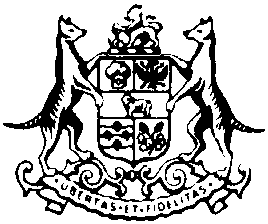
****

2018

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

parliament of tasmania

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SOLICITOR-GENERAL**

**REPORT FOR 2017-18**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*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* (“the Act”), 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 2018.

**1. The Office of Solicitor-General**

The functions of the Office of Solicitor-General are set out in s 7 of the 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*.”

A direction dated 3 November 2015 was given under s 7(b) to me by the Attorney-General, by which I am responsible for and control the State’s functions in respect of civil proceedings.[[1]](#footnote-2)

In addition to s 7, s 8 of the Act provides for the delegation to the Solicitor-General by instrument in writing by the Attorney-General of:

*“…responsibility for the performance or exercise of such of the functions and powers (other than th[e] power of delegation) 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.

**A brief history**

The Office of Solicitor-General has existed in Tasmania since 1825. At that time and consistent with the practice in the United Kingdom, the Office of Solicitor-General was a political office[[2]](#footnote-3) – both the Attorney-General and the Solicitor-General being members of most of the early Cabinets following the introduction of responsible government in Tasmania.[[3]](#footnote-4) However, in 1863, following the report of a Royal Commission to inquire into the accounts, and “*…the nature and amount of the business transacted in the several Departments of Our Government whose offices or places of business shall be and lie to the southward of the Town of Campbell Town…*”, the decision was made that the Office of Solicitor-General should henceforth be a non-political and non-ministerial office. Perhaps unsurprisingly, the decision appears to have been based more upon financial rather than prudential considerations.

From 1863 the Solicitor-General’s Office was the core of the legal administration of the government until, in 1934, the Attorney-General’s Department was created and assumed responsibility for the administration of legislation. Thereafter the Solicitor-General’s Department functioned as the Crown Law office advising and assisting the Executive Council, Ministers and agencies in legal matters affecting them. This position remained virtually unchanged until the enactment of the Act which, for the first time, established the Office of Solicitor-General as an independent office under statute.

Today, the office is accurately described in the following passage about Australian Solicitor’s-General.

*“The most familiar of their roles is the argument, on behalf of the executive government of their respective polities, of the most important cases affecting the interests of the government and the governed and between the governments of the federation in the highest courts in the land. No less important, however, are the duties performed by these officers in ensuring the observance of the rule of law by advice given to the governments they serve on issues of constitutional, administrative and even commercial law.”[[4]](#footnote-5)*

**2. ADMINISTRATION**

My office consists of two sections: the Office of the Solicitor-General (Advisings) and the Office of the Solicitor-General (Litigation). As reported in previous years, the merger of these sections occurred in November 2015. There have, however, been, two structural issues outstanding since the merger. One was resolved during the relevant period. The other has continued through the reporting period.

The first issue relates to the amendment of the *Crown Proceedings Act 1993*, ss 13 and 14 to provide that service of certain civil process on the Crown is to be made on my office. There is also a transitional provision in s 24. Amendments to that effect were made by the *Crown Proceedings Amendment Act 2016,* s 4, which was proclaimed to commence on 30 October 2017.[[5]](#footnote-6)

The second issue relates to physical location. The Litigation section is presently on level 5 of the Executive Building. The Advisings section is on level 8 of that building. It has long been my view that before the advantages of the merger can be fully realised, it is necessary for both divisions to share the same physical space. The optimum strategic outcome identified is to relocate both offices to share a larger space with the Office of the Crown Solicitor. This will mean that the whole of the budgetary output of Crown Law (apart from the DPP) will be located together, with opportunities to develop a more diverse practice and to share work and resources. It will also enhance the collaboration and exchange of views between legal practitioners which is a vital part of their professional development and growth. That serves also to strengthen the knowledge base of my office and better equip it to furnish advice to government. The location of the entirety of my office and the Office of the Crown Solicitor in one place remained a priority at the end of the reporting period. The location of those offices in close proximity to the Office of the DPP is also a highly desirable result from a strategic perspective.

Moving the OSG (Advisings) from level 8 would also provide better accommodation options for the Office of the DPP. All in all, as at the end of the reporting period it remained the most attractive strategic option which anyone, to my knowledge, has been able to identify.

