



CROWN LAW ANNUAL REPORT

2020-21

This report, including all enclosures, has been prepared for the exclusive use and distribution by Crown Law Queensland. Unless express written consent is provided, no part of this report should be reproduced, distributed or communicated to any third party.



**Queensland
Government**

2020-21

AT A GLANCE



105% productivity



168, 425 hours spent on legal matters



4.73 out of 5 client satisfaction rating



2,817 new legal matters created

TABLE OF CONTENTS

04	Crown Solicitor's message	32	Education and training
05	About us	34	Crown Law through COVID-19
06	Our organisation	36	Crown Law Library
10	Branches and teams	36	Crown Law Choir
18	Our clients	37	Business Improvement and Transformation
19	Fee structure	38	Performance and accountability
20	Significant matters		
30	Our people		

CROWN SOLICITOR'S MESSAGE



It is remarkable what we have achieved as a practice in the 2020-21 financial year, despite COVID-19 continuing to impact the way we work and live. The uncertainty that we continued to face throughout 2020-21 as a result of the pandemic has shown the strength of our practice, our flexibility and our resilience. Delivery of professional legal services to our clients has continued seamlessly.

I am extremely proud of the continued commitment Crown Law staff have shown and most importantly, the way we have worked together to provide solutions and accessible services to our clients. The virus is undoubtedly the most extraordinary thing I have ever seen in my working life.

Crown Law again took on a variety of complex and significant legal matters during the 2020-21 financial year which included assisting the Queensland Government's strong response to COVID-19 through the provision of critical and often urgent legal advice on a range of pandemic related issues. These have ranged broadly from providing legal advice to key agencies on legislative powers, on provisions of the *COVID-19 Emergency Response Act 2020*, breaches of human rights complaints with regard to hotel quarantining and litigation about challenges to border closures.

Other key highlights from the 2020/21 financial year include:

- achieving a client satisfaction rating of 4.73 out of 5
- exceeding the Law Council of Australia's equitable briefing target of female barristers receiving 30% of the value of briefs. Crown Law achieved more than 40% during the 2020-21 financial year.
- handling a significant increase in both dangerous prisoner orders and Mental Health Review Tribunal hearings (17% increase from the previous 12 months before the first COVID-19 lockdown in March 2020).
- continuing to implement significant process and system improvements as we continue to move towards a paper light office.

Crown Law continued our commitment to the provision of legal education to clients by finding alternative ways to deliver training that were compliant with social distancing and travel restrictions. We presented 34 training workshops in 2020-21 by offering virtual attendance at training sessions. We also delivered our 2020 annual legal conference online.

Finally, I would like to acknowledge and thank our clients. Your support, trust and input are vital components to our business. Crown Law considers itself an integral part of your teams and we look forward to working with you into the future.

Greg Cooper
Crown Solicitor

ABOUT US

Crown Law operates as a self-funded business unit of the Department of Justice and Attorney-General, providing advice and legal representation in all areas of law affecting the public sector and State of Queensland. Crown Law works exclusively for the Queensland State Government, meaning all resources and skills are focused on the government's priorities and legal needs.

Our extensive pool of experienced lawyers aim to provide the highest standard of legal services that protect and support the government in the public interest. With a total workforce of 240, including 160 lawyers, Crown Law offers a broad range of legal services to all Queensland State Government entities.

While Crown Law is the government's own legal unit, departments and agencies are not obliged to use our services for certain areas of law. Law firms in the private sector can also provide services to the Queensland Government, which means Crown Law competes for this business.

Our services

Crown Law's core expertise spans 19 major areas of law, with a host of speciality areas also offered to clients. Our primary areas of law are:

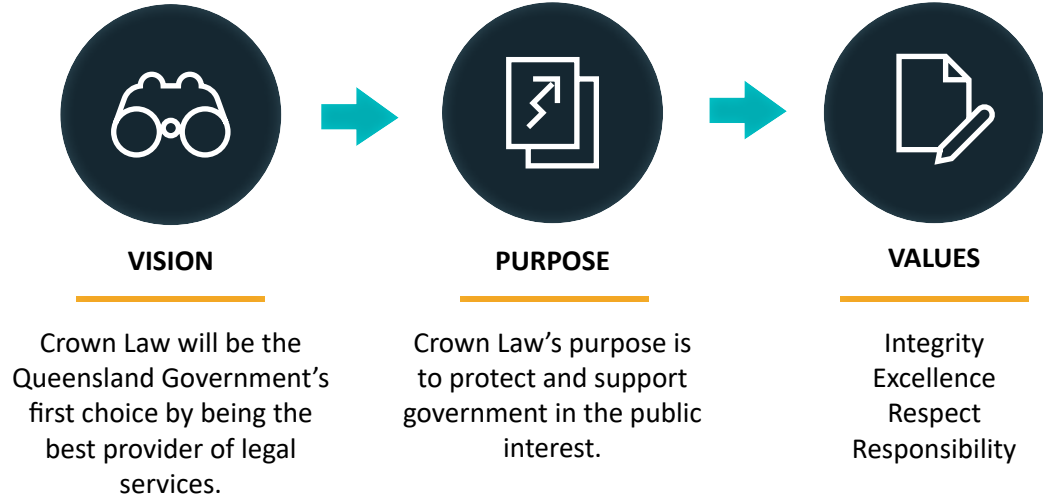
- | | | |
|----------------------------|--|----------------------------|
| ▪ administrative law | ▪ dispute resolution | ▪ intellectual property |
| ▪ advocacy | ▪ employment law | ▪ native title |
| ▪ anti-discrimination | ▪ health law | ▪ planning and environment |
| ▪ commissions of inquiry | ▪ human rights | ▪ property law |
| ▪ constitutional law | ▪ information and communication technology | ▪ prosecutions |
| ▪ corporate and commercial | ▪ insurance and risk | ▪ WorkCover |
| ▪ debt recovery | | |

Our broader role includes providing legal education training through workshops, information sessions, legal briefings and an annual legal conference.

