



2007

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PARLIAMENT OF TASMANIA

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# **SOLICITOR-GENERAL**

# **REPORT FOR 2006-2007**

*Presented to both Houses of Parliament  
pursuant to Section 11 of the Solicitor-General Act 1983*

# SOLICITOR-GENERAL REPORT FOR 2006-2007

## I OVERVIEW

The demand for legal advice from this Office has continued at high level, with the slightly lesser demand for formal advisings more than offset by the need on a number of occasions to provide urgent and sometimes complex *ex tempore* advice. Absent increased resources I have not been able to increase the State's involvement in constitutional matters, which is disappointing and an issue which I hope will be addressed in the future. There have been some changes in personnel in the small group of professionals who assist me, but the quality of the support has been maintained and the demand for the services of the Office continues to be met in what I perceive to be a timely and constructive way.

## II THE FUNCTIONS OF THE SOLICITOR-GENERAL

Once again I will not set out in this report a statement of my statutory functions. I have done that previously and they have not changed. Anyone wishing to review them should refer to the report for 2004-2005.

## III PROFESSIONAL ADVISINGS

As is customary, I set out in the schedule to this report the number and spread of formal advisings for the year in review. The continuing trend towards greater complexity in legal issues which confront the State in its dealings is evidenced by an overall increase in the length of the advisings which have recently been given.

I have previously expressed my concern at the level of demand for *ex tempore* advice. Obviously there are circumstances in which it is essential, but too often, I fear, need for it is created by the fact that those pressing for it have, for no apparently good reason, waited far too long to seek it. The potential shortcomings in *ex tempore* advice must be obvious to all, and I can do no more than urge those involved in seeking advice to identify the need for it at the earliest opportunity so that the guidance which they need can be thoroughly researched and considered.

## CONSTITUTIONAL MATTERS

A number of pending constitutional matters were referred to in last year's report. They have all since been resolved. The anti-discrimination matter which involved conduct within the Australian Defence Forces did not go to an appeal hearing before the Full Federal Court, as the issues were resolved through mediation. Senator Brown was successful at first instance before the Federal Court in his challenge to the legality of plans for logging in the Wielangta Forest south of Orford, but that matter is presently on appeal to the Full Federal Court. The High Court handed down its decision in *Forge and Others v ASIC and Others*, in which it sustained the validity of the appointment of acting judges to the Supreme Court of New South Wales in terms which gave reassurance as to the validity of acting appointments, should they be needed, to our own Supreme Court. Finally, the opposition of the States to the Commonwealth's *Workplace Relations Amendment (Work Choices) Act 2005* failed upon a 5:2 division of the court. I am satisfied that the best constitutional arguments which could be put in opposition to the validity of that legislation were put, but obviously a majority of the court were not persuaded by them.

Pending in the High Court is the challenge by Betfair Pty Ltd to Western Australian legislation which purports to prohibit Western Australians from betting through betting exchanges and to make it unlawful for betting exchanges to utilise in their business Western Australian race fields without permission of the relevant Western Australian Minister who, if acting consistently with Western Australian legislation, would not give that permission to a betting exchange. Tasmania has intervened in support of Betfair, whilst all other jurisdictions would appear to be aligning themselves with Western Australia. The constitutional issues revolve around Sections 92 and 118 of the *Constitution*, which respectively provide that trade, commerce and intercourse between the States shall be absolutely free and require that full faith and credit is to be given throughout the Commonwealth to the laws of every State. A hearing is expected in the sittings of the court commencing in Canberra on 25 September.

Constitutional argument is usually complex and its proper presentation involves detailed preparation taking a considerable time. The smallness of the professional complement available to me has continued to limit the number of cases in which Tasmania can be involved as compared with the number which it should be involved and, when a case requires preparation, considerable strain is normally placed on the Office to ensure that its core advisory function is not adversely impacted. I strongly maintain the view that Tasmania should be more active than it has been able to be in recent years in litigation which is likely to see evolvement in the interpretation of the *Constitution*, which could be achieved by the engagement of just one additional legal professional. I strongly urge that budgetary provision be made for this to happen.