At the end of the relevant period plans to achieve this move were quite well advanced, though not complete. A number of contingencies, including the completion of the office accommodation at Parliament Square, had been realised. I expect to report on the outcome of the accommodation project in my 2019 report.

**Litigation**

Another on going challenge for the Litigation section related to the structure of the established positions in the office. During the relevant period, a number of opportunities became available in the Litigation section, which have resulted in a better structure for the office.

Last year I reported that as a result of a funding arrangement by a number of agencies, the Litigation section was able to create two positions for a two year period to enable the long tail of Workers Rehabilition and Compensation cases to be addressed. I am pleased to report those arrangements have been succesful. Experienced workers’ compensation practitioners are indispensible to the State. It is an area that requires constant attention in order to ensure that cases are dealt with economically and efficiently.

The Litigation section comprises the following positions; the Assistant Solicitor-General (Litigation), two Level 3 legal practioners, one Level 2 legal practitoner and one Level 1. There are two positions devoted to the project to reduce the noted long term workers compensation cases being at Level 3 and a Level 2 respectively.

The volume of matters dealt with by the Litigation section is high. Many diverse areas of law are engaged. Great demands are made of the practitioners, and they continue to display outstanding skills.

**Advisings**

One of the advantages that was identified during the merger process was the increased opportunties for practitioners to broaden their skills. As its name suggests, the Advisings section gives advice, written and verbal. However, there are continuing opportunities for practitioners in Advisings to appear in a range of matters in the Supreme Court and in coronial proceedings. I thank the Assistant Solicitor-General (Litigation), Paul Turner, for continuing to promote these opportunities.

I made the point last year that the pool of legal practitioners in Tasmania who are engaged in public law, is very small. This is partly because there is a vast array of constitutional and public Acts with which the private profession are unlikely to be concerned or familiar. The State is, therefore, the natural incubator for the public law and lawyers in Tasmania.

The work of the Advisings section of my office is particularly directed to the Crown’s legal compliance with its onerous legal requirements. It achieves this by a disciplined approach to legal problems that is best served by a centralised Crown legal service that works as a cohesive team.

It is a great benefit for legal practitioners in Crown Law that the work is generally of high quality and significant interest. That benefit should be realised and fostered strategically to ensure that a cohort of exprerienced public lawyers is available to the State from its own resources.

**Staff**

As at the relevant date the Advisings section consisted of:

* Sarah Kay, the Assistant Solicitor-General (Advisings)
* Jenny Rudolf (LP3)
* David Osz (LP2)
* Dashini Elankovan (LP1)

The Litigation section consisted of:

* Paul Turner, the Assistant Solicitor-General (Litigation)
* Gretel Chen (LP3)
* Kirsten Hodgson (LP3)
* Teshi Zacharek (LP2)
* Louise Brooks (LP2)
* Lisa Kelly (LP2)
* Toby MacGregor (LP1)

Our legal practitioners in both sections work long hours, well beyond the strict requirements of their positions. They have an unswervingly professional approach to their work, with comparatively limited resources. I thank each of them.

I also extend the thanks of the office to our Executive Assistant, Ms Melissa Xepapas, for her considerable assistance, support and contribution throughout the year. I also thank Pam Cawthorn, Scott Stalker, Lindsey Reed and Ann Harkus for their assistance and hard work. Pam and Ann have also been of great support to the Advisings section. I also acknowledge the assistance we have been given by administrative officers from the Business Support unit of the Office of the Director of Public Prosecutions when needed from time to time.

On 25th May 2018, the appointment of Marica Duvnjak as the Chairperspon of the Resource Management and Planning Appeals Tribunal was announced. Marica had acted in that role since November 2017. Before that Marica was a senior practitioner in the Litigation section and had so been since April 2015. She is a very experienced and capable practitioner and was a highly valued member of the team, able to assume carriage of a wide range of matters. We congratulate Marica on her appointment. She is missed as a valuable member of the Litigation team.

Michael Varney continues as our Director of Crown Law. As was the case last year Michael’s greatest challenge has been to extract the best performance from our practice management software, which is presently an ongoing project. He has implemented a number of programs, including events for the health and well-being of staff. I record my thanks to him.

The Office of the Solicitor-General is fully funded from the Consolidated Fund and accordingly does not charge agencies and other entities for the use of its services.