OUR ORGANISATION

Vision, purpose and values

Crown Law's vision, purpose and core values provide the foundation for a dynamic, refocussed and more efficient government legal practice.



Our values reinforce Crown Law's commitment to providing exceptional client service and maintaining a professional internal culture. We value our reputation for integrity and place an emphasis on providing the highest standards of fairness, honesty and openness for our clients.

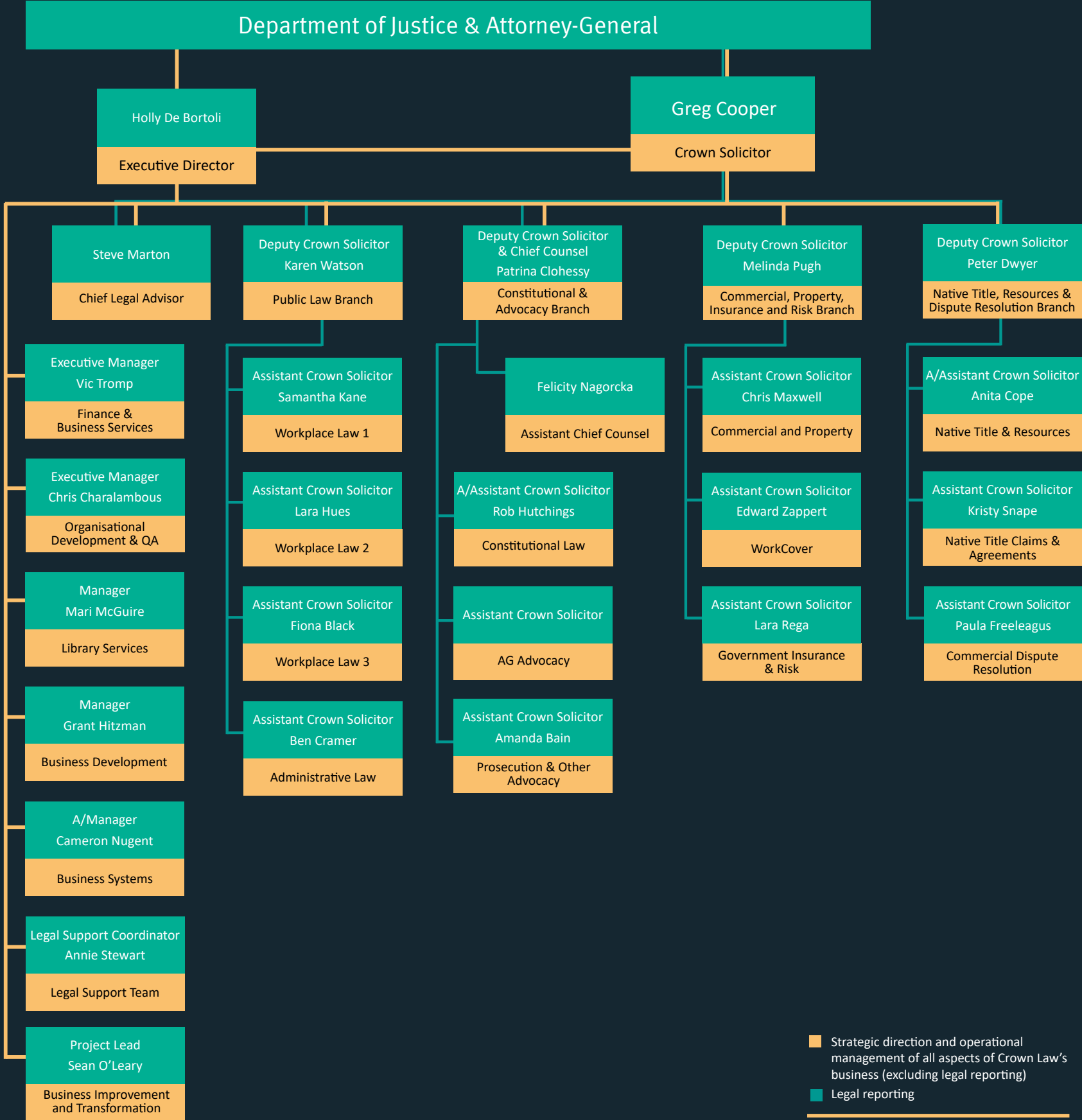
Organisational structure

Crown Law is led by the Crown Solicitor, the most senior officer in the practice. Acting as the solicitor for the State, the Crown Solicitor is responsible for providing legal advice to senior departmental officers as well as the Premier, Attorney-General, Ministers and Directors-General.

The Executive Director reports directly to the Crown Solicitor and is accountable for business operations, performance and the strategic direction of the practice.

Crown Law's four legal branches are led by Deputy Crown Solicitors. The legal teams within each branch are managed by an Assistant Crown Solicitor who is responsible for the supervision of legal matters and the lawyers in their team. Assistant Crown Solicitors receive expert legal support from Special Counsel, who manage more complex matters. All lawyers in Crown Law are supported by the Practice Management Branch, comprising of seven teams, each led by a manager.

Crown Law Organisational Structure Chart



■ Strategic direction and operational management of all aspects of Crown Law's business (excluding legal reporting)
■ Legal reporting

Our leadership team

The Strategic Leadership Team is comprised of six experienced senior Crown Law executives who provide direct leadership to the practice.

These members include the Crown Solicitor, the Executive Director and four Deputy Crown Solicitors including the Deputy Crown Solicitor and Chief Counsel.

The Strategic Leadership Team are primarily responsible for developing and executing business strategies within Crown Law and ensuring that the practice continues to provide all government clients with exemplary legal services.



GREG COOPER

Crown Solicitor

Greg was appointed Queensland's 22nd Crown Solicitor on 1 November 2008.

