

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

Your Ref: D18/38615

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



NEW SOUTH WALES

SOLICITOR GENERAL

SG 2018/23

**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 [REDACTED]
[REDACTED] to comment on an advice, dated [REDACTED] 2018, by the
Crown Solicitor [REDACTED]

I have annexed the advice of the Crown Solicitor to this advice for ease of reference.

Background

[REDACTED]

Advice of the Crown Solicitor

In her advice of [REDACTED] 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 the question [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Comments on the advice of the Crown Solicitor

I broadly agree with the view of the Crown Solicitor set out above as to [REDACTED]

[REDACTED] although, there

may be a question as to [REDACTED]

[REDACTED]

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.

A handwritten signature in blue ink, appearing to read 'MG Sexton'.

MG Sexton SC

 2018

A large black rectangular redaction box covering several lines of text.A black rectangular redaction box covering a line of text.

Crown Solicitor (Ms Lea Armstrong)