**3. PROFESSIONAL**

# Advisings

A summary of the formal advice prepared by this office during the relevant period and categorised by reference to the agencies and other bodies which requested those advices is annexed as Schedule 1 to this report. For ease of comparison the same details for the immediately preceding 12 month period are also included.

There is a cautionary note that must be added. The number of files opened does not reflect the number of pieces of work done. One file may consist of a number of written advices, and on occassion discussions for the purposes of implementing the advice given. To that extent, the statistics mask the full extent of the work done.

As was the result last year, the number of advice matters opened during the reporting period shows a considerable increase from the previous period. This continues an upward trend. All members of the Advisings section continue to notice the increased workload. Given the legislative program of government, the trend is more than likely to continue.

I add that a considerable amount of advice of a less formal nature is also given during short telephone, or email attendances.

**Section 78B Notices**

This section refers to the number of notifications formally given to the Attorney-General pursuant to section 78B of the *Judiciary Act 1903* (Cth) of matters involving the Commonwealth *Constitution* or its interpretation during the relevant period. The Advisings section of my office is responsible for providing advice to the Attorney-General in relation to these matters. We only refer to the Attorney-General those matters that we consider are appropriate for intervention by the State. That is because, when analysed, many of them lack substance or are clearly of no interest to the State.

The number of notifications decreased during the relevant period***[[6]](#footnote-7)*** when compared with the last reporting period.

# Litigation

The practice of litigation for the Crown requires skills and knowledge which are not required by private practitioners. An understanding of the unique position of the Crown is essential as is a level of knowledge of public law and institutions of government. The Crown is a model litgant and practitoners in my office are acutely conscious of the bundle of obligations which attaches to that role.

The Litigation section undertakes all civil litigation for the State. Civil litigation is defined in the Attorney-General’s written direction to me as:

*““civil proceedings” includes actions, applications, appeals, claims, proceedings or suits of any nature in the civil jurisdiction of any Federal Court or a Court of any State, or in the jurisdiction of any commission, tribunal, arbitrator or other body.”*

It can be seen that the functions of the office are extremely broad. Nearly all litigious matters in which the State is a party, or is otherwise concerned, are dealt with by the Litigation section, the notable exception being matters which involve the Commonwealth *Constitution* or its interpretation. Those matters are generally dealt with by the Advisings section.

I have attached in Schedule 2 a list of civil files opened and closed during the relevant period. The number of files opened represents a small decrease of files opened during the previous period.[[7]](#footnote-8) During the relevant period, the number of files closed was considerably higher than the number closed during the previous period.[[8]](#footnote-9) This is likely to be the product of a number of factors, including the incorporation of the new practice management system software, and improved administrative support.

As adverted to in relation to Advisings, the number of files is a coarse measure of the amount of work performed. Many litigous matters are resource intensive; and practitioners are observing increasing factual and legal complexities in much of what they are called upon to do.

I acknowledge the hard work of practitioners in the Litigation section. I am hopeful that with the merger of the section with Advisings and the physical location of both sections in the same office space the opportunities to share work and to develop a more diverse practice for practioners will increase.

# Appearances in Constitutional Matters

During the relevant period, the High Court of Australia handed down its decision in [*Brown v Tasmania* [2017] HCA 43; (2017) 91 ALJR 1089.](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2017/43.html?context=1;query=Tasmania;mask_path=au/cases/cth/HCA)  The brief facts were that each of the plaintiffs was arrested under the *Workplace (Protection from Protesters) Act 2014* (Tas) (‘the Act’) for contravening directions of police officers to leave forestry land, or a business access area relating to that land. The charges against them were discontinued by police on the advice of the Director of Public Prosecutions. However, they continued proceedings already filed in the High Court, seeking declarations that the Act was invalid.

The issue was whether the Act impermissibly infringed the implied freedom of political communication under the Commonwealth Constitution.

The Court held, firstly, that the tests previously stated in *McCloy v New South Wales*[[9]](#footnote-10) should be revised. This will be of continuing legal significance. The tests are now accurately stated as follows.

1. Does the law effectively burden the implied freedom of political communication?

2. If yes to question 1, is the purpose of the law legitimate, in the sense that it is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government?

3. If yes to question 2, is the law reasonably and appropriately adapted to advance that legitimate object in a manner that is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government?