Over his four decades in the Queensland Public Sector, Greg has accumulated a wealth of experience practising in public law, common law and constitutional law. Prior to his current appointment, Greg spent four years as Deputy Crown Solicitor of Crown Law's Litigation Branch. He has also held positions in the former Solicitor-General's Office and as Legal Counsel to the Parliamentary Committee on Subordinate Legislation

and deputised for the Solicitor-General at national meetings of the Standing Committee of Solicitors-General.

In his role as Crown Solicitor, Greg acts as the solicitor on the record for the State and provides independent legal advice to the Cabinet, the Premier, the Attorney-General, Ministers, Directors-General and departmental officers on matters of significance to the government. Greg is also responsible for resolving conflicts of interest in any legal matter being handled by Crown Law and for setting the professional and ethical standards of the Crown Law office.



HOLLY DE BORTOLI

Executive Director

Since joining the Queensland Government in 1999, Holly has held a variety of positions within Queensland public service agencies including Queensland Shared Services, Queensland Health and the Department of Justice and Attorney-General. Prior to this, she worked for 13 years within the private sector, in both Chartered Accounting and Commercial industry roles.

Holly joined Crown Law in February 2008 as Manager of Finance and Business Services.

This experience has provided Holly with a broad range of skills including leadership, project and operational management skills and vast experience in leading and implementing change within the work environment.

Holly is a Certified Practising Accountant and a Fellow to CPA Australia.



MELINDA PUGH

Deputy Crown Solicitor

Melinda was appointed Deputy Crown Solicitor of the Commercial, Property, Insurance and Risk Branch in July 2017.

Melinda's key expertise is her strategic advice and guidance on matters related to government business, particularly where they involve complex regulatory, competition or statutory interpretation issues.

Prior to joining Crown Law, Melinda gained a solid reputation in health law during her 10 years with Queensland Health.

In her current role, Melinda is responsible for three teams specialising in all aspects of government commercial law, property, planning and environment law, WorkCover claims, as well as personal injury claims against the State, including civil litigation.



KAREN WATSON

Deputy Crown Solicitor

Karen was appointed Deputy Crown Solicitor of the Public Law Branch in 2010.

As a long serving employee of Crown Law, Karen has an unsurpassed knowledge of Queensland Government public law, employment and discrimination law, management of disciplinary matters, and statutory interpretation.

Karen's experience in workplace and employment law began in 1998 when she became team leader of workplace law.

In her current role, Karen is responsible for teams in workplace and administrative law and provides advice on sensitive and significant workplace law matters to the highest levels of government.



PETER DWYER

Deputy Crown Solicitor

Peter was appointed Deputy Crown Solicitor in early 2010 and leads the Native Title, Resources and Dispute Resolution Branch.

Peter has expertise across a range of legal practice areas including commercial and contract law, corporate governance, dispute resolution, native title and resources law, employment law and intellectual property.

Prior to joining Crown Law, Peter held a senior legal position at Queensland Health and practised commercial and property law in the private sector. He also held an in-house corporate role overseas.

In his current role, Peter provides strategic and solutions-focused advice to client agencies on complex and sensitive matters.



PATRINA CLOHESSY

Deputy Crown Solicitor and Chief Counsel

Patrina was appointed Deputy Crown Solicitor and Chief Counsel of the Constitutional and Advocacy Branch in March 2019.

Patrina is a barrister of the Supreme Court of Queensland who has practised for over 22 years, primarily in the areas of criminal law, mental health law, dangerous prisoners litigation and the conduct of public inquiries.

Prior to joining Crown Law in October 2015, Patrina gained considerable criminal advocacy experience over a period of 18 years with the Office of the Director of Public Prosecutions, reaching the rank of Senior Crown Prosecutor.

In her current role, Patrina leads an experienced legal branch comprising of barristers and solicitors who provide specialist advice and advocacy services on behalf of the State of Queensland.



BRANCHES AND TEAMS

Public Law Branch

Administrative Law

Specialising in the operation and application of public sector administrative law, Crown Law's Administrative Law Team has unique expertise in advising and representing the State in matters under the *Judicial Review Act 1991*, the *Right to Information Act 2009* and the *Information Privacy Act 2009*.

The Administrative Law Team provides a range of services including:

- advice and representation in matters involving the *Judicial Review Act 1991*
- statutory decision-making and assistance with statements of reasons
- advice and representation in matters involving the *Right to Information Act 2009* and the *Information Privacy Act 2009*
- representation in administrative law appeals including in the Queensland Civil and Administrative Tribunal.

Workplace Law

Working closely with other specialists across Crown Law, the Workplace Law Team provides advice and legal services in workplace relations and employment law, including practice areas which are unique to government. Their legal services include:

- advising government agencies on their statutory powers and functions, including under the *Public Service Act 2008*, such as discipline and ill health retirement
- preparing correspondence for and on behalf of decision makers in ill health retirement and discipline processes
- advising agencies on policies, governance and risk management in relation to employment
- acting and advising on industrial relations, including the obligations under the *Industrial Relations Act 2016* and the *Fair Work Act 2009*, protected industrial action, bargaining and arbitrations in relation to certified agreements
- acting for and advising government agency employers in WorkCover appeals, applications for review and responses concerning injured employees
- acting for and advising in relation to complaints of unlawful discrimination at State and Federal level, sexual harassment, victimisation and public interest disclosures
- advising and assisting agencies in relation to the preparation of appeals against discipline decisions under the *Public Service Act 2008* and other public service appeals
- advising and representing government clients in work health and safety matters
- advising and representing the State in unfair dismissal, adverse action, industrial disputes, promotion appeals and other proceedings under the *Industrial Relations Act 2016*
- drafting and advising on all aspects of employment contracts for senior staff, including appointments, discipline and termination, dispute settlement and representation.

Constitutional and Advocacy Branch

The Constitutional and Advocacy Branch provide specialist advice and representation in all aspects of constitutional law and advocacy services on behalf of the State of Queensland. This includes; constitutional advice and litigation; supporting the practice of the Solicitor-General; human rights advice and litigation; conducting dangerous prisoner applications on behalf of the Attorney-General; representing the Attorney-General in mental health proceedings; and the conduct of statutory criminal prosecutions and public inquiries.