## **OTHER APPEARANCES**

As in the past, my Office has as required continued to represent the Commonwealth in matters arising under the Hague Convention on the Civil Aspects of International Child Abduction, and has continued to provide assistance to the Director of Public Prosecutions in relation to a number of matters coming under his purview.

## **CRITICISM OF SOLICITOR-GENERAL ADVICE**

Considerable public debate ensued during the year upon issues arising out of the approval of the Tasmanian Compliance Corporation Pty Ltd ("TCC") as an accreditor of building practitioners under the provisions of the *Building Act* 2000 and of the subsequent termination of that approval. One of the issues subject to debate was the production to a Legislative Council Committee by the Premier of a copy of a report commissioned from the accounting firm KPMG in relation to the matter. I had provided legal advice on that issue. Some Members of Parliament, both State and Federal, were loudly critical of what I was supposed to have said on the issue of Parliamentary Privilege. So inaccurate were those criticisms and the assertions upon which they were based that one can only assume that those Members either had not read the advice (most likely) or had not understood it. In either case, their criticisms did them no credit. One would rather have hoped that those elected to governing this country would confine their criticism of public officers to acts or omissions which had in fact occurred.

I had proposed to set out here in some detail the relevant events so that readers of this report could make their own assessment of the concern which I have just expressed, but since litigation is closely pending relating to the TCC matter it is inappropriate that I should do so.

## **IV LEGAL INFORMATION**

No formal seminar program was conducted by this Office this year, but my colleagues and I have during the year made a number of presentations to various groups on legal issues. I envisage that the Office will continue to meet the demand for guidance on legal issues of general concern to those engaged within the State Service as occasion arises.

## **V SPECIAL COMMITTEE OF SOLICITORS-GENERAL**

This Committee, which consists of the Solicitors-General of the Commonwealth, the States, the Territories and New Zealand, continues to meet periodically to consider both matters referred to it by the Standing Committee of Attorneys-General and other legal issues of national consequence and/or common interest. A number of reports were provided by the Committee to SCAG, and others are being worked on.

Two of the issues dealt with in the year under review were of particular significance nationally, and I would expect them to become the subject of Commonwealth legislation in the near future.

## **VI ADMINISTRATIVE ISSUES**

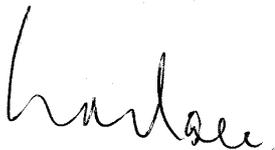
Once again the administration of the Office appears to have run smoothly over the year under the capable guidance of Crown Law Manager, Kerry Worsley.

## **VII RETIREMENT**

This is my last Annual Report, as my long-planned retirement will take effect on 3 August. It has been my privilege to have had the opportunity to serve the people of Tasmania as their Solicitor-General for the last 21 years. I wish to place on record my indebtedness to all those very professional and dedicated people within the public sector who have assisted me in so many ways over that time to ensure that advice sought by government has been well-informed and pertinent, and most particularly those who have worked so closely with me in this Office over the years, whose time and skills I have borrowed upon heavily and without whose input the achievements with which the Office has been credited would not have been the same.

## **SUMMARY**

The year in review has again been one of many challenges at a variety of levels. Hopefully it will be the judgment of those who matter that these challenges have been well met.



*WCR BALE QC*  
**SOLICITOR-GENERAL**

**SCHEDULE OF ADVISINGS**

Agencies (including State Authorities)	Number of Advising	
	2006-2007	2005-2006
Department of Economic Development	13	6
Department of Education	47	57
Department of Health and Human Services	162	197
Department of Infrastructure, Energy and Resources	124	114
Department of Justice	254	163
Department of Police and Emergency Management	10	15
Department of Premier and Cabinet	106	104
Department of Primary Industries and Water	272	396
Department of Tourism, Arts and the Environment	154	85
Department of Treasury and Finance	63	98
Tasmanian Audit Office	10	7
Port Arthur Historic Site Management Authority	-	2
Rivers and Water Supply Commission	10	6
Retirement Benefits Fund Board	17	25
TAFE Tasmania	15	9
The Public Trustee	3	-
Other bodies and offices	80	69
<b>TOTAL ADVISINGS</b>	<b>1340</b>	<b>1353</b>
<b>Section 78B Notices</b>	<b>228</b>	<b>242</b>