

# Public Defenders Act 1995 No 28

[1995-28]



New South Wales

## Status Information

### Currency of version

Historical version for 17 May 2006 to 31 October 2007 (accessed 28 November 2024 at 19:20)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**

*[Crown Law Officers Legislation Amendment \(Abolition of Life Tenure\) Bill 2007](#)*

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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# Public Defenders Act 1995 No 28



New South Wales

An Act to provide for the appointment and functions of Public Defenders; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Public Defenders Act 1995*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

In this Act:

**community legal centre** means an Aboriginal legal service or other community legal centre within the meaning of section 48H of the *Legal Profession Act 1987*.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**legal practitioner** has the same meaning as it has in the *Legal Profession Act 1987*.

**legally assisted person** means a person who is a legally assisted person within the meaning of the *Legal Aid Commission Act 1979* or who is receiving legal assistance through a community legal centre.

**part-time Public Defender** means a Public Defender exercising his or her functions as a Public Defender on a part-time basis, as provided by an agreement referred to in section 6 (2A).

## Part 2 Appointment of Public Defenders

### 4 Appointment of Senior Public Defender

(1) The Governor may appoint a Senior Public Defender.

- (2) The Senior Public Defender has such functions as are conferred or imposed on the Senior Public Defender by or under this or any other Act.
- (3) The Senior Public Defender is responsible to the Attorney General for the due exercise of the Senior Public Defender's functions, but nothing in this subsection affects or derogates from the authority of the Senior Public Defender in respect of the conduct of any proceedings.
- (4) Schedule 1 has effect in relation to the Senior Public Defender.

## **5 Appointment of Deputy Senior Public Defenders**

- (1) The Governor may appoint one or more Deputy Senior Public Defenders.
- (2) A Deputy Senior Public Defender has such functions as are conferred or imposed on Deputy Senior Public Defenders by or under this or any other Act.
- (3) A Deputy Senior Public Defender is responsible to the Senior Public Defender for the due exercise of the Deputy Senior Public Defender's functions, but nothing in this subsection affects or derogates from the authority of a Deputy Senior Public Defender in respect of the conduct of any proceedings.
- (4) Schedule 1 has effect in relation to a Deputy Senior Public Defender.

## **6 Appointment of Public Defenders**

- (1) The Governor may appoint such number of Public Defenders as the Governor thinks necessary.
- (2) A Public Defender has such functions as are conferred or imposed on Public Defenders by or under this or any other Act.
- (2A) A Public Defender may, by agreement in writing entered into with the Senior Public Defender, exercise his or her functions as a Public Defender on a part-time basis.
- (3) A Public Defender is responsible to the Senior Public Defender for the due exercise of the Public Defender's functions, but nothing in this subsection affects or derogates from the authority of a Public Defender in respect of the conduct of any proceedings.
- (4) Schedule 1 has effect in relation to a Public Defender.

## **7 Acting appointments**

- (1) The Attorney General may appoint a person who is eligible for appointment as such to act in the office of Senior Public Defender, Deputy Senior Public Defender or Public Defender.
- (2) The Attorney General:

- (a) may, subject to this section, determine the terms and conditions of appointment, including remuneration and allowances, of a person acting in the office of Senior Public Defender, Deputy Senior Public Defender or Public Defender, and
  - (b) may terminate such an appointment at any time.
- (3) A person may not act or be appointed to act under this section for a period of more than 12 months at a time.
- (4) While a person is acting in the office of Senior Public Defender, Deputy Senior Public Defender or Public Defender, the person has all the functions of that office and is taken to be the holder of that office.

