



2025

PARLIAMENT OF TASMANIA

SOLICITOR-GENERAL

REPORT FOR 2024-25

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

In accordance with s 11 of the *Solicitor-General Act 1983*, I submit to the Attorney-General my report on the performance and exercise of the functions and powers of the office of Solicitor-General for the relevant period, namely the twelve-month period ending on 30 June 2025.

SUMMARY

The Office¹ of Solicitor-General continued to be engaged in advising the State upon a wide range of legal issues over the reporting period. In addition to providing written advice, representation was provided in various matters, including in the High Court.

FUNCTIONS OF THE SOLICITOR-GENERAL

The functions of the Solicitor-General are set out in s 7 of the *Solicitor-General Act* in the following terms:

7. Functions of Solicitor-General

A person holding the office of Solicitor-General has and shall exercise the following functions:

- (a) to act as counsel for the Crown in right of Tasmania or for any other person for whom the Attorney-General directs or requests him to act;
- (b) to perform such other duties ordinarily performed by a legal practitioner as the Attorney-General directs or requests him to perform; and
- (c) to perform such duties (if any) as are imposed on him by or under any other Act.

Pursuant to s 7 of that Act, I have been requested by the Attorney-General to accept instructions from the Clerks of the Houses of Parliament in relation to matters concerning the employment of employees of the Parliament.

Section 8 of the Act provides for the delegation to the Solicitor-General by instrument in writing from the Attorney-General of responsibility for the performance or exercise of such of the functions and powers which may be performed or exercised by the Attorney-General under the laws of Tasmania as may be specified in the instrument of delegation. No delegation pursuant to s 8 of the Act was in force at any time during the relevant period.

¹ When reference is made to the “Office” in capitalised form, it includes those who are employed to assist me in the performance of my functions as distinct from the statutory “office” established under s 4 of the *Solicitor-General Act*.

DISCHARGE OF FUNCTIONS

Advice

In practical terms, the bulk of the work of the Office involves the provision of legal advice to Agencies and instrumentalities of the Crown. A significant amount of that work is directed to answering queries from the other arms of Crown Law, predominantly in assisting the State Litigation Office in connection with issues arising in the conduct of litigation.

A summary of the advice files opened during the relevant period is annexed at Schedule 1. For ease of comparison, the same details for the immediately preceding 12-month period are also included. The table indicates a slight decrease in the number of opinions provided compared to the previous reporting period. This may be reflective of a spike in requests for advice in the period following the delivery of the Report of the Commission of Inquiry in August 2023. The number of opinions provided during the reporting period is largely consistent with the 2022-2023 reporting period. The difficulties in sharing information between Agencies and statutory authorities remains a consistent theme.

Indemnity Panel

I continued to sit as a member of the Indemnity and Legal Assistance Panel which is established by the Policy and Guidelines for the Grant of Indemnities and Legal Assistance to Public Officers and chaired by the Secretary of the Department of Justice.

Section 78B Notices

It is a requirement under s 78B of the *Judiciary Act 1903* (Cth) that if there is a cause pending in a court involving a matter arising under the Constitution or involving its interpretation, that notice of the nature of the matter be given to the Attorneys-General of the Commonwealth, the States and Territories before the court is able to proceed in the cause. Those notices are forwarded to my Office for the provision of advice to the Attorney-General. As a matter of practice, only those in which the State may be considered to have an interest are referred to the Attorney-General for instructions regarding intervention. The number of notices considered during the reporting period is noted in Schedule 1.

Representations in Constitutional Matters

The Office represented the Attorney-General during the relevant period in two matters. Judgments were handed down in relation to two other matters heard in the preceding reporting period.

Ravbar v Commonwealth of Australia [2025] HCA 25; (2025) 99 ALJR 1000

This matter was heard by the High Court in Canberra on 10 – 11 December 2024. The plaintiffs, who had been officers of the Construction, Forestry and Maritime Employees Union (“the CFMEU”), challenged the constitutional validity of the *Fair Work (Registered Organisations) Amendment (Administration) Act 2024* (Cth) which inserted provisions into the *Fair Work*

(Registered Organisations) Act 2009 (Cth) and the *Fair Work Act 2009* (Cth). The amendments made provision for the Construction and General Division of the CFMEU and each of its branches to be placed into administration. The plaintiffs argued that the provisions were invalid on several grounds including that they breached the implied freedom of political communication and were contrary to Ch III of the Constitution. I appeared on behalf of the Attorney-General, intervening, together with the Assistant Solicitor-General, Jenny Rudolf. Judgment was delivered on 18 June 2025. The Court upheld the validity of the legislation.