If the answer to the last question is “no” the law is invalid.

However, a majority of the Court[[10]](#footnote-11) found that the provisions of the Act that had been challenged (‘the impugned provisions’) were invalid. The issue was ultimately resolved substantially by reference to the powers that a police officer was given when giving directions[[11]](#footnote-12), including for the removal or arrest,[[12]](#footnote-13) of a person from a relevant area. The officer may have acted on the basis of a mistaken, albeit reasonable, belief that person was contravening the Act. The effect would be to stifle a lawful protest.

However, all judges in the majority, as well as Gordon J, considered that the purpose of the Act, viz., “*the protection of businesses and their operations, here forest operations, from damage and disruption from protesters who are engaged in particular kinds of protests.*”[[13]](#footnote-14) was valid. The question was then whether, in accordance with the third question in the restated test (above), the Act is “*reasonably and appropriately adapted to advance that legitimate object in a manner that is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government.*”

The judges approached the answer to this question by different paths. Keifel CJ, Bell and Keane JJ held that s 8(1)(b),[[14]](#footnote-15) and ss 11(7) and (8)[[15]](#footnote-16) were not sufficiently connected to the purpose.[[16]](#footnote-17) Their Honours found further that the remaining impugned provisions[[17]](#footnote-18) operated more widely than the purpose required and so were unnecessary.

Nettle J found that the impugned provisions were both suitable and necessary; however, that they were not adequate in their balance.

Gageler J considered that the Act was not closely tailored to the achievement of the legitimate purpose for a number of reasons. He said it was under-inclusive, in that it related only to protesters;[[18]](#footnote-19) its consequences were not attached to the conduct of protesters, but attached to the directions of police officers that might be wrongly exercised.[[19]](#footnote-20) His Honour attached particular significance to consequences that followed from the directions of police officers;[[20]](#footnote-21) and the arbitrary period of exclusion from an area for a period of three months.[[21]](#footnote-22)

**Interventions**

During the relevant period, the Attorney-General exercised the right to intervene under s 78B of the *Judiciary Act 1903* (Cth) in respect of the following matters.

* [*Burns v Corbett; Burns v Gaynor; Attorney General for New South Wales v Burns; Attorney General for New South Wales v Burns; New South Wales v Burns* [2018] HCA 15 (18 April 2018)](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2018/15.html?context=1;query=Tasmania;mask_path=au/cases/cth/HCA). The case concerned two complaints by Mr Burns to the Anti-Discrimination Board of New South Wales about statements made by Ms Corbett and Mr Gaynor and said by Mr Burns to vilify homosexuals. Mr Burns was a resident of New South Wales. Ms Corbett was a resident of Victoria and Mr Gaynor was a resident of Queensland. Therefore, the dispute was a “matter” on which original jurisdiction was conferred on the High Court under s 75(iv) involving a dispute between the residents of different States. A majority of the Court held that there is an implication in the Constitution that precludes a State parliament from conferring Commonwealth judicial power on a tribunal that is not a court of a State referred to in s 77 of the Constitution. The Court unanimously held that a State law which purports to confer jurisdiction on a tribunal which is not a court of a State is rendered inoperative by s 109 of the *Constitution* because it is inconsistent with s 39 of the *Judiciary Act 1903* (Cth).
* *Work Health and Safety Authority v Outback Ballooning Pty Ltd* High Court number D4 of 2018 This case was heard in August 2018. The Court has reserved its decision. The case concerned the tragic death of a hot air balloon passenger. The NT authority alleged that the respondent had breached s 32 of the *Work Health and Safety (National Uniform Legislation) Act 2011* (NT). Tasmania is a partipating State in the National scheme of Work Health and Safety legislation. The respondent claims that the NT Act was invalid on the basis that the *Air Navigation Act 1920* (Cth), *Civil Aviation Act 1988* (Cth) and other Commonwealth regulations covered the field of safety of air navigation.

During the relevant period the matter of *Preston and Ors v State of Tasmania*, involving a challenge to the *Reproductive Health (Access to Terminations) Act 2013* (Tas), under the implied freedom of political communication in the Commonwealth *Constitution*, was removed to the High Court. It will be heard in October 2018.