Constitutional Law

With significant experience advising clients on complex topics in relation to constitutional law and statutory interpretation, Crown Law's Constitutional Law Team provides a range of legal services and advice which include:

- advising the Attorney-General on the conduct of and intervention in constitutional litigation
- advising the Attorney-General on the conduct of and intervention in litigation raising issues pursuant to the *Human Rights Act 2019*
- providing support to the Solicitor-General when representing the State government in litigation
- advising the State on complex constitutional law issues
- advising on the validity and effectiveness of draft legislation, if enacted
- advising on issues involving Cabinet and Parliament
- advising the Attorney-General in relation to the first law officer's functions and powers including pardons, indemnities, contempt of court and matters involving judicial officers
- advising on complex questions of statutory interpretation.

Attorney-General Advocacy

The Attorney-General Advocacy Team is made up of court-going advocates, barristers and solicitors. The team provides advice and representation to the Attorney-General:

- on proceedings under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (DPSOA)
- on proceedings under the *Mental Health Act 2016* including proceedings in the Mental Health Court and Mental Health Review Tribunal
- on cy-pres charitable trusts applications in the Supreme Court
- matters where the Attorney-General elects to appear as amicus curiae
- on her role as the First Law Officer, including:
 - ministerial correspondence concerning DPSOA and mental health matters
 - parens patriae jurisdiction.



Prosecutions and Other Advocacy Team

An integral responsibility of many government agencies is the enforcement of regulations and legislation to protect the public from criminal behaviour and incompetent and improper conduct by individuals, members of professions and by commercial organisations.

The lawyers in the Prosecutions and Other Advocacy Team have extensive experience acting as counsel assisting coronial inquiries and in commissions of inquiry, as well as conducting prosecutions on behalf of regulatory and disciplinary agencies. Crown Law provides the services of skilled counsel for advice, representation and in-house services, placing Crown Law in a unique position to meet the specialist advocacy needs of government agencies in relation to:

- royal commissions and commissions of inquiry
- Crime and Corruption Commission hearings
- coronial investigations and inquests
- statutory prosecutions in relation to:
 - work health and safety matters relevant to mining, gas, petroleum and explosives
 - maritime safety prosecutions and enforcements
 - workers compensation fraud
 - local government and planning
 - public health, drugs and poisons
 - food safety standards
 - education and care services national law
 - public housing and residential services
 - fair trading and consumer protection
 - contempt proceedings
- Queensland Civil and Administrative Tribunal general administrative reviews
- disciplinary tribunals and appeals
- appeals in the District Court pursuant to s 222 of the *Justices Act 1886*.

Commercial, Property, Insurance and Risk Branch

The Commercial, Property, Insurance and Risk Branch consists of three teams specialising in all aspects of government commercial law, property, planning and environment law, WorkCover claims and personal injury claims against the State, including civil litigation.

Commercial and Property

The Commercial and Property Team provides a broad range of practical and concise advice on, and specialist drafting for:

- commercial contracts for State agencies and State-controlled entities
- contract administration and governance
- government funding contracts
- tender and procurement processes, consultancy contracts and standing offer arrangements
- probity issues
- structuring, regulatory and governance issues for government agencies
- competition and consumer law issues
- intergovernmental agreements
- taxation
- public sector finance
- information privacy
- intellectual property
- charities and trusts.

The team also advises and acts for agencies in all real property transactions and includes a planning and environment practice, which provides advice to clients on requirements under State and Commonwealth legislation, represents government agencies in various courts and advises on a wide range of planning and environmental issues.

WorkCover

Crown Law's WorkCover Team advises and acts for WorkCover Queensland, State government departments and other public sector entities in the management of common law workers' compensation claims.

These include claims on behalf of emergency services personnel such as police, corrective services, ambulance and fire officers, who may have sustained an injury during the course of their work, as well as claims arising from incidents at building sites, in national parks and at schools.

Lawyers in this team also specialise in managing psychiatric injury claims arising from bullying and harassment, trauma, excessive workloads and asbestos exposure.

They advise on the involvement of third parties, such as comprehensive third-party insurers, matters of liability, quantum and evidence, and liaise with client agencies on the conduct of matters and resolution of claims.

Work the team regularly undertakes includes:

- identification and evaluation of risk management in personal injuries litigation
- conducting and preparing for complex trials in all jurisdictions
- dispute resolution including mediations, conducting conferences and negotiating settlements
- conducting complex civil proceedings.

Lawyers from our WorkCover Team have represented the State in the District, Supreme and High Courts in some of Queensland's largest and most complex WorkCover litigation cases.

Government Insurance and Risk

Crown Law's personal injury civil litigation outside WorkCover matters is managed in the Government Insurance and Risk Team.

In addition to complex and often contentious personal injury matters, the team provide legal services in dispute resolution, risk management and public liability. Core work for the Government Insurance and Risk Team includes:

- managing all child abuse litigation brought against the State
- conducting complex civil proceedings including personal injury, medical negligence and stress claims
- providing high level complex legal advice on a wide range of personal injury matters
- dispute resolution including negotiating settlements, conducting mediations, directions hearings and settlement conferences
- conducting and preparing for complex trials in all jurisdictions
- identification and evaluation of risk management in personal injuries litigation
- conducting insurance and public liability litigation
- appearing as an advocate at applications, callovers, taxations and directions hearings.

Legislation key to their daily work includes the *Personal Injuries Proceedings Act 2002* and the *Civil Liabilities Act 2003*.

The team also includes specialist lawyers working on historical child sexual abuse claims.

