



2006

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PARLIAMENT OF TASMANIA

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# **SOLICITOR-GENERAL**

# **REPORT FOR 2005-2006**

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

## SOLICITOR-GENERAL REPORT FOR 2005-2006

### I OVERVIEW

As will be seen from the attached Schedule, the number of formal advisings provided by my Office during the year in review has increased again, albeit marginally, with the general spread of advisings broadly matching (predictably) that of recent years. Given that this has happened during a period in which there has been greater involvement than usual in High Court matters as well as a State Election and an ever-increasing demand for *ex tempore* advice (about which I will say more later in this report) the result is a very pleasing one, and once again reflects the enthusiasm and dedication of the small but very professional team which assists me. There is no backlog of advice and an average turnaround time for advisings of less than 7 days is still being achieved, with more urgent advice generally accommodated within whatever shorter timeframe is required.

### II THE FUNCTIONS OF THE SOLICITOR-GENERAL

I will not take time in this report to restate my statutory functions, which have been set out in each of the reports of recent years and especially comprehensively last year. Those reports are readily accessible.

### III PROFESSIONAL ADVISINGS

The Schedule gives the number and spread of formal advisings for the year. Because of the principles relating to legal professional privilege, it is not appropriate that I should speak about any particular advising. Generally, however, it is fair to say that the trend noted last year towards increasingly complex legal issues involving broader and more detailed research with sometimes inconclusive results has continued, and there is no reason to suppose that it will slacken in the foreseeable future. So far, the human and other resources available to me have been sufficient to meet the demand in a timely and effective way, but there is obviously a limit to that so that the adequacy of these resources within the Office needs constant review.

One aspect of the demand for advisings is of concern, and warrants comment. It is the steady increase in requests for *ex tempore* advice, sometimes "urgent" (whether actually or only as a matter of perception is often difficult to tell) but frequently not.

The obvious problem with this sort of advice is that it is unresearched and therefore, except in the simplest cases, at greater, and in many instances I would have thought unacceptable, risk of being wrong. Although in non-urgent cases there is usually an indication that there will be a request for the advice given to be formalised, such requests are often not forthcoming.

Although there is on occasion genuine need for urgent advice which can only be dealt with in this way, the importance of government action being legally sustainable is so great that I believe that the trend referred to above needs to be stopped by actively discouraging the seeking of such advice except where the meeting of immutable timelines requires it. That is the course which I am adopting, by indicating to those who seek it that *ex tempore* advice is to be taken as an unresearched, rough guide only which should not be relied upon as a foundation for government action (or inaction) unless confirmed in writing or given in circumstances in which time constraints preclude formal advice and it is acknowledged that the advice is given without the benefit of thorough consideration.

#### CONSTITUTIONAL MATTERS

Last year's report referred to intervention in a matter involving a determination of the reach of Tasmania's Anti-Discrimination Act into conduct within the Australian Defence Forces. A judgment sustaining the thrust of Tasmania's argument was delivered by Heerey J in the Federal Court on 9 February of this year. That decision has been appealed to the full Federal Court, and that appeal is listed for hearing in Hobart in August.

Constitutional issues have also been raised in the proceedings challenging the legality of plans for logging in the Wielangta Forest south of Orford (Brown v Forestry Tasmania). The taking of evidence in this matter has concluded but it has not been possible for the Court to schedule a continuous hearing and it will be some time before final submissions are made.

Tasmania intervened in two significant matters in the High Court of Australia. The first was a challenge to the validity of laws in New South Wales providing for the appointment of acting judges to its Supreme Court. The decision in the case clearly has the potential to impact upon the power of the State of Tasmania to appoint acting judges to its Court. The case was Forge & Ors v ASIC & Ors. The Court's decision is currently reserved.

The second case was the challenge to the validity of major portions of the Commonwealth's Workplace Relations Amendment (Work Choices) Act 2005. That challenge was heard in Canberra in May, with the hearing extending over 6 sitting days. Once again, the Court's decision is presently reserved.

Because of staff fluctuations during the year, the additional professional position which I had hoped to develop for assistance with the preparation of constitutional matters has not been filled, and that is something that I will seek to address in the near future.

#### **OTHER APPEARANCES**

My Office has continued to represent the Commonwealth in matters arising under the Hague Convention on the Civil Aspects of International Child Abduction, and as well we have continued to provide assistance to the Director of Public Prosecutions in relation to the prosecution of administrative law and other matters.

#### **IV LEGAL INFORMATION SEMINARS**

After the intensity of last year's seminar program which the Office presented, I chose this year not to provide a formal program addressing legal issues, but rather to meet particular Agency requests as and when they arose. This has been done, but with a greatly reduced level of demand. It seems that Agencies are quick to enrol officers and employees in a set program, but less diligent in identifying areas of need and seeking to address them.

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

As was the case last year, the Committee met three times in the period under review, when it considered matters referred to it by the Standing Committee of Attorneys-General as well as other legal issues of national consequence and/or common interest. A number of reports were provided to SCAG, and more are currently in preparation. It is not my province to disclose the issues with which those reports dealt.

Generally, it is my experience that a significant but often unheralded value of SCSG meetings is that they bring together on a regular basis for informed and vigorous exchange the senior legal officers most closely involved in legal aspects of the administration of government in Australia. The associations developed at these meetings are such that the pooled knowledge of the members of SCSG is available to each of them out of session, and is frequently accessed to the mutual benefit of all concerned.

#### **VI ADMINISTRATIVE ISSUES**

There is nothing to report under this head which has not already been canvassed in this report, save to once again express my appreciation to Crown Law Manager Kerry Worsley and her team who undertake very efficiently the hard yards necessary to ensure that my staff, and others within Crown Law, have what they need for the proper discharge of their functions.

**VII SUMMARY**

The year just past has been another challenging one. I believe those challenges have been met to the general satisfaction of those who have needed the services of the Solicitor-General. I will endeavour to ensure that that continues to be the case.

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

**SCHEDULE OF ADVISINGS**

Agencies (including State Authorities)	Number of Advising	
	2005-2006	2004-2005
Department of Economic Development	6	7
Department of Education	57	45
Department of Health and Human Services	197	205
Department of Infrastructure, Energy and Resources	114	101
Department of Justice	163	160
Department of Police and Emergency Management	15	21
Department of Premier and Cabinet	104	122
Department of Primary Industries and Water	396	388
Department of Tourism, Arts and the Environment	85	69
Department of Treasury and Finance	98	92
Tasmanian Audit Office	7	7
Port Arthur Historic Site Management Authority	2	
Rivers and Water Supply Commission	6	
Retirement Benefits Fund Board	25	24
TAFE Tasmania	9	6
The Public Trustee	-	6
Other bodies and offices	69	82
<b>TOTAL ADVISINGS</b>	<b>1353</b>	<b>1335</b>
<b>Section 78B Notices</b>	<b>242</b>	<b>228</b>