



# Justice Sector of the NSW Public Service Association of NSW

## Legal Fund and Constitution

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# JUSTICE SECTOR LEGAL FUND CONSTITUTION

## PREAMBLE

- The Justice Sector can involve work that is difficult and dangerous.
- Staff are often placed in positions of direct conflict.
- Staff have been accused of criminal behaviour.
- The Public Service Association does not provide under its rules, financial assistance to members who have been charged with a criminal offence.
- A number of members have been charged by the Police with offences, which allegedly occurred in the workplace in the course of their duties.
- Members can be summoned to give evidence in Coronial Inquests or before commissions of enquiry or any tribunal, in circumstances where the interests of the Member and their employer diverge, or where the findings could have an adverse effect upon the Member of the Fund.
- Following discussions with Justice Sector workplace delegates, the Public Service Association sought legal advice and then altered its rules to provide for the establishment of a legal fund to furnish financial assistance to members who face criminal charges associated with employment in the NSW Justice Sector.

## DEFINITIONS

“**Member**” means a person who has been admitted as a member of the Fund

“**The NSW Justice Sector**” means the following areas where persons who are PSA members or eligible to be PSA members are employed:

\*Juvenile Justice

\*NSW Corrective Services, excluding members of the Prison Officers’ Vocational Branch

\*Members of the NSW Police Force unless eligible for membership of the Police Association of NSW

\*Courts and Tribunal Services

\*The Sheriff of NSW

\*NSW Rural Fire Service

\*NSW State Emergency Service

\*Fire and Rescue NSW

\*Privately operated correctional centres where the PSA has coverage

\*Such other employees who are considered by the Trustees to be eligible

## A. NAME AND OBJECTS

1. The name of the legal fund is the Justice Sector Legal Fund (“the Fund”).
2. The objects for which the Fund is formed are:

- (a) To provide legal assistance, representation and information to any Member who is employed in the NSW Justice Sector who is also a member of the Public Service Association (PSA) in relation to any alleged criminal offence arising out of or in the course of his/her employment.
  - (b) To provide legal assistance to a Member to make a claim under the provisions of the Victims Right and Support Act 2013, in the event that the claim or prospective claim arises out of or in the course of his/her employment.
  - (c) To provide legal assistance and representation before Coronial Enquiries, where the interests of the Member and their employer diverge.
  - (d) To provide legal assistance and representation before any commission of enquiry or tribunal conducting an enquiry whose findings could have an adverse effect upon the Member of the Fund.
3. Notwithstanding anything contained in Clause A2 above, the Fund shall not assist any Member in respect of any matter relating to:
- (a) Libel and/or defamation, or
  - (b) Equal opportunity and/or sexual harassment,
- whether such claim arose out of, or in the course of, his/her employment, or otherwise.

## **B. MEMBERSHIP**

### **1. Admission to Membership**

- (a) Any person who is a member of the PSA and who is employed within the NSW Justice Sector may apply for membership of the Fund.
- (b) Application for membership of the Fund shall be made in writing in a form prescribed by the Executive of the PSA.
- (c) All applications made for membership must be submitted to the Trustees for consideration and the Trustees shall have an absolute discretion in respect of granting or refusing membership.
- (d) Subscriptions to the Fund shall be made by a deduction authority signed by the prospective Member and submitted by the Trustees to the pay section of the relevant Department or by credit card payment.
- (e) Membership fees shall be examined yearly and set by and in the absolute discretion of the Trustees following consultation with all Departmental Committees from the NSW Justice Sector who have

members in the Fund. Any increase in membership fees shall not be made unless one month's notice has been given to all Members.

- (f) If the balance of the Fund reaches such a level, which in their absolute discretion the Trustees consider sufficient to fund all possible expenses for the following twelve months, the Trustees may suspend or reduce membership fees.
- (g) There shall be no refund of fees to any Member under any circumstances notwithstanding that the Member has resigned from the Fund or ceased employment in the NSW Justice Sector.
- (h) Any member may remain in the Fund even if they move to a position not comprehended by (a) above, provided the member remains in the employment of the NSW Justice Sector as defined by the Constitution.

## **2. Termination of Membership**

- (a) Any Member intending to withdraw from the Fund shall signify his/her intention in writing to the Trustees.
- (b) Any Member who ceases to be employed by the NSW Justice Sector as defined by the Constitution shall automatically cease to be a Member of the Fund.
- (c) Any Member who ceases to be a member of the PSA shall automatically cease to be a member of the Fund.

## **3. Change of Address**

Members shall notify the Trustees of any change of address and all notices posted to them at their last known address shall be considered to have been duly delivered.

## **4. Obligations of Membership**

- (a) If a criminal charge is laid against any Member, an allegation of criminality is made, or a Member is summoned to give evidence before a Coronial Inquest, commission of enquiry or any tribunal, or like bodies, then that Member: -
  - i) Shall not make any statement or admissions to any person without first having sought and obtained advice from the PSA; and
  - ii) Shall refuse to answer any questions asked by any person, except those questions that he/she shall be obliged to answer by law, before he/she has sought and obtained advice from the PSA.
- (b) Failure to follow the obligations in (a) above may result in the Trustees declining to assist a member.
- (c) If any Member is charged with a criminal offence arising out of or in the course of his/her employment that Member shall, if permitted to do so by law, immediately advise the PSA of: -

- i) The nature of the Charge.
- ii) The date of the alleged offence.
- iii) The location of the alleged offence.
- iv) Any other material fact relating to the alleged offence.