MJZP v Director-General of Security [2025] HCA 26

This case involved a challenge to the constitutional validity of a provision of the *Administrative Appeals Tribunal Act 1975* (Cth) which prevented certain information, which was available to the Federal Court on an appeal from the Tribunal, from being disclosed to any person other than the Court on the basis that its disclosure would be contrary to the public interest. It was argued that this breached the requirements of procedural fairness and was inconsistent with the institutional integrity of the Court. Judgment was delivered on 6 August 2025 following a hearing in the High Court on 12-13 December 2024. The Assistant Solicitor-General, Jenny Rudolf appeared with Emily Warner on behalf of the Attorney-General, intervening. The constitutional validity of legislative limits on procedural fairness due to national security concerns was upheld.

Howard v Code of Conduct Panel [2024] TASSC 64

This matter was previously reported on in my report for the 2023-24 reporting period. At that time judgment remained reserved. However, judgment was delivered during the current reporting period on 13 November 2024. Representation was provided on behalf of the Attorney-General, intervening, in relation to a constitutional challenge against the validity of provisions of the *Local Government Act 1993* (Tas) relating to the content of codes of conduct concerning the conduct of councillors (s 28S(1)(f) and (g)). It was argued by the applicant that the provisions infringed the constitutionally implied freedom of political communication. The Supreme Court found that neither of the impugned provisions was inconsistent with the implied freedom of political communication.

Attorney-General (Tas) v Casimaty [2024] HCA 31; (2024) 261 LGERA 177

The High Court delivered its judgment in Hobart on 11 September 2024, unanimously upholding the Attorney-General's appeal. As previously reported, the case raised questions relating to the *Public Works Committee Act 1914*, parliamentary privilege and the role of the courts in relation to enforcing compliance with certain requirements under that Act. This Office represented the Attorney-General before the Full Bench of the High Court in Canberra on 9 April 2024.

Special Committee of Solicitors-General

During the reporting period, the Special Committee of Solicitors-General met on four occasions. The ability to meet on a regular basis provides a valuable opportunity to discuss common points of interest, significant legal developments and current constitutional matters pending before the courts.

ADMINISTRATION

Staffing

As at the conclusion of the reporting period, I was assisted in the performance of my functions by a dedicated team of highly capable lawyers comprised of the Assistant Solicitor-General, a level 4 legal practitioner, a level 3 legal practitioner and two level 2 legal practitioners. The Office has also been ably assisted by an executive officer and receives general support from the Crown Law administration team led by the Director of Crown Law.

The Office continued to participate in the Department's legal graduate program. A graduate was assigned to the Office during and for a period following the completion of this year's Tasmanian Legal Practice Course. The program offers a means of exposing young lawyers to the legal work undertaken within the Crown and provides encouragement to those lawyers to consider taking up a legal career with the Crown.

Funding

The Office of the Solicitor-General is fully funded from the Public Account. Legal services are provided to the State, its Agencies and instrumentalities without charge.

BICENTENARY OF THE OFFICE OF SOLICITOR-GENERAL

The list annexed at Schedule 2 has appeared in the annual reports of Solicitors-General for a number of years. It indicates that the first appointment to the office of Solicitor-General was that of Alfred Stephen on 9 May 1825, over 200 years ago.

A bicentennial celebration of that appointment was held in April of this year. Her Excellency the Honourable Barbara Baker AC, Governor of Tasmania, and Emeritus Professor Don Chalmers AO graciously hosted a reception at Government House on 28 April 2025 to mark the occasion. The enduring nature of the office is reflective of its importance in ensuring that government has access to independent advice and the commitment of government to acting in accordance with the rule of law.

AGENCY RESPONSIBILITIES – The rise and rise of departmental legal advisers

The Attorney-General, as the first law officer of the State, has ultimate responsibility for the provision of legal advice to the State. That responsibility has devolved to the Law Officers of the Crown² and to a select group of officers and employees.³ State Service employees who hold legal qualifications but who are not employed as legal practitioners are not entitled to provide legal advice to the State.

² The term "Law Officers of the Crown" may be understood to mean the Solicitor-General, the Director of Public Prosecutions, the Crown Solicitor and the State Litigator.