Native Title, Resources and Dispute Resolution Branch

The Native Title, Resources and Dispute Resolution Branch specialises in native title, resources law and Aboriginal and Torres Strait Islander cultural heritage and in the conduct, and resolution, of a broad range of litigation on behalf of the State including commercial and contractual disputes, debt recovery, negligence and nuisance claims and claims for false imprisonment.

Native Title

Our native title practice comprises two teams – Native Title Claims and Agreements and Native Title and Resources.

Crown Law has been the State's foremost legal advisor on native title and cultural heritage since the historic Mabo decision in 1992.

Specifically, lawyers across our two native title teams specialise in:

- the conduct of native title determination applications filed in the Federal Court
- negotiating and drafting indigenous land use agreements
- proceedings in the Federal Court for review of registration test decisions
- the right to negotiate and other proceedings in the National Native Title Tribunal
- the conduct of applications for compensation filed in the Federal Court
- advising on the compensation liability of government with respect to native title and calculating quantum
- advising on the extinguishment of native title and the 'future act' regime under the *Native Title Act*
- *1993 (Cth)* advising on:
 - native title issues relating to proposed legislation
 - native title and Aboriginal and Torres Strait Islander cultural heritage issues relevant to projects across the State
 - the interaction between native title and other interests, such as Aboriginal and Torres Strait Islander land, the protected area estate and resources tenure
 - mining and petroleum legislation, including as it relates to native title, environmental regulation and land access.

Legislation key to the daily work of both teams includes the *Native Title Act 1993 (Cth)*, *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003*.

Commercial Dispute Resolution Team

The Commercial Dispute Resolution Team advises and represents the State in all jurisdictions. The team principally acts for clients in Supreme and District Court proceedings as well as advises and represents clients in the Magistrates Court, Queensland Civil and Administrative Tribunal and Federal Court proceedings. They also regularly advise on and respond to notices of non-party disclosure, subpoenas and summonses issued out of all jurisdictions.

Our lawyers specialise in all forms of alternate dispute resolution, having successfully negotiated the resolution of numerous disputes on behalf of client departments through mediation and participation in without prejudice conferences.

The team provides advice and representation on a range of legal matters including:

- commercial disputes
- construction disputes/sub-contractors charges
- real property disputes/fraud on title claims
- repossession
- debt recovery
- insolvency
- property damage claims
- injunctive relief
- trespass, property damage, nuisance and negligence claims (other than personal injuries)
- trade practices disputes/consumer law disputes
- defamation
- public officer superannuation recoveries
- revenue recovery and appeals
- false imprisonment and malicious prosecution claims.

Practice Management Branch

Led by the Executive Director, the Practice Management Branch (PMB) provides corporate and operational support to the practice to allow lawyers to focus on their core business. Efficiently streamlined into seven teams, PMB provides a myriad of unique corporate services to Crown Law.

Finance and Business Services

The Finance and Business Services Team is responsible for finance and asset management including coordination of client billing, expenses and disbursements, travel arrangements, accommodation, along with records management, archiving, retention and disposal, and copy room services to the practice.

Business Systems

Crown Law's dedicated IT support team is responsible for providing hardware and legal practice software services and support in coordination with the Department of Justice and Attorney-General's IT Services. Business Systems is also responsible for operating Crown Law's independent help desk service which provides software training, remote access support and an out of hours service.

Business Development

Business Development is responsible for maintaining the practice's online presence, communications, events, legal service tenders, publications and corporate design. To uphold high standard client services, Business Development is responsible for client relationship management through the Client Management Framework and feedback from client satisfaction surveys.

Organisational Development and Quality Assurance

Organisational Development provides human resource services to Crown Law in areas of recruitment and selection, learning and development, workplace health and safety, performance management and health and well-being. The team also manages staff feedback and quality assurance of business processes across the practice.

Library Services

The Crown Law Library maintains the library collection, the library intranet site and provides reference and research services and training.

Legal Support Team

The Legal Support Team coordinates all secretarial and administrative support within Crown Law.

Business Improvement and Transformation Team

This team implements continual process and system improvements, ensuring the office continues to operate in a paper light environment.

OUR CLIENTS

Client Service Charter

Crown Law's Client Service Charter is aligned with our vision, purpose and core values. The charter guides all staff in the provision of client service that is:

- accessible
- accurate
- timely and responsive
- solution focussed
- value for money
- commercially attuned.

Client Management Framework

Crown Law's Client Management Framework aims to improve consistency in client service and includes a formal reporting structure between the Client Relationship Managers within the practice and the Strategic Leadership Team. Regular reporting occurs between the Client Relationship Managers and the Strategic Leadership Team on the services delivered to their individual clients.

The roles and responsibilities within the framework create a pathway for implementing strategic business development activities based on shared and individual client needs and service expectations.

The Strategic Leadership Team is responsible for the overall management of the framework and setting the strategic direction for improving client service within the practice. Overall service quality is monitored and, where necessary, client service issues addressed.

Client Relationship Managers are usually at the Assistant Crown Solicitor level or higher and are allocated at least one key client. The Client Relationship Manager role is designed to be a single point of contact – on behalf of all of Crown Law – for that client. The key responsibility of a Client Relationship Manager is to ensure a consistently high level of client service.

Client Relationship Managers are expected to take a pro-active approach to managing client expectations on a day-to-day basis and matching service delivery to their needs.

FEE STRUCTURE

Fees

Crown Law provides legal services to Queensland Government departments and agencies, statutory bodies, government-owned corporations, commercialised business units, disciplinary boards and tribunals under a user-pays model. Legal services are categorised into 'tied' and 'untied' legal work. Legal matters that fall into the tied category are undertaken solely by Crown Law unless specifically exempted by the government to ensure the continuing protection of the Attorney-General's role as the first law officer and legal adviser to Cabinet. Untied work is open to competition from private legal firms.

Tied fees are reviewed annually, in accordance with Queensland Government's annual government indexation rate for fees and charges. Untied fees are reviewed annually in accordance with Crown Law's judgement of the market.