# Other Litigation

During the relevant period, practitioners from my office appeared in a number of cases in the Supreme Court which have been reported,[[22]](#footnote-23) including,

* [*L v Commissioner, Criminal Injuries Compensation Commission* [2018] TASSC 32 (29 June 2018)](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/tas/TASSC/2018/32.html?context=1;query=Solicitor-General;mask_path=au/cases/tas/TASSC)
* *Copper Mines of Tasmania Pty Ltd v Cooper* [2018] TASSC 25 (25 May 2018)
* *Jordan v Criminal Injuries Compensation Commission* [2018] TASSC 10 (2 March 2018)
* *Sher v Smart* [2018] TASSC 2 (18 January 2018)
* *Integratedliving Australia Ltd v Hodgetts* [2017] TASSC 78 (21 December 2017)
* *Brooks v Easther* [2017] TASFC 12 (15 November 2017) (Full Court Appeal)
* *Brooks v Easther (No 4*) [2017] TASSC 59 (4 October 2017)
* *Brooks v Easther (No 3)* [2017] TASSC 54 (11 September 2017)
* *Brooks v Easther (No 2)* [2017] TASSC 47 (21 August 2017)
* *Brooks v Easther* [2017] TASSC 44 (13 July 2017).

By way of explanation, the case of *Brooks v Easther* related to the Board of Inquiry into the Glenorchy City Council. I also note that in the case of *Jordan v Criminal Injuries Compensation Commission*, Justice Brett noted the “*helpful submission of the Attorney-General*” that had been prepared by Toby MacGregor.

Practitioners from my office regularly appear in a range of matters in the Federal Court and State courts and tribunals.

# Hague Convention

During the reporting period, this office continued to act on behalf of the State Central Authority in Tasmania (being the Secretary, Department of Health and Human Services) under the *Hague Convention on the Civil Aspects of International Child Abduction*. However, during the relevant period, no requests to act were received.

# Special Committee of Solicitors-General

The Special Committee of Solicitors-General (SCSG) which is comprised of the Solicitors-General of the Commonwealth and of every State and Territory (and by invitation, the Solicitor-General of New Zealand) met on three occasions during the relevant period; in Darwin, in July 2017, Wellington, in November 2017 and in Hobart in March 2018.

The SCSG is a subcommittee of the Standing Committee on Law and Justice (or “SCLJ”, formerly the Standing Committee of Attorneys-General) and is periodically requested by SCLJ to provide joint advice to it in relation to various matters usually involving more or less contentious *Constitutional* issues.

The SCSG also routinely reviews and discusses the implications of any recent decisions involving the Commonwealth *Constitution* or its interpretation together with all pending and reserved cases in Australia in which a constitutional issue has arisen or is thought to be likely to arise.

The meetings of the SCSG also provide a valuable opportunity for the exchange of information and views regarding proposals for law reform and legislative amendment which may have come from other jurisdictions.

# The Whole of Government CLE program

The CLE program has continued to show strong results during the reporting period.

Seminars run during the reporting period are set out in the following table.

|  |  |
| --- | --- |
| **Date** | **Seminar Topic** |
| 31 August 2017 | Preparing Legislation for Government |
| 18 September 2017 | Delegations of statutory functions and powers and authority to contract |
| 23 October 2017 | Re-run Contracts 101 |
| 27 November 2017 | Judicial review – making strong decisions |
| 20 February 2018 | Re-run Crown Law 101 |
| 19 March 2018 | Who are you contracting with? |
| 23 May 2018 | Re-run Who are you contracting with? |

In addtion to these seminars, presenters have run sessions for agencies on an ‘as requested’ basis. The following is a table of those sessions.

|  |  |
| --- | --- |
| **Date** | **Seminar name** |
| July 2017 | Tailored section 69 of the *Criminal Code* (Tas) |
| 6 March 2018 | Tailored delegations workshop |
| 26 April 2018 | Tailored Treasurer’s Instructions session |
| 30 April 2018 | Tailored Treasurer’s Instructions session |

My office has also run the following ‘in house’ seminars for its practitioners and the Office of the Crown Solicitor (where appropriate).

|  |  |
| --- | --- |
| **Date** | **Seminar name** |
| 31 July 2017 | The Power of the Supreme Court to Suppress the Publication of Evidence |
| 30 October 2017 | Authority to Contract |
| 29 January 2018 | Caretaker Convention |
| 26 February 2018 | Constitutional Foundations of Tasmania |
| 30 April 2018 | Documentary Evidence |
| 30 April 2018 | High Court decision of the *Gaynor v Burns* case |
| 28 May 2018 | IP Legal Refresher |
| 25 June 2018 | The Great Disclaimer Debate |

There continues to be considerable interest at all levels of the State Service in the matters presented. The program has been focussed, as it should be, on those matters which are of significant interest to government, rather than the wider profession.

