

PRISON OFFICERS' LEGAL FUND CONSTITUTION

PREAMBLE

- The Corrections industry is a difficult and dangerous one.
- Correctional Officers are often placed in positions of direct conflict with inmates and/or members of the public in the course of their employment.
- Correctional Officers are often accused by inmates and/or members of the public of criminal conduct in the course of their employment behaviour.
- The Public Service Association of NSW ("the PSA") does not provide financial assistance to members who have been charged with a criminal offence, which has allegedly been committed in the course of is associated with their employment in the Corrections industry.
- A number of Prison Officers Vocational Branch ("POVB") members have been charged by the Police with criminal offences, which allegedly occurred in the course of their employment workplace, or have been required to appear before and give evidence to a court or tribunal enquiring into the death of an inmate or a known or suspected breach of the criminal law.
- Matters affecting Correctional Officers arising from assaults upon Correctional Officers by inmates need to be addressed.
- Following upon discussions with the POVB Management Committee, the PSA sought legal advice and then altered its rules to provide for the establishment of a Legal Fund to furnish financial assistance to POVB members –
 - (a) who face criminal charges in respect of conduct in the course of their employment in the Corrections Industry arising from allegations against them made by inmates and/or members of the public associated within the course of their employment in the Corrections industry, or
 - (b) who are required to appear and give evidence to a court or tribunal enquiring into the death of an inmate or a known or suspected breach of the criminal law arising out of, or in the course of, their employment with Corrective Services New South Wales ("CSNSW") or any successor body or department responsible for the administration of correctional centres in NSW, or
 - (c) who have been assaulted by inmates while in the course of their employment.

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NAME AND OBJECTS

1. The name of the fund established by this Constitution is the "Prison Officers' Legal Fund" ("the Legal Fund").
2. The objects for which the Legal Fund is formed are:-
 - (a) To provide legal assistance and representation and information to any member ("Member") of the Prison Officers' Vocational Branch (POVB) of the PSA on the conditions set out herein in relation to any alleged criminal offence committed in the course of their employment with CSNSW (or any successor body or department) against an inmate or member of the public.
 - (b) To provide legal assistance to a Member on the conditions set out herein to make a claim under the provisions of the Victims Rights and Support Act 2013 in the event that the claim or prospective claim arises out of or in the course of their employment with ~~CSNSW;CSNSW.~~
 - (c) To provide legal assistance and representation to a Member on the conditions set out herein who has been summoned by a tribunal or court to give evidence in relation to a known or suspected breach of the criminal law either by the Member, another Member or another person, and relating to the Member's employment as a Correctional Officer by ~~CSNSW;CSNSW.~~
 - (d) To provide legal assistance and representation to a Member on the conditions set out herein who has been summoned to give evidence in a Coronial Inquest or Inquiry and who has received a letter from or on behalf of the Coroner advising them that they may be the subject of adverse comments or findings.
 - (e) To provide legal and financial assistance to a Member who has been assaulted by an inmate in the course of their employment to make representations to the NSW Director of Public Prosecutions where the Trustees of the Legal Fund are of the view that the sentence imposed on the inmate was manifestly inadequate.
 - (d)(f) To provide legal and financial assistance to a Member who has been assaulted by an inmate in the course of their employment for the Appointed Lawyer to liaise with Police in relation to the prosecution of that inmate.

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3. Notwithstanding anything contained in Clause 2 above, the Fund shall not assist any Member in respect of any of the following matters relating either to:-

(a) Any civil proceedings; or

(b) Equal opportunity and/or sexual harassment complaints or proceedings; or,

(b) Criminal proceedings involving an allegation that a Member has committed a criminal offence against another Member,

whether such proceedings or complaints arose out of or in the course of their employment with CSNSW or otherwise.