³ Chief Parliamentary Counsel, officers appointed as senior lawyers to specialist equivalent positions created under s 29(4) of the *State Service Act 2000* and persons employed as legal practitioners under the legal practitioner classifications contained in the Tasmanian State Service Award, Appendix 20.

That distinction appears to be understood at a theoretical level, yet the proliferation within Agencies of positions sitting within the Tasmanian State Service Award's General Stream and described as "legal adviser" (or similar) suggests that the distinction may not be adequately recognised. The very term "legal adviser" suggests a person who is employed to provide legal advice. Even if that is not the case, the expectation that they will do so may nevertheless arise with the risk that such persons inadvertently stray beyond the legitimate bounds of their roles. The risk is not fanciful. It not only places those individuals at risk of breaching the *Legal Profession Act 2007* but may compromise the integrity of the State's legal services through the provision of advice by persons who may not be qualified or competent to do so and who do not possess the independence of the Office of the Solicitor-General.⁴ It has not gone unnoticed that the rise in such positions within some Agencies has been accompanied by a perceptible decline in the number of requests for legal advice received by this Office. One might hope that the connection is purely coincidental, yet the sense remains that there may be instances in which legal issues are being handled internally without proper recourse to Crown Law.

The importance of seeking independent advice from Crown Law should not be underestimated. Notably, it is fundamental that legal advice from this Office is given in a frank and fearless manner and that it offers a consistent approach and a single view as to the law. As the Supreme Court has recognised, the independent office created by the *Solicitor-General Act* is "steadfastly independent as part of the State's constitutional fabric and its adherence to the rule of law".⁵ Agencies should remain alert to these matters and should ensure compliance with the Attorney-General's Guidelines in relation to the provision of legal services to the Government (a copy of which is attached at Schedule 3) and the Treasurer's Instruction FC-17 on the Engagement of Legal Practitioners (a copy of which is found at Schedule 4).

CONTINUING LEGAL EDUCATION

Delivery of Continuing Legal Education

Crown Law's "Understanding the Law" Continuing Legal Education program for the delivery of legal education seminars to government Agencies continued during the reporting period.

The program is managed by a Steering Committee comprised of representatives from within Crown Law together with Agency representatives and is chaired by me. Sessions were delivered on the following topics and were attended by the number of participants specified below:

- Public Interest Disclosures Act – Whistleblowing legislation (61)
- Consent to Medical Treatment (80)
- Budget 2024 (83)
- Work Health and Safety (29)
- Government Contracting (110)
- Developing Effective Legislation - Working with OPC (72)
- Medical Consent (48)
- Administrative Decision-Making (75)

⁴ Similar concerns were raised by one of my predecessors in his annual report for the 2012-13 reporting period.

⁵ *Honourable Will Hodgman v Tasmanian Industrial Commission* [2019] TASSC 40 at [36] (Estcourt J).

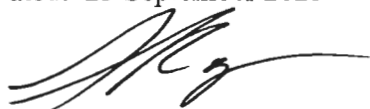
- Work Health and Safety Officer Training (56)
- Using Vendor Terms for Procurement of Goods and Services – ICT Contracts (90)
- Statutory Interpretation and Policy Development (103).

Outside of that program, I delivered a presentation together with the State Litigator on “The Crown, Crown Law and the Crown as a Litigant” at the Law Society’s Litigation Conference in November 2024.

Professional Development

Practitioners within the Office attended various professional development sessions throughout the reporting period, including the Australian Institute of Administrative Law’s 2024 National Administrative Law Conference and Gilbert and Tobin’s Constitutional Law Conference 2025. Several members of staff also participated in resilience training.

Dated: 25 September 2025



Sarah Kay SC
Solicitor-General of Tasmania

Schedule 1**SCHEDULE OF ADVICE GIVEN**

	2023-24	2024-25
Department of State Growth	36	45
Department for Education, Children and Young People	62	57
Department of Health	19	18
Department of Justice	170	178
Department of Police, Fire and Emergency Management	30	20
Department of Premier and Cabinet	108	81
Department of Natural Resources and Environment Tasmania	82	87
Department of Treasury and Finance	26	13
Tasmanian Audit Office	3	4
The Public Trustee	5	9
Other bodies and offices	86	74
TOTAL ADVISINGS	634	586
Section 78B Notices	180	174

