenders on behalf of Aboriginal Legal Services (NSW/ACT) Limited**

6.1 The parties acknowledge that the Public Defenders undertake work pursuant to a separate Service Level Agreement with the Aboriginal Legal Service (NSW/ACT) Limited. Legal Aid NSW and Public Defenders will endeavour to co-ordinate the arrangements for the most efficient delivery of advocacy services and other appropriate assistance to the Aboriginal Legal Services (NSW/ACT) Limited. This may include the provision of a Public Defender, or alternatively, provision by Legal Aid NSW of a solicitor advocate to undertake circuit work or appear in other matters as required.

## **7 Other Assistance**

7.1 It is acknowledged and agreed that the Public Defenders will continue to assist and support Legal Aid NSW in the provision of legal services by:

7.1.1 The provision of *ad hoc* advice to Legal Aid NSW staff and private practitioners acting on assignment for Legal Aid NSW either by telephone or other means.

7.1.2 The early involvement of Public Defenders by provision of advice or advocacy where requested in murder committals; committals for Commonwealth offences; committals involving complex issues such as mental illness/fitness to stand trial or other complex issues; and assistance, in appropriate cases at case conferences to negotiate with the Director of Public Prosecutions arising from the Case Conferencing initiative. Protocols will be settled between the parties as the initiative is developed and implemented.

7.1.3 The provision of research material and other legal material. In recognition of this service, Legal Aid NSW will provide an amount of \$18,900 plus GST, to fund the salary of one of the Public Defender's Legal Research Officers for one additional working day per week for the duration of this agreement.

7.1.4 The provision of speakers and materials for continuing legal education of Legal Aid NSW staff and private solicitors undertaking legally aided matters including but not limited to bi-monthly MCLE training within the CBD; provision of MCLE to regional Legal Aid NSW officers at mutually agreed times and venues; the provision of speakers at the annual Legal Aid NSW criminal law conference; and attendance of Legal Aid NSW staff at the

annual Public Defenders Conference or other legal education seminars provided by Public Defenders (subject to agreed numbers and costs).

7.1.5 Advice in the preparation of Law Reform submissions made by Legal Aid NSW, provided that the Public Defenders shall not be under an obligation to advise or draft submissions on Legal Aid NSW's behalf where the Public Defenders choose to make submission independently of Legal Aid NSW or advance a view with which Legal Aid NSW may not agree.

7.1.6 Other assistance and support as may be agreed between the parties from time to time.

## **8 Further work to be undertaken**

8.1 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, if appropriate, in any subsequent Agreements.

## **9 Dispute Resolution**

9.1 In relation to any dispute arising from the provisions of this agreement, or as a consequence of the briefing of public defenders by Legal Aid NSW, such disputes shall be referred for resolution to the Senior Public Defender and the Director Crime of Legal Aid NSW.

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[Annexure A](#)

[Annexure A\(1\)](#)

[Annexure B](#)