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Your Ref: D18/38615

Ms Rebecca Main Committee Clerk Legislative Council Portfolio Committee No 4 – Legal Affairs Parliament House Macquarie Street SYDNEY NSW 2000

Dear Ms Main

Portfolio Committee No 4 – Legal Affairs: Inquiry into Budget Estimates 2018-2019

Thank you for your letter dated 31 October 2018 in which you advise that the Committee had resolved that I provide, within seven days, the Solicitor General's advice referred to in the Acting Crown Solicitor's advice of 24 October 2018 in paragraph 4.4.

I am instructed that, at paragraph 4.4 of his advice, the Acting Crown Solicitor was primarily referring to an observation made by the Solicitor General in an opinion provided earlier this year (SG2018/23).

Please find enclosed a redacted copy of that opinion. The redactions are intended to preserve the confidentiality of those parts of the opinion which do not address the matter referred to at paragraph 4.4 of the Acting Crown Solicitor's advice. The Solicitor General's opinion was primarily directed to these other matters. (The former Crown Solicitor's advice, on which the Solicitor General commented in his opinion, was wholly directed to those other matters.)

I am instructed that, in paragraph 4.4 of his advice, the Acting Crown Solicitor was also referring to a later observation, made orally, by the Solicitor General in another matter. In order to assist the Committee, I refer to pages 1-2 of the advice of the Acting Crown Solicitor of 29 October 2018. I also refer to paragraphs 3.21-3.22 of the advice of the former Crown Solicitor (201802302 Advice 2) of 12 September 2018 which, as the Committee is aware, was included by the Auditor-General in her *Report on State Finances* of 19 October 2018.

Yours sincerely

Andrew Cappie-Wood

Secretary

7 NOV 2018



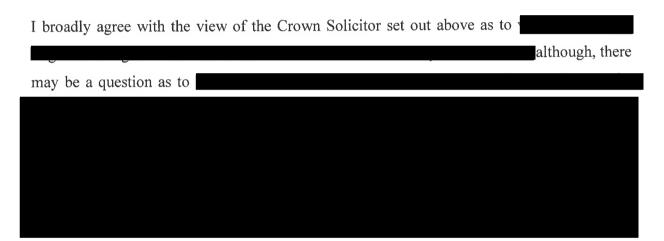
QUESTION OF POWERS OF LEGISLATIVE COUNCIL COMMITTEES TO CALL FOR PRODUCTION OF DOCUMENTS FROM WITNESSES

I have been asked by the Crown Solicitor, who acts for					
to comment on an advice, dated 2018, by the					
Crown Solicitor					
I have annexed the advice of the Crown Solicitor to this advice for ease of reference.					
Background					
Advice of the Crown Solicitor					
In her advice of 2018 the Crown Solicitor was not considering the substantive					

question of the power of a parliamentary Committee to call for a document in the way

described but rather t	he question		

Comments on the advice of the Crown Solicitor



I should add, however, that it is more likely than not, in my view, that, if this question of the powers of a parliamentary Committee were to be the subject of a decision of a court, a finding would be made that a Committee of the NSW parliament has the power to call for a witness to attend and give evidence, including by the production of a document, subject to claims of privilege, such as public interest immunity and legal professional privilege, that might be made by the witness. There may be some argument as to whether such a power resides in the Parliamentary Evidence Act, Standing Order 208(c) of the Legislative Council or a power based on reasonable necessity but, if the power does exist, it would be likely to emerge in any court proceedings on the basis that such proceedings would be difficult to confine to the limited question of the construction of the Parliamentary Evidence Act.

Please do not hesitate to contact me in relation to any of the matters raised in this advice.

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MG Sexton SC

2018

Crown Solicitor (Ms Lea Armstrong)