Tied and untied work

At the close of the 2020-21 financial year, approximately 11 per cent of Crown Law's revenue was derived from legal work in the 'untied' category, the same as the previous year. Areas of law which fall into the category of untied work are:

- statutory prosecutions
- coronial inquiries
- commercial litigation which includes but is not limited to:
 - insolvency
 - revenue appeals
 - contractual disputes
 - land title/real property claims
 - debt recovery
 - construction litigation
- planning and environment court litigation
- compulsory acquisition/compensation claims
- land valuation appeals
- personal injury matters excluding Queensland Government Insurance Fund (QGIF) managed claims.

Legal work in the tied category includes:

- QGIF-managed claims
- workplace law
- Right to Information

- judicial review
- native title and cultural heritage
- legal advice and representation in relation to child welfare and protection
- WorkCover
- matters arising from the special position at law of the Attorney-General, including matters which the Attorney-General in the role as first law officer of the State, directs that these be dealt with by Crown Law
- legal advice on matters pertaining to the role and powers of the Governor, Parliament or Cabinet
- legal advice underpinning a Cabinet submission
- legal advice on all constitutional law issues
- agreements that are to be approved by Cabinet and agreements which involve unique or major considerations which are of a special policy or operational significance for a department or agency of the State
- matters confidential and sensitive to government or have government-wide implications, including legal advice or representation between or on behalf of two or more government agencies
- matters involving judicial officers, indemnities and public inquiries.



SIGNIFICANT MATTERS

Palmer v Western Australia [2021] HCA 15

The matter of *Palmer v Western Australia* challenged the validity of State border closures due to the COVID-19 pandemic.

Western Australia closed its borders on 5 April 2020 by a direction made by the State Emergency Coordinator under the *Emergency Management Act 2005* (WA). On 18 May 2020, Mr Clive Palmer sought and was refused permission to enter Western Australia. Mr Palmer then commenced proceedings in the High Court, alleging that the border closure was invalid for infringing s 92 of the *Constitution* which provides that trade, commerce and intercourse among the States shall be ‘absolutely free’.

The Attorney-General for Queensland intervened and took an active role in the proceedings in the Federal Court and in the High Court. The Solicitor-General Mr Sandy Thompson QC appeared for the Attorney-General with Crown Law’s in-house counsel, Felicity Nagorcka and Kent Blore. They were instructed by Senior Principal Lawyer, James Potter from Crown Law’s Constitutional Law Team.

The matter was heard by the High Court on 3 and 4 November 2020. On 6 November 2020, the High Court pronounced orders to the effect that the *Emergency Management Act* was valid, and that the validity of the Border Directions did not raise a constitutional issue.

The High Court ruled that Queensland’s submissions should be accepted and undoubtably constitutes one of the most significant decisions to emerge from the COVID-19 pandemic.

Holzinger v Attorney-General (Qld) & Anor [2020] QCA 165

On 12 August 2020, the Court of Appeal delivered judgment in *Holzinger v Attorney-General* (Qld), unanimously dismissing Mr Holzinger’s application for judicial review.

In 2015 a jury found the applicant guilty of three counts of rape and four counts of indecent treatment of a child under 16 years. The applicant was unsuccessful in appealing his convictions and presented a petition to the Governor seeking a pardon or, alternatively, seeking that his petition be referred to the Court of Appeal under s 672A of the *Criminal Code* (Qld). The applicant was informed that the Governor had decided not to pardon him and that the Attorney-General for the State of Queensland determined not to refer his petition to the Court of Appeal. The applicant applied under the *Judicial Review Act 1991* for review of the Attorney-General’s refusal to refer his case to the Court of Appeal.

The Court held that the nature and subject-matter of decisions under s 672A render them insusceptible of judicial review, whether under the *Judicial Review Act 1991* (Qld) or otherwise, at least on the grounds relied upon by Mr Holzinger. The Solicitor-General Mr Sandy Thompson QC appeared for the Attorney-General with Assistant Chief Counsel, Felicity Nagorcka. Mr Holzinger sought special leave to appeal this decision which was refused by the High Court.

State representation for the Disability Royal Commission

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission) was established on 4 April 2019 by the Governor-General of the Commonwealth of Australia. On 27 June 2019 the Governor of the State of Queensland issued letters patent for the conduct of the inquiry concurrently in Queensland with corresponding inquiries in the other Australian jurisdictions. The Hon Ronald Sackville AO QC was appointed as Chair of the Royal Commission. Mr Sackville is currently supported by five other Royal Commissioners.

Crown Law acts on behalf of the State of Queensland. Ms Kathryn Mc Millan QC with Deputy Crown Solicitor and Chief Counsel, Patrina Clohessy are appearing as counsel for the State, instructed by Principal Lawyer, Rebecca Bensted from the Attorney-General Advocacy Team.

The Royal Commission was originally slated to run over a three-year period however in June 2021 the period was extended by a further period of 17 months. The terms of reference require the commission to focus on the experiences of people with disability, especially their experiences of violence, abuse, exploitation and neglect in their many different forms across all settings.

The commission has indicated that it intends to place people with disability at the forefront of its activities – their stories shared through submissions along with public and private hearings will be central to informing the commission on the policy issues that will need to be considered. The Disability Royal Commission has established premises in Brisbane and Sydney. The Brisbane office includes a dedicated hearing space.

An opening ceremonial sitting of the Royal Commission was held in Brisbane in September 2019. The Royal Commission held its first public hearing at which evidence was taken, in Townsville on the topic of inclusive education in November 2019 and since that time, public hearings have continued on a variety of topics across the four general domains of Health, Education, Accommodation and Employment. The Disability Royal Commission is holding a series of public hearings around the country in which witnesses give evidence, under oath or affirmation to gather evidence about violence, neglect, abuse and exploitation of people with disability. Public hearings are recorded and streamed live on the Royal Commission website. The commission published an interim report on 30 October 2020 and publishes progress reports on its work every six months. A final report is due by no later than 29 September 2023.