4. Notwithstanding any grant of legal assistance ("the Grant") in accordance with this Constitution, the Trustees shall at all times have the discretion to revoke the Grant if:

(a) The Member has in their opinion lied in their application for legal assistance in a material respect; or

(b) The Member has, in the opinion of the Appointed Lawyer, failed to provide timely and appropriate instructions; or

(c) The Member has decided to instruct legal representatives other than the Appointed Lawyer without the express written authority of the Chair of the POVB and discontinues instructing the Appointed Lawyer; or

(d) The Trustees resolve that the continuance of legal assistance is not in the interests of the Legal Fund or its members; or

(e) After legal assistance is granted, the Member's subscriptions or levies become three (3) months or more overdue, unless the Trustees otherwise decide.

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MEMBERSHIP

1. Admission to Membership

(a) Any person who is a member of the PSA and who is employed as a Correctional Officer by CSNSW may apply for membership of the Legal Fund.

- (b) Any new class of person to be admitted into the Legal Fund can only be admitted by a majority vote of the members of the POVB Management Committee and of the Executive of the PSA.
- (c) Application for membership of the Legal Fund shall be made in writing in a form prescribed by the Executive of the PSA.
- (d) All applications made for membership of the Legal Fund must be submitted to the Trustees for consideration and the Trustees shall have an absolute discretion in respect of granting or refusing membership, notwithstanding that the applicant falls within the class of persons referred to in paragraph (a) herein, and the decision reached by the Trustees shall be final and not subject to any challenge.
- (e) Subscriptions to the Legal Fund shall be made by a deduction authority signed by the prospective Member and submitted by the Trustees to the payroll section of CSNSW.
- (f) Membership fees shall be examined yearly and set by and in the absolute discretion of the Trustees following consultation with the POVB Management Committee. Any increase in membership fees shall not be made unless one month's notice has been given to all Members.
- (g) If the balance of monies in the Legal Fund reaches such a level, which in the absolute discretion of the Trustees is sufficient to fund all possible expenses of the Legal Fund for the following twelve months, the Trustees may suspend or reduce membership fees for such period as they may deem appropriate.
- (h) There shall be no refund of fees to any Member under any circumstances notwithstanding that member has left the Legal Fund.
- (i) Any member may remain in the Legal Fund even if they move to a position not comprehended by (a) above, provided the member remains in the employment of CSNSW.

2. Termination of Membership

- (a) Any Member intending to resign their membership of the Legal Fund shall signify their intention to do so by giving 30 days' notice in writing to the Trustees. Such member will remain liable for payment of their subscription fees up to the date that the resignation becomes effective, unless the

Trustees otherwise decide, and for all other amounts due and owing.

- (b) Any Member who ceases to be employed by CSNSW shall automatically cease to be a Member of the Legal Fund.
- (c) Any member who ceases to be a member of the PSA shall automatically cease to be a member of the Legal 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 duly delivered.

4. Obligations of Membership

- (a) If an allegation of any criminal offence is made against a Member, that Member:-
 - (i) Must not make any statement or admission to any person without first having sought and obtained advice from the PSA, the POVB and/or the Appointed Lawyer.
 - (ii) Shall refuse to answer any questions asked of them by any person, except those questions that they shall be obliged to answer by law, before they have sought and obtained advice from the PSA, the POVB and/or the Appointed Lawyer. In this regards, Members are advised to refer to the POVB Legal Fund Guide for Correctional Officers.
- (b) If any Member is charged with a criminal offence arising out of or in the course of their employment with CSNSW that Member shall immediately advise the PSA or the POVB in full of the following matters and shall forward all documents provided to them by the Police:-
 - (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.

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TRUSTEES AND MANAGEMENT OF THE FUND

1.
 - (a) The business and general affairs of the Legal Fund shall be under the overall management of the Trustees.
 - (b) The Trustees of the Legal Fund shall be the persons at any given time holding the positions of General Secretary of the PSA, President of the PSA and Chair of the POVB.
 - (c) The address for service of the Trustees shall be the Head Office of the PSA.
 - (d) The day-to-day operations of the Legal Fund shall be the responsibility of the Chair of the POVB.
 - (e) Authority for the granting of legal assistance is delegated to the Chair of the POVB and notwithstanding anything contained in this Constitution shall be at the discretion of that person.
 - (f) The legal costs to be paid by the Legal Fund to the Appointed Lawyer shall be as is agreed to from time-to-time and in any event shall not exceed the rate paid by the PSA to the Appointed Lawyer.
 - (g) Barristers to be retained to represent Members shall be as selected by the Appointed Lawyer or requested by the relevant member.
 - (h) The Legal Fund shall attend to the payment of all legal costs and expenses, including medico-legal expenses incurred on behalf of a Member upon receiving a tax invoice from the Appointed Lawyer.
 - (i) In order for a Member to be eligible for a grant of legal assistance under this Constitution, they must have been a financial Member at the time of the incident relevant to the application for legal assistance.
 - (j) If a Member was in arrears of subscriptions and/fees for a period of six (6) months or more immediately to becoming a