Schedule 2

**SOLICITORS-GENERAL OF
VAN DIEMEN'S LAND and TASMANIA**

9 May 1825	5 May 1832	Alfred Stephen
1832	1833	Hugh Cokeley Ross (acting)
Jan 1833	Sep 1837	Edward McDowell
23 Mar 1838	1841	Herbert C Jones
15 Jan 1841	Dec 1843	Thomas William Horne
Jan 1844	1848	Valentine Fleming KC
1848	Dec 1853	Alban Charles Stonor
1854	1854	Francis Villeneuve Smith
1854	1855	Edward McDowell (acting)
19 Dec 1855	Feb 1857	John Warrington Rogers
25 Apr 1857	1 Nov 1860	Thomas James Knight
1 Nov 1860	Feb 1861	William Lambert Dobson
1 Jan 1864	1867	John Compton Gregson
Dec 1867	14 Mar 1887	Robert Patten Adams
Jun 1887	Apr 1901	Hon. Alfred Dobson KC
Apr 1902	1 Sep 1913	Edward David Dobbie KC
1914	1930	Lloyd Eld Chambers KC
Sep 1930	Aug 1938	Philip Lewis Griffiths KC
1939	17 Oct 1944	Rudyard Noel Kipling Beedham KC
18 Oct 1944	13 Mar 1946	Marcus George Gibson KC (acting)
14 Mar 1946	1 May 1951	Marcus George Gibson KC
14 Jun 1951	21 Mar 1952	Malcolm Peter Crisp KC
26 May 1952	1 Sep 1956	Stanley Charles Burbury QC
27 Sep 1956	27 Feb 1968	David Montagu Chambers QC
6 May 1968	1 Mar 1984	Roger Christie Jennings QC
2 Mar 1984	10 Apr 1986	Christopher Reginald Wright QC
11 Apr 1986	3 Aug 2007	William Christopher Robin Bale QC
18 Sep 2007	18 Jan 2008	Francis Counsel Neasey (acting)
3 Mar 2008	16 May 2014	Geoffrey Leigh Sealy SC
19 May 2014	31 Aug 2014	Francis Counsel Neasey (acting)
1 Sep 2014	24 Dec 2021	Michael Ernest O'Farrell SC
25 Dec 2021		Sarah Kay SC



ATTORNEY-GENERAL
THE HON GUY BARNETT MP

**Guidelines in relation to the provision
of legal services to the Government**

1. As a matter of constitutional principle only the Attorney-General, as first law officer, is entitled to provide legal services to the State.
2. In Tasmania, the responsibility for the delivery of those services devolves to:
 - a. the Solicitor-General, as second law officer;¹
 - b. the Director of Public Prosecutions, as the independent legal officer required to conduct the prosecution of criminal offences;²
 - c. the Crown Solicitor, as a prescribed officer under the *State Service Regulations 2021*;³
 - d. the State Litigator, as a prescribed officer under the *State Service Regulations 2021*;⁴
 - e. the Chief Parliamentary Counsel, as a prescribed officer under the *State Service Regulations 2021*;⁵
 - f. officers appointed to Specialist equivalent positions under the *Premier's Determination – Remuneration and Conditions for appointment of Equivalent Specialists (Senior Lawyers)* dated 4 May 2022 (or a similar determination, as made from time to time); and
 - g. employees employed under the *Legal Practitioners Award* to provide legal services.

*(collectively, 'the Government's legal practitioners')
3. The Solicitor-General acts as counsel for the Crown in the right of Tasmania.⁶ In practice, this function predominantly involves the provision of written legal advice to the State and representing the State in constitutional matters. Since October 2023, responsibility for the conduct of the State's civil litigation, including in relation to claims relating to child sexual abuse, has rested with the State Litigator.
4. Consistently with accepted practice, reflecting underlying constitutional considerations, Treasurer's Instruction FC-17 (made pursuant to s 51 of the *Financial Management Act 2016*) also provides that the Crown must follow legal advice provided by the Law Officers of the Crown⁷ in relation to:

¹ *Solicitor-General Act 1983*.

² *Director of Public Prosecutions Act 1973*, s 12

³ Reg, 5 & Sch 1.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Solicitor-General Act 1983*, s 7(a).

⁷ The first Law Officer of the Crown is the Attorney-General. However, for the purposes of TI FC-17 the Law Officers of the Crown can be taken to be the Crown Law Principals, viz., the Solicitor-General; the Director of Public Prosecutions, the Crown Solicitor and the State Litigator.