## **Part 3 Functions of Public Defenders**

### **8 Functions of Senior Public Defender**

- (1) The functions of the Senior Public Defender include the following:
- (a) to make arrangements and give directions for the disposition of the work of Public Defenders and so to ensure the effective and efficient conduct of that work,
  - (b) to provide advice and assistance to, and to monitor the work and activities of, Public Defenders,
  - (c) to consult with the Legal Aid Commission and with community legal centres about, and to enter into arrangements with the Legal Aid Commission and community legal centres for, the provision of legal assistance to legally assisted persons,
  - (d) to advise the Attorney General, whether on the request of the Attorney General or otherwise, on matters relating to the reform of the law relevant to the work and activities of Public Defenders.
- (2) The Senior Public Defender also has all the functions of a Public Defender.

### **9 Functions of Deputy Senior Public Defenders**

- (1) The functions of a Deputy Senior Public Defender include that of assisting the Senior Public Defender, as the Senior Public Defender requires.
- (2) A Deputy Senior Public Defender also has all the functions of a Public Defender.

### **10 Functions of Public Defenders**

- (1) The functions of a Public Defender include the following:
- (a) to advise and appear in criminal proceedings, and other proceedings in the nature of criminal proceedings, on behalf of legally assisted persons,
  - (b) to advise on matters referred to the Public Defender by the Senior Public

Defender,

(c) to carry out such other related functions as may be specified by the Attorney General after consultation with the Senior Public Defender.

(2) The reference in subsection (1) (a) to 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 for 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 prison, in a hospital for the detention of mentally incapacitated persons or in any other place of detention.

#### **11 Guidelines**

(1) The Senior Public Defender may, by order in writing, establish guidelines with respect to the exercise of the Public Defenders' functions under this Act.

(2) Guidelines may not be established in relation to particular cases.

(3) A Public Defender is subject to any guidelines in force under this section.

#### **12 Recovery of costs from community legal centres**

The Senior Public Defender may, after consultation with the Legal Aid Commission, enter into arrangements with community legal centres for the recovery of costs associated with the provision by Public Defenders of legal assistance to persons who are referred to Public Defenders by community legal centres.

### **Part 4 Miscellaneous**

#### **13 Staff**

(1) Such staff as may be necessary to enable the Senior Public Defender to exercise the Senior Public Defender's functions are to be employed under Part 2 of the [Public Sector Management Act 1988](#).

(2) The Senior Public Defender may arrange for the use of the services of any staff or facilities of a government department, an administrative office or a public or local authority.

#### **14 Delegation**

The Senior Public Defender may delegate to:

- (a) a Deputy Senior Public Defender, or
- (b) a Public Defender,

the exercise of any of the Senior Public Defender's functions (other than this power of delegation).

#### **15 Attorney General may arrange secondments**

The Attorney General may make arrangements with the Senior Public Defender for the secondment of Public Defenders to act as Crown Prosecutors or to assist in the conduct of inquiries or investigations under the *Royal Commissions Act 1923* or the *Independent Commission Against Corruption Act 1988* or other such inquiries or investigations.

#### **16 Protection from liability**

A matter or thing done or omitted by the Senior Public Defender, a Deputy Senior Public Defender or a Public Defender does not subject the Senior Public Defender, Deputy Senior Public Defender or Public Defender to any action, liability, claim or demand, if the matter or thing was done or omitted in good faith for the purposes of executing this or any other Act.

#### **17 Annual report**

- (1) As soon as practicable after 30 June, but on or before 31 December, in each year, the Senior Public Defender must prepare and forward to the Attorney General a report of the work and activities of Public Defenders for the 12 months ending on 30 June in that year.
- (2) The Attorney General must lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

#### **18 External review committee**

- (1) The Attorney General may establish an external review committee to monitor the work and activities of Public Defenders.
- (2) The constitution, procedure and functions of the committee are to be as prescribed by the regulations.

#### **19 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.



## 20 Repeal of **Public Defenders Act 1969**

The *Public Defenders Act 1969* is repealed.

## 21 (Repealed)

## 22 Savings, transitional and other provisions

Schedule 3 has effect.

