

## STATUTORY AND OTHER OFFICES REMUNERATION ACT 1975

### REPORT AND DETERMINATION PURSUANT TO SECTION 14 OF THE ACT - PUBLIC DEFENDERS

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The Premier of New South Wales, the Hon Bob Carr MP, by letter of 11<sup>th</sup> December 2001 has directed the Tribunal, pursuant to Section 14 of the Statutory and Other Offices Remuneration Act 1975, to review the duties and responsibilities of Public Defenders and to make determinations on the appropriate levels of remuneration.

The Tribunal invited submissions and these were received from the Senior Public Defender with whom the Tribunal met to discuss various aspects of that submission.

#### **Background:**

1. The Public Defenders Act 1995 was introduced following the 1994 Report of the Public Accounts Committee. The legislation maintains the independence of Public Defenders and provides for the accountability of the Senior Public Defender to the Attorney General and of Public Defenders to the Senior Public Defender.
2. The Act widened the scope of Defenders to include committal, bail and parole hearings and hearings before the Mental Health Review Tribunal.
3. In 2001 the Act was amended to provide for the Attorney General or Senior Public Defender as his delegate to approve the briefing of Public Defenders by the Legal Representation Office for persons who might not otherwise qualify as legally assisted persons under the Public Defenders Act.
4. The Crimes (Sentencing Procedure) Act 1999 under Section 38(2) permits the Public Defender to do any one or more of the following:
  - Oppose or support the giving of the guideline judgement by the Court;
  - Make submission with respect to the framing of the guidelines;
  - Inform the Court of any relevant pending appeal with respect to sentence;
  - Assist the Court with respect to any relevant matter.
5. The Criminal Procedure Amendment (Pre-Trial Disclosure) Act 2001 requires the Crown and Defence in designated complex trials to disclose certain information to each other about the content and manner of conduct of their respective cases. For the defence counsel this is an historic and substantial departure from the way trials have been conducted.
6. The core function of Public Defenders is to advise and represent legally assisted and accused in serious criminal matters. This includes appearing in criminal trials and serious sentence matters in the District and Supreme Courts. Public Defenders appear in a significant percentage of the homicide trials, sentences and appeals in the State. Public Defenders regularly appear in appeals in the Court of Appeal, the Court of Criminal Appeal and the High Court. They advise the Legal Aid Commission on the merits of such appeals.

7. The Public Defenders have a commitment to collect, maintain and improve an accurate body of statistical information on the work carried out under the Act.

**Submissions from Senior Public Defenders:**

8. The current submission points out, *inter alia*:
  - The professional culture of the Public Defenders is very much that of an independent bar at its best. This is an essential element of a justice system worthy of the name.
  - The core business of the Public Defender has changed markedly in the level of seriousness and volume of work done.
  - At present in addition to the Senior Public Defender and the Deputy Senior Public Defender there are twenty Public Defenders. The Senior Public Defender has a statutory duty to manage the office and to report directly to the Attorney General. This has been the case since the 1995 Act.
  - The Crimes (Sentencing Procedure) Act 1999 and the Criminal Procedure Amendment (Pre-Trial Disclosure) Act 2001 has led to a significant increase in the level and complexity of work.
  - Recent significant changes include:
    - (a) A rationalisation of work between the Defenders and the solicitor advocates of the Legal Aid Commission in the District Court has led to the Defenders taking on those matters with the higher level of complexity.
    - (b) an increased proportion of work in the Supreme Court (mainly murder trials) and the Court of Criminal Appeal. The work before the Court of Criminal Appeal has increased by nearly 100 per cent.
    - (c) The present levels of remuneration are not comparable with those at the private bar.
    - (d) Defenders do not receive overtime payments, time in lieu or flexi leave or the right to accumulate flexi leave. They do however receive 8 weeks annual leave.
    - (e) Public Defenders and Crown Prosecutors have and should continue to have parity of remuneration.
    - (f) The base level of remuneration for Defenders should be not less than 75 per cent of that received by a District Court Judge.

**Conclusions:**

9. Public Defenders play a significant role in the effectiveness and integrity of the Criminal Justice System.

10. The issue for determination is whether their current remuneration is appropriate and whether the special adjustments of 3 per cent in 1997 and 3.2 per cent in 1998 have already given them adequate compensation for changes in work value.
11. The Tribunal is satisfied that the legislative changes in 1999 and 2001 together with the increasing amount of representation in the Supreme Court and the Court of Criminal Appeal has resulted in a significant increase in the work value of these positions.
12. The Tribunal has previously not agreed to a fixed percentage relationship between Public Defenders and Judges. However, the Tribunal has now concluded as a result of this work value review that the existing nexus between Public Defenders and Crown Prosecutors should be maintained.
13. After considering the above and after having regard to the views of the Assessors, the Tribunal determines that the remuneration of the office of Senior Public Defender should be \$189,735.
14. The Tribunal further determines that the rate for the Deputy Senior Public Defender shall be \$170,760 and for a Public Defender it shall be \$156,000.
15. The Tribunal also concludes that any further adjustment would require demonstration that there has been a significant net increase in work value requirements after April 2002.

## **DETERMINATION**

The Tribunal determines, pursuant to section 14 of the Statutory and Other Offices Remuneration Act 1975, that the remuneration of the offices of Senior Public Defender, Deputy Senior Public Defender, and Public Defender shall be as follows with effect on and from 2 April 2002.

Senior Public Defender	\$189,735
Deputy Senior Public Defender	\$170,760
Public Defender	\$156,000

**Statutory and Other Offices  
Remuneration Tribunal**

**Gerry Gleeson**