The program is overseen by a Steering Committee, made up of Alan Morgan (Crown Solicitor), Chelsea Trubody-Jager (Director, Secretariat & Legal Services, DSG), Rowanne Brown (Legal Policy Officer, DHHS), Heather Clayton (Legal Practitioner, Crown Solicitor’s Office) and me. I thank my colleagues on the Committee for their work and contribution to this important program.

Heather Clayton also acts as the program’s administrator. Heather is to be congratulated for the continued high quality of the program.

I also thank the Training Consortium for its considerable assistance in the presentation of the program.

We also have a reference group made up of senior representatives from Agencies, who assist the Steering Committee in identifying relevant topics to be delivered. I thank them for their participation.

# Other activities

I remain a member of the Board of Legal Education. I am presently a member of the Steering Committee into the review of the *Electoral Act 2004*. I continue to maintain contact with the Faculty of Law.

**The development of the Crown’s Legal Services**

As with previous reports I note the Crown’s position as a moral exemplar and its duty to obey the law. This is, of course, fundamental to the rule of law. The strategic challenges for my office are not new. Some were present when I was appointed, some have developed since then but all of them have persisted since the amalgamation of the Litigation section with Advisings. All are resourced based. They may be summarised (in no particular order) as follows.[[23]](#footnote-24)

* A public perception that the legal functions of the Crown are concentrated in ‘law and order’ issues such as the prosecution of criminals, with a resulting loss of visibility of the vital necessity for legal resources connected with legal compliance, risk management, civil liability issues, complex transactional and constitutional issues.
* A lack of understanding that the State is significantly exposed to judicial review of administrative decision making.
* A lack of resources to enable the State to fully participate in the federation, take an active interest in constitutional matters and jealously guard its sovereign powers from encroachment.
* A decentralisation of significant legal resources in the State Service.
* A lack of an overall strategic direction and appropriate funding for the elements making up Crown Law (by which I include this office and the Office of the Crown Solicitor).
* The need to engage private legal firms, at significant cost to the State, in significant matters in which the State lacks legal resources.

Legal practitioners in Crown Law are probably not considered to be in the ‘front line’ of government services. Yet that is exactly what they are. Like every other front line aspect of government they should be well resourced, fostered and developed to their fullest potential.

As always, I look forward to a constructive discussion and action to address these matters.

# Vale Terry Foulds

Before closing, and although it does not relate to the reporting period, I record the sad loss of the Hon. Justice Harold Terrance Foulds, a Judge of the Supreme Court of Papua New Guinea and former Crown Counsel for the State. Terry passed away on 16 September 2018.

# Acknowledgments

I record my thanks to the Crown Solicitor, Mr Alan Morgan and the Director of Public Prosecutions, Mr Daryl Coates SC, and also to their staff for their comradery, support and guidance.

I also thank the Assistant Solicitor-General (Advisings), Sarah Kay and the Assistant Solicitor-General (Litigation), Paul Turner, for their considerable assistance and support during the past year. Both continue to provide invaluable service to the State.

Dated: 27th September 2018

**Michael O’Farrell SC**

Solicitor-General of Tasmania

**Schedule 1**

**SCHEDULE OF ADVISINGS**

|  |  |  |
| --- | --- | --- |
|  | **2016-17** | **2017-18** |
| Department of State Growth | 48 | 42 |
| Department of Education | 44 | 47 |
| Department of Health and Human Services | 61 | 58 |
| Department of Justice | 210 | 194 |
| Department of Police and Emergency Management | 7 | 5 |
| Department of Premier and Cabinet | 80 | 130 |
| Department of Primary Industries, Parks, Water and the Environment | 95 | 76 |
| Department of Treasury and Finance | 17 | 22 |
| Tasmanian Audit Office | 2 | 3 |
| Retirement Benefits Fund Board | 4 | 1 |
| The Public Trustee | 1 | 3 |
| Other bodies and offices | 39 | 49 |
| **TOTAL ADVISINGS** | **608** | **630** |
|  |  |  |
| **Section 78B Notices** | **150** | **131** |