Attorney-General (Cth) v Ogawa [2020] FCAFC 180

On 28 October 2020 the Full Court of the Federal Court delivered judgment in *Attorney-General (Cth) v Ogawa*. The Full Federal Court in the Ogawa decision acknowledges and pays deference to the Court of Appeal decision in *Holzinger*.

Like the *Holzinger* matter, the Ogawa litigation concerns the exercise of the prerogative of mercy and the associated power in s 672A of the *Criminal Code*, in considering a petition for a pardon, to refer a case or an issue arising, to the Court of Appeal.

Ms Ogawa was originally convicted of offences under the Commonwealth *Criminal Code*. Her convictions were in a Queensland court exercising Federal jurisdiction. She petitioned the Commonwealth Governor-General for a pardon. Her petition was refused, and the Commonwealth Attorney-General refused to refer her case to the Queensland Court of Appeal under s 672A of the Queensland *Criminal Code*, being the applicable law. She sought judicial review in the Federal Court in relation to decisions by the Governor General not to pardon her, and the Commonwealth Attorney-General not to refer her case to the Court of Appeal.

She was successful at first instance before Justice Logan of the Federal Court (*Ogawa v Attorney-General (No 2)* [2019] FCA 1003). The Commonwealth appealed Logan J's decision. The Attorney-General for the State of Queensland intervened in the appeal. The Solicitor-General Mr Sandy Thompson QC appeared for the Attorney-General with Assistant Chief Counsel, Felicity Nagorcka.

The Attorney-General appealed to the Full Federal Court. The Full Federal Court found for the Attorney-General. The Full Federal Court decided that Logan J had erred in granting declaratory relief with respect to the Attorney-General's recommendation because, contrary to the primary judge's finding, the Attorney-General's recommendation to the Governor-General was not affected by material legal error. The Full Federal Court found that there was no real prospect that a state of satisfaction could be reached that Dr Ogawa was "innocent" of any of the offences for which she was convicted.

The Full Court also considered the extent to which the power to pardon may be subject to judicial review. The Full Court expressed some doubt as to whether the exercise of Constitutional executive power to grant or refuse a pardon to a petitioner will in all cases be completely immune from judicial review. Ms Ogawa sought special leave to appeal this decision which was refused by High Court.

Human Rights Act litigation

The Attorney-General's statutory functions under the *Human Rights Act 2019* include intervening for the State as a party to proceedings before a court or tribunal involving human rights issues and receiving and assessing notices concerning such proceedings.

As First Law Officer, the Attorney-General also has the function of advising the State about human rights issues which may arise under the Act.

This work is performed by Crown Law on her behalf and is led by Senior Principal Lawyer, Kent Blore. Crown Law is also involved in complaints of human rights contraventions to the Queensland Human Rights Commission.

As at 30 June 2021, Crown Law received, on behalf of the Attorney-General, 21 notices under s 52 of the *Human Rights Act 2019*; intervened in eight proceedings, and provided submissions on the operation of the Act in five other proceedings to which the Attorney-General was already a party.

A brief summary of key human rights cases over the last financial year are as follows:

- In *Innes v Electoral Commission of Queensland [No 2]* [2020] QSC 293, the Court of Disputed Returns accepted submissions made on behalf of the Attorney-General that the 2020 local government election was conducted in a way that was compatible with the right to take part in public life.
- In *Attorney-General (Qld) v Sri & ors* [2020] QSC 246, the Supreme Court weighed competing human rights, and granted an injunction restraining the respondents from attending or encouraging others to attend a planned sit-in protest on the Story Bridge during the COVID-19 pandemic.
- In *Pauga v Chief Executive of Queensland Corrective Services*, the Supreme Court accepted submissions made on behalf of the Attorney-General that the *Human Rights Act 2019* does not affect the decisions of magistrates acting in a personal capacity under Commonwealth legislation such as the *Extradition Act 1988* (Cth).

State of Queensland v the Estate of the late Jennifer Leanne Masson [2020] HCA 28

Crown Law represented the Queensland Ambulance Service (QAS) in this High Court appeal about a claim for damages for personal injury. The High Court allowed the appeal and found in favour of QAS. The High Court found that the QAS officer exercised reasonable care in administering salbutamol (rather than adrenaline) in treating a patient having a severe asthma attack and that the exercise of this clinical judgment was not in contravention of QAS's clinical practice manual.

Coronial Inquest into the death of Omid Masoumali

Principal Lawyer, Emily Cooper from the Prosecutions and Other Advocacy Team was briefed as Counsel Assisting the State Coroner for the inquest into the death of Omid Masoumali. The initial phase of the inquest was heard in February and March 2019 and the inquest resumed on 2-3 September 2020 before the State Coroner.

At the time of his death, Mr Masoumali was residing at the Nibok Settlement on the island nation of the Republic of Nauru, having been transferred there from Christmas Island, and subsequently granted refugee status.

On 27 April 2016, Mr Masoumali set himself alight in the presence of United Nations High Commissioner for Refugees officials who were visiting Nibok. He was flown to the Royal Brisbane and Women's Hospital, but later died from his injuries. The matter is currently adjourned for delivery of findings.

Mental Health Review Tribunal forensic order reviews

Lawyers from Crown Law's advocacy teams appear at Mental Health Review Tribunal (MHRT) hearings on behalf of the Attorney-General in proceedings for forensic order and fitness for trial reviews for over 800 mental health patients who have committed criminal offences but who have been diverted from the criminal justice system.

Patients placed on forensic orders by the Mental Health Court have committed indictable offences and are:

- found to have been of unsound mind at the time of the commission of the offences, or
- found to be temporarily or permanently unfit for trial due to mental illness or intellectual disability.

As a patient recovers through treatment and care, the patient seeks the MHRT's approval for greater leave into the community and a lessening of the restrictions placed upon them.