- the legal functions, powers or responsibilities of the Crown;⁸
- the lawfulness of any action, or proposed course of action, by the Crown;⁹ and

should also follow legal advice of Law Officers of the Crown in relation to:

- the legal enforceability or legal effectiveness of a transaction entered into by the Crown.¹⁰
5. Subject to those considerations, the State Litigator acts on instructions from Heads of Agency, their delegates or persons authorised by them, with respect to the conduct of civil litigation including in matters of child sexual abuse. Any such instructions should be given with appropriate regard to any legal advice as to matters of liability and quantum of settlement, prospects of success and strategic risks associated with the litigious process. Whilst advice of that nature is not considered to be binding, it should nevertheless be taken into account in the formulation of instructions.
 6. An Accountable Authority (within the meaning of the *Financial Management Act*) must refer all requests for legal advice, civil litigation services and commercial and conveyancing legal services to Crown Law¹¹ unless Crown Law otherwise agrees to the direct engagement of external legal services¹².
 7. Subject to approval to engage or to brief external lawyers, the only officers or employees who are entitled to engage in legal practice for the government are the Government's legal practitioners. It follows that State Service officers and employees who are not the Government's legal practitioners, whether or not holding legal qualifications, do not provide legal services to the Crown. It follows that advice (including as to the legal enforceability or effectiveness of a transaction), provided by State Service officers and employees who hold legal qualifications, but are not the Government's legal practitioners, should not be regarded as legal advice provided by a legal practitioner.
 8. It also follows that Agencies should not, and should not permit officers and employees to, engage in legal practice, or to hold themselves out as being able to engage in legal practice.¹³

Queries

9. Any queries about the scope, or effect of these guidelines, should be referred to Crown Law.

⁸ TI FC-17, cl 17.3.

⁹ Ibid.

¹⁰ TI FC-17, cl 17.4.

¹¹ TI FC-17, cl 17.6.

¹² TI FC-17, cl 17.8.

¹³ The limited exceptions provided for in ss 13(2)(b) and 13(3) of the *Legal Profession Act 2007* do not apply to these officers and employees.

TREASURER'S INSTRUCTION
FINANCIAL MANAGEMENT ACT 2016
ENGAGEMENT OF LEGAL PRACTITIONERS

EFFECTIVE DATE

1 July 2019

SCOPE

This Treasurer's Instruction applies to all agencies listed in Column 1 of Schedule 1, Part 1 in the *Financial Management Act 2016* unless otherwise exempted or provided for under the provisions of the Act.

APPLICATION

At all times.

OBJECTIVE

To provide direction in relation to the engagement of legal practitioners.

INSTRUCTION

Engagement of legal practitioners

- 17.1 A reference to the "Crown" includes all of its agencies and instrumentalities.
- 17.2 This Treasurer's Instruction reflects the following constitutional principles:
- 17.2.1 the Crown must ascertain and obey the law; and
- 17.2.2 unless otherwise lawfully permitted, the Crown must obtain its legal advice from Law Officers of the Crown.
- 17.3 The Crown must follow legal advice provided by Law Officers of the Crown in relation to:
- the legal functions, powers or responsibilities of the Crown; or
 - the lawfulness of any action, or proposed course of action, by the Crown.
- 17.4 In addition to those principles, the Crown should follow the legal advice of Law Officers of the Crown in relation to the legal enforceability or legal effectiveness of a transaction.
- 17.5 These requirements do not extend to advice given by the Law Officers about the proposed allocation of transactional and business risks, unless the Crown's proposed allocation would be unlawful.

- 17.6 The Accountable Authority must refer all requests for legal advice, civil litigation services and commercial and conveyancing legal services to Crown Law.
- 17.7 All legal instructions must be provided by, or through, Crown Law unless otherwise agreed in advance in writing by Crown Law.
- 17.8 The Accountable Authority must not directly engage external counsel or commercial legal services without the written agreement of Crown Law.
- 17.9 The Accountable Authority must comply with the requirements of *Guidelines for Seeking Advice from the Solicitor-General's Office* issued by the Attorney-General.
- 17.10 The Accountable Authority must comply with the *Guidelines for the Disclosure of Communications Protected by Client Legal Privilege* issued by the Attorney-General.
- 17.11 The Accountable Authority must comply with the *Model Litigant Guidelines* issued by the Solicitor-General.

ADDITIONAL GUIDANCE

Further information in support of this Treasurer's Instruction can be found in the *Financial Management - Better Practice Guidelines*.