**Schedule 2**

**CIVIL FILES OPENED AND CLOSED AS AT 30 JUNE 2018**

|  |  |  |
| --- | --- | --- |
| **Work type** | **Opened** | **Closed** |
| Administrative appeals – Magistrates Court | 24 | 40 |
| Administrative appeals – Supreme Court | 9 | 7 |
| Anti-discrimination | 7 | 11 |
| Charity | 2 | 8 |
| Contract | 7 | 6 |
| Coronial | 12 | 7 |
| Debt recovery | 36 | 38 |
| Employment – workers compensation | 274 | 753 |
| Heritage | 3 | 5 |
| Industrial dispute | 12 | 8 |
| Judicial Review | 12 | 8 |
| Miscellaneous | 47 | 83 |
| Miscellaneous advice | 6 | 10 |
| Negligence – medical | 22 | 89 |
| Negligence – other | 9 | 10 |
| Negligence – motor vehicle | 4 | 8 |
| Negligence – occupier | 2 | 0 |
| Negligence – school | 4 | 4 |
| Planning | 5 | 23 |
| Subpoena | 4 | 4 |
| Tenancy | 8 | 14 |
| **Total** | **509** | **1136** |

**Schedule 3**

**SOLICITORS-GENERAL OF**

**VAN DIEMEN’S LAND and TASMANIA**

|  |  |  |
| --- | --- | --- |
| 9 May1825 | 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 |  | Michael Ernest O’Farrell SC |

1. Except for proceedings under the *Crime (Confiscation of Profits) Act* *1993*. [↑](#footnote-ref-2)
2. i.e., an office filled by an elected member of the Parliament. [↑](#footnote-ref-3)
3. In the United Kingdom the Attorney-General has rarely, and the Solicitor-General has never, been a member of the Cabinet; the prevailing view being that membership of the Cabinet is inconsistent with the duty to act as truly independent legal advisors to the Cabinet and government departments [See generally, *The Law Officers of the Crown*, Edwards, Sweet & Maxwell, 1964, Chapter 9]. [↑](#footnote-ref-4)
4. Keane P A in the Foreword to *Public Sentinels: A comparative study of Australian Solicitors-General*, Appleby, G, Keyzer, P and Williams, J M (Eds) Ashgate, 2014, page xi. [↑](#footnote-ref-5)
5. Proclamation under the *Crown* *Proceedings Amendment Act 2016* SR 70 of 2017. [↑](#footnote-ref-6)
6. See Schedule 1. [↑](#footnote-ref-7)
7. In the previous period from 1 July 2016 to 30 June 2017, the number of files opened was 449. [↑](#footnote-ref-8)
8. In the previous period from 1 July 2016 to 30 June 2017, the number of files closed was 294. [↑](#footnote-ref-9)
9. (2015) 257 CLR 178. [↑](#footnote-ref-10)
10. 6:1 (although Gordon J would have upheld most provisions of the Act, except for s 8(1)(b). [↑](#footnote-ref-11)
11. Under s 11. [↑](#footnote-ref-12)
12. Under s 13. [↑](#footnote-ref-13)
13. Keifel CJ, Bell and Keane JJ, [101]; see also Gageler at [212]; Nettle J at [272] & ff; Gordon J at [413]. [↑](#footnote-ref-14)
14. The four day exclusion. [↑](#footnote-ref-15)
15. Directions to a group of protesters. [↑](#footnote-ref-16)
16. *Brown*, [135], [136]. [↑](#footnote-ref-17)
17. Sections 6(1), (2) and (3), 11(1) and (2), 13 and Part 4. [↑](#footnote-ref-18)
18. *Brown,* [220]-[223]. [↑](#footnote-ref-19)
19. *Brown,* [224] to [227.] [↑](#footnote-ref-20)
20. *Brown,* [229]-[231]. [↑](#footnote-ref-21)
21. *Brown,* [231]. [↑](#footnote-ref-22)
22. A total of 6 out of 67. [↑](#footnote-ref-23)
23. They are set out in more narrative and comprehensive form in last year’s report. [↑](#footnote-ref-24)