## C. TRUSTEES

### 1.

- (a) The business and general affairs of the Fund shall be under the management of the Trustees.
- (b) The Trustees of the Fund shall be the persons at any time holding the positions of General Secretary of the PSA, President of the PSA and one member of the Central Council of the PSA chosen by members of the Central Council who are themselves employed in the NSW Justice Sector as defined, who is employed within the NSW Justice Sector.
- (c) The Trustees, at their discretion may determine on an annual basis, the maximum amount of financial assistance to be provided to any Member.
- (d) The maximum amount of financial assistance determined by the Trustees shall be entered into the Minute Book of the Fund. The fixed amount so determined shall not be exceeded unless the Trustees determine that there are exceptional circumstances that justify exceeding it.
- (d) The address for service of the Trustees shall be the Head Office of the PSA.

### 2. Funds

- i) The Fund shall consist of contributions, subscriptions, levies, fees and dues payable by Members, and all moneys received from any source whatsoever.
- ii) The Fund shall be applied for the following purposes:
  - (a) Making payments in connection with any matters prescribed by this Constitution;
  - (b) Paying such sums as may be determined by the Trustees, from -time - to - time, as being in the interests of the Members;
  - (c) Aiding and encouraging Members of the PSA generally, or particular groups of persons to become Members of the Fund;
  - (d) For or in connection with any other lawful object or purpose authorised by the Constitution of the Fund;
- iii) The investment of surplus cash funds shall be a valid exercise of this clause.
- iv) The monies of the Fund may be invested in any manner as authorised by the Trustee Act 1925 as amended;
- v) Except where otherwise provided, the Trustees shall control the Fund;
- vi) The books of the Fund shall be kept in accordance with the requirements of any applicable Act, the appropriate Australian accounting standards and any other requirements at law;
- vii) The Annual Statement of Accounts shall include a balance sheet and statement of income and expenditure.

### **3. Meetings of the Trustees**

- (a) The Annual Meeting of the Trustees shall be held at the office of the PSA in the first week of July. At the Annual Meeting, the Trustees, at their discretion, may determine the maximum amount of financial assistance available to Members pursuant to Clause 1(c) above.
- (b) The Trustees shall (at a time and a place to be fixed by the General Secretary of the PSA) meet within seven days of an application for assistance. Minutes of all resolutions and proceedings of such Trustees shall be entered in a book kept for that purpose.
- (c) The Trustees may resolve to conduct any meeting by teleconference.
- (d) Two Trustees must be present at a meeting to constitute a quorum.
- (e) The President of the PSA shall act as the Chair at all meetings of the Trustees.
- (f) The Chair shall have a deliberative as well as a casting vote at all meetings.
- (g) A meeting of the Trustees may be called at any time at short notice by unanimous agreement, or in exceptional circumstances, by the Chair upon notification to all other Trustees.

### **D. FINANCIAL YEAR**

The financial year of the Fund shall terminate on the 30<sup>th</sup> day of June each year.

### **E. ALTERATION OF CONSTITUTION**

- 1. The clauses of this Constitution shall not be altered otherwise than in accordance with this Part.
- 2. A motion for the alteration of the Constitution of the Fund shall only be made at a PSA Executive Meeting following consultation with all Departmental Committees that operate within the NSW Justice Sector that have members in the Fund.

### **F. INDEMNITY OF OFFICERS**

- 1. Every Officer of the PSA and every member of the PSA acting in a capacity as a duly authorised agent of the Fund shall be entitled to indemnity from the Fund in respect of all losses and expenses suffered or incurred by him/her in the bona fide exercise of his/her functions as an officer or agent of the Fund.
- 2. The Fund shall enter into an agreement with any legal firm selected by the Trustees, which shall be the sole legal firm by whom Members shall be represented.

### **G. LEGAL REPRESENTATION**

In the event a Member is not satisfied with their representation, they must make a written submission to the Trustees, which they shall consider within 5 working days.

### **H. CONTRIBUTIONS**

The Legal Fund may contribute to any charity or Departmental Committee from the Justice Sector of the NSW Public Service from time to time to assist that charity or body to fulfil its obligations. Such contributions shall be determined by the Trustees upon receipt of a written application signed by at least two (2) members of any Departmental Committee from the Justice Sector of the NSW Public Service, which has members in the Fund.

## I. ACCOUNTS

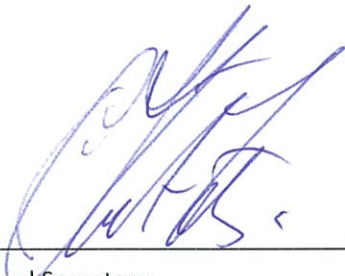
- (a) The Fund shall publish in the PSA's Journal "Red Tape" the Annual Statement of Accounts and the Auditor's Report in relation to the Fund, or a summary which meets the requirements of any applicable Act;
- (b) The Annual Statement of Accounts and the Auditor's Report in relation to the Fund shall be presented to the Central Council of the PSA;
- (c) All cheques or drafts upon the Fund shall be signed by the General Secretary as Trustee for the Fund and by one other Trustee;
- (d) The General Secretary as Trustee is authorised to open a bank account and arrange for the deposit of subscriptions to the Fund into this account from time to time;
- (e) The Trustees may from time to time seek a loan from a Bank or other financial institution. In the case of a loan, the Trustees will ensure that the security proposed to be given for the repayment of the loan is adequate and the proposed arrangements for the repayment of the loan are satisfactory. The Trustees must approve the making of any loan to the Fund.

Endorsed by Central Council at its meeting on 10 December 2018.



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President



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General Secretary