financial Member again, a grant of legal assistance will only be available if three (3) months have elapsed since the date the Member again became a financial Member.

- (k) In the event that a Member has an order for costs made in their favour by a court in any proceedings where legal assistance has been granted out of the Legal Fund, the Member shall forward all monies received pursuant to such an order to the Legal Fund within 7 days of its receipt.

2. Funds

The Legal Fund shall consist of the contributions, subscriptions, levies, fees and dues payable by Members, and all moneys received from any source whatsoever.

- (i) The Legal 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 in accordance with the Objects set out herein;
 - (c) promoting the Legal Fund and encouraging POV B members generally, or particular groups of members to become members of the Legal Fund;
 - (d) for, or in connection with, any other lawful object or purpose authorised by this Constitution;
 - (e) any purpose that in the opinion of the Trustees is in the interests of the members of the Legal Fund;
 - (f) the investment of such cash funds as the Trustees in their absolute discretion deem appropriate .
- (ii)
 - (a) The Legal Fund may be invested in any manner as authorised by the *Trustee Act, 1925* as amended.
 - (b) Except where otherwise provided, the Trustees shall control the monies in the Fund;
 - (c) 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 of law;

- (d) 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 Head Office of the PSA in the first week of July each year.
- (b) Minutes of all resolutions and proceedings of Trustee meetings shall be entered in a book to be kept for that purpose.
- (c) Two Trustees must be present at a meeting to constitute a quorum.
- (d) The President of the PSA shall act as Chair at all meetings of the Trustees and in their absence one of the other Trustees may act as the Chair.
 - (j) The Chair shall have a deliberative as well as a casting vote at all meetings.
 - (k) 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.

FINANCIAL YEAR

The financial year of the Legal Fund shall terminate on the 30th day of June each year.

A. 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 Legal Fund shall only be moved and voted upon at a PSA Executive Meeting following consultation with the POVB Management Committee.

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B. INDEMNITY OF OFFICERS

1. Every officer and member of the PSA acting in a capacity as a duly authorised agent of the Legal Fund shall be entitled to indemnity from the Legal Fund in respect of all losses and expenses suffered or incurred by them in the bona fide exercise of their functions as an officer or agent of the Legal Fund.
2. The Legal Fund shall enter into an agreement, which may or may not be in writing, with the legal firm of McNally Jones Staff Lawyers (“the Appointed Lawyer”), who shall be the legal firm with whom the Legal Fund shall deal.

G. The Legal Fund may make contributions to the POVB from time-to-time to assist that body to fulfil its obligations. Such contributions, which must not be used for a purpose otherwise the subject of this Constitution, shall be determined by the Trustees upon receipt of a written application signed by at least two (2) members of the POVB Management Committee.

H. ACCOUNTS

- (i) the Legal Fund shall publish in the PSA’s Journal, “Red Tape”, its Annual Statement of Accounts and the Auditor’s Report , or a summary;
- (iii) the Annual Statement of Accounts and the Auditor’s Report in relation to the Legal Fund shall be presented to the Central Council of the PSA New South Wales;
- (iv) all cheques drawn upon the Legal Fund shall be signed by the General Secretary of the PSA as Trustee for the Legal Fund and by one other Trustee;
- (v) the General Secretary of the PSA as Trustee is authorised to open a bank account and arrange for the deposit of subscriptions to the Legal Fund into this account from time-to-time;

ADOPTED

This Constitution was adopted by:

...../.../...

PRESIDENT

...../.../...

GENERAL SECRETARY

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