## 23 Review of Act

- (1) The Attorney General is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## Schedule 1 Provisions relating to Public Defenders

(Sections 4, 5 and 6)

### 1 Definitions

In this Schedule:

**Officer** means the Senior Public Defender, a Deputy Senior Public Defender or a Public Defender.

**public servant** means an officer or employee of the Public Service or an employee of a statutory body.

**Senior Officer** means the Senior Public Defender or a Deputy Senior Public Defender.

**statutory body** means any body constituted by or under an Act that is declared by proclamation to be a statutory body for the purposes of this Schedule.

### 2 Eligibility for appointment

- (1) A person must be a legal practitioner of at least 7 years' standing to be eligible for appointment as the Senior Public Defender.
- (2) A person must be a legal practitioner of at least 5 years' standing to be eligible for appointment as a Deputy Senior Public Defender.
- (3) A person must be a legal practitioner to be eligible for appointment as a Public Defender.

### **3 Term of office**

- (1) The Senior Public Defender holds office for such period (not exceeding 7 years) as is specified in the relevant instrument of appointment, but is eligible for reappointment.
- (2) A Deputy Senior Public Defender holds office for such period (not exceeding 5 years) as is specified in the relevant instrument of appointment, but is eligible for reappointment.
- (3) A Public Defender (other than a Senior Officer) holds office until the Public Defender vacates the office under this Act.
- (4) A Senior Officer who was a Public Defender when appointed a Senior Officer remains a Public Defender while holding office as a Senior Officer and, subject to this Act, after ceasing to hold that office.

### **4 Remuneration and leave**

- (1) An Officer is entitled to be paid:
  - (a) remuneration in accordance with the [Statutory and Other Offices Remuneration Act 1975](#), and
  - (b) such travelling and subsistence allowances as the Attorney General may from time to time determine in respect of the Officer.
- (2) The leave that may be granted to an Officer is to be as the Attorney General may from time to time determine in respect of the Officer.

### **5 Vacation of office**

- (1) An Officer is taken to have vacated office if the Officer:
  - (a) dies, or
  - (b) resigns the office by instrument in writing addressed to the Attorney General, or
  - (c) ceases to be a legal practitioner, or
  - (d) is removed from office by the Governor under subclause (2).
- (2) The Governor may remove an Officer from office:
  - (a) for incapacity, incompetence, misbehaviour or unsatisfactory performance, or
  - (b) if the Officer becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (c) if the Officer becomes a mentally incapacitated person, or

- (d) if the Officer absents himself or herself from duty for 14 days (whether or not wholly or partly consecutive) in any period of 12 months, except on authorised leave or unless the absence is occasioned by illness or other unavoidable cause, or
- (e) if the Officer is convicted in New South Wales of an offence punishable by imprisonment for 12 months or upwards or is convicted elsewhere of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (f) if the Officer fails, without reasonable excuse, to comply with clause 6.

## **6 Other work**

- (1) An Officer must not, without the consent of the Attorney General or (except in the case of the Senior Public Defender) the Senior Public Defender:
  - (a) engage in the practice of law (whether within or outside New South Wales) outside the duties of his or her office, or
  - (b) engage in paid employment outside the duties of his or her office.
- (2) An Officer must not contravene or fail to comply with any conditions attached to any such consent.

## **7 Application of [Public Sector Management Act 1988](#)**

The [Public Sector Management Act 1988](#) (Part 8 included) does not apply to or in respect of the appointment of an Officer and an Officer is not, as an Officer, subject to that Act.

## **8 Rights of certain former public servants**

- (1) This clause applies to an Officer who, immediately before being appointed as an Officer, was:
  - (a) a public servant, or
  - (b) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as a public servant.
- (2) Subject to the terms of his or her appointment as an Officer, an Officer:
  - (a) retains any rights accruing to the Officer as a public servant, and
  - (b) is entitled to receive any deferred or extended leave,as if he or she had continued to be a public servant during his or her term of office as an Officer.
- (3) An Officer's service as an Officer is taken to be service as a public servant for the purposes of any law under which any rights of the kind referred to in subclause (2) (a)

accrued or were accruing or by which any entitlement referred to in subclause (2) (b) is conferred.

## **9 Special arrangements for Crown Prosecutors appointed as Public Defenders**

- (1) A person appointed as a Senior Officer who, immediately before the appointment, held office as a Crown Prosecutor is taken to have been appointed also as a Public Defender.
- (2) Any such Senior Officer remains a Public Defender while holding office as a Senior Officer and, subject to this Act, after ceasing to hold that office.

## **Schedule 2 (Repealed)**

## **Schedule 3 Savings, transitional and other provisions**

(Section 22)

### **Part 1 Preliminary**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

    this Act

[\*Courts Legislation Amendment Act 2005\*](#)

[\*Courts Legislation Amendment Act 2006\*](#), to the extent that it amends this Act

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### **Part 2 Provisions consequent on the enactment of this Act**

#### **2 Definitions**

In this Part:

**former Act** means the *Public Defenders Act 1969*.

**public servant** means an officer or employee of the Public Service or an employee of a statutory body.

**statutory body** means any body constituted by or under an Act that is declared by proclamation to be a statutory body for the purposes of this Part.

### 3 Saving of existing appointments

- (1) Any person who, immediately before the commencement of this subclause, was a Public Defender under the former Act (including both the Senior Public Defender and the Deputy Senior Public Defender) is taken to have been appointed under this Act as a Public Defender on the same conditions as to remuneration and allowances (subject to subclauses (2) and (3)) as those on which the person held office as Public Defender immediately before that commencement.
- (2) The person who, immediately before the commencement of this subclause, was the Senior Public Defender (Martin Langford SIDES, Q.C.) is taken to have been appointed under this Act, for a period of 7 years beginning on the commencement of this subclause, as the Senior Public Defender on the same conditions as to remuneration and allowances as those on which the person held office as Senior Public Defender immediately before that commencement.
- (3) The person who, immediately before the commencement of this subclause, was the Deputy Senior Public Defender (Michael Anthony GREEN, Q.C.) is taken to have been appointed under this Act, for a period of 5 years beginning on the commencement of this subclause, as a Deputy Senior Public Defender on the same conditions as to remuneration and allowances as those on which the person held office as Deputy Senior Public Defender immediately before that commencement.

### 4 Preservation of rights of certain former public servants

- (1) This clause applies to a Public Defender appointed under the former Act who, immediately before being so appointed, was:
  - (a) a public servant, or
  - (b) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as a public servant.
- (2) A person who ceases to be a Public Defender by resignation is entitled to be appointed to some position in the Public Service or in the relevant statutory body, as the case requires, not lower in classification and salary than that which the person held immediately before being appointed as a Public Defender under the former Act.

## **5 Preservation of rights of other former public servants**

- (1) This clause applies to a Public Defender appointed under the former Act who, immediately before being so appointed, was the holder of a full-time office constituted by an Act and who, immediately before being appointed to that office, was:
  - (a) a public servant, or
  - (b) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as a public servant.
- (2) A person who ceases to be a Public Defender has such rights, if any, to appointment to a position in the Public Service or in the relevant statutory body, as the case requires, as were set out in the terms of his or her appointment as a Public Defender under the former Act or as are agreed on by the person and by or on behalf of the Government.

## **Part 3 Provision consequent on enactment of [Courts Legislation Amendment Act 2006](#)**

### **6 Part-time Public Defender**

- (1) Section 6 (2A) applies to a Public Defender appointed before the commencement of that subsection.
- (2) Until a relevant determination is made and takes effect under the [Statutory and Other Offices Remuneration Act 1975](#), a part-time Public Defender is entitled to be paid in accordance with the determination in force for the time being for Public Defenders, but on a pro rata basis (according to time spent in service), as calculated by the Attorney General.