The Attorney-General represents the community and acts in the public interest by making submissions to the MHRT regarding whether a forensic order is necessary to protect the community. Submissions are also made on the level of community leave and the conditions upon which the MHRT should approve leave for a patient, based upon the risks to the community posed by the patient.

Attorney-General submissions made to the MHRT may also focus on protecting the victims of crime by making submissions where appropriate proposing non-contact provisions or proposing the imposition of geographical restrictions, prohibiting a patient from accessing a certain area, to minimise the risk of possible unforeseen contact between the victim and the patient.

Crown Law lawyers assess each MHRT decision and make recommendations to the Attorney-General regarding MHRT decisions to be considered for appeal to the Mental Health Court.

Crown Law appeared at 1,984 MHRT forensic order review hearings for the financial year 1 July 2020 to 30 June 2021. This is an increase of 205 compared to the previous year's figure of 1,779 from 1 July 2019 to 30 June 2020.

Dangerous prisoners litigation

The *Dangerous Prisoners (Sexual Offenders) Act 2003* (DPSO Act) was established following rising concerns in the community about the risk of serious offenders committing further sexual offences after their release at the end of their term of imprisonment. This Act enables the Attorney-General to make an application for post-sentence preventative detention or supervision of serious sex offenders. The objective is to maintain the protection of the community through the care, control and treatment of sex offenders who are considered an unacceptable risk to the community by re-offending sexually or violently.

Crown Law plays an important role in administering this Act, working in consultation with Queensland Corrective Services on the Sex Offenders and Dangerous Offenders Assessment Committee to advise the Attorney-General on whether there is sufficient evidence for making an application under the Act. Crown Law represents the Attorney-General in these applications and appears at all stages of proceedings.

As at 21 June 2021, 348 cases have been commenced by the Attorney-General under the DPSO Act, with 86.49% of offenders placed on an order under the Act. A further 3.45% of these cases are still pending determination by the court. There are currently 132 offenders on supervision orders in the community under the Act, 124 of whom are fitted with ankle bracelets to electronically monitor their movements.

Recent DPSO Act legal issues

The issue of a prisoner's capacity to engage in legal proceedings has arisen in several recent applications under the DPSO Act. This raises additional considerations of fairness to those prisoners in relation to their ability to properly participate in proceedings, and then delay in progressing matters, particularly in relation to the time it may take for the appointment of a substituted decision-maker. The issues involved in the process and the involvement and roles of the various parties and stakeholders can be complex as highlighted in two recent cases below:

***Attorney-General for the State of Queensland v FPN* [2021] QSC 110; and *Attorney-General for the State of Queensland v SLS* [2021] QSC 111**

In both A-G v FPN and A-G v SLS, the issues in each matter were similar in that the Court was to determine whether a concern was raised that the respective prisoners lacked capacity to engage in the proceedings. Further, the Court was also requested to provide guidance in the form of a framework judgment as to the appropriate course to progress matters under the Act when issues of capacity arise.

Her Honour Justice Williams heard both of these matters on 13 May 2021. A-G v SLS was an application pursuant to section 27(2) of the DPSO Act for the first annual review of the continuing detention order. A-G v FPN was an original application before the Court pursuant to Division 3 of the DPSO Act.

Both matters identified that issues had arisen as to whether the respondents were persons with impaired capacity and whether they had capacity to make the decisions required to conduct the review of the continuing detention order or the Division 3 proceedings under the DPSO Act. If this was the case, then the Court had to then consider whether the questions of the respondents' capacity to respond to the DPSO Act proceedings should be referred to the Queensland Civil and Administrative Tribunal (QCAT) for determination.

Psychiatric evidence was heard regarding the capacity of both respondents' capacity. Her Honour held in both matters that the question of the respondents' capacity to respond to the DPSO Act proceedings be referred to QCAT for determination. In addition, in AG v FPN, given the respondent is currently on an interim detention order, Her Honour noted the liberty of the respondent was at stake and urged urgent resolution of the QCAT determination.



Gerner v Victoria [2020] HCA 48

On 12 October 2020 Mr Gerner commenced proceedings in the original jurisdiction of the High Court challenging the validity of the restrictions imposed under Victoria's COVID-19 lockdown, in particular the 25km movement restriction. Mr Gerner alleged that the restriction infringed an implied freedom of movement said to be found in the *Constitution*.

Victoria demurred on the sole question of whether such an implied freedom of movement existed. The Attorney-General for the State of Queensland intervened in support of the position of Victoria. The Solicitor-General Mr Sandy Thompson QC appeared for the Attorney-General with Assistant Chief Counsel, Ms Felicity Nagorcka.

On 10 December 2020, the High Court delivered its reasons for granting Victoria's demurrer at the close of the hearing on 6 November 2020. In a unanimous judgment, the High Court held that there is no freedom of movement which may be implied from the *Constitution*, other than what is already protected by s 92 of the *Constitution* and the implied freedom of political communication.

MDF v Central Queensland Network Authorised Mental Health Service [2020] QCA 1 08

This appeal concerned an application for a statement of reasons under s 38 of the *Judicial Review Act 1991*, for a decision made by the Mental Health Tribunal under the *Mental Health Act 2016* to issue an examination authority in respect to the appellant.

The Court held that a person who is subject to an examination authority has the capacity to seek a statutory order of review as a 'person aggrieved' by the decision, and that the decision to issue the examination authority was not 'spent' by the issue of a later treatment authority.

In this case, the Attorney-General had also issued a certificate under s 36 of the *Judicial Review Act* that the disclosure of certain information relating to the matter would be contrary to the public interest. The Court held that the redaction of that information contained in the statement of reasons did not render the statement false or misleading under s 37(1)(b) of the *Judicial Review Act*, so the Court ordered that a written statement containing the reasons be provided to the appellant.

Together Queensland v State of Queensland (Department of Children, Youth Justice and Multicultural Affairs) (CB/2018/151)

The arbitration proceedings for a determination to replace the State Government Entities Certified Agreement 2015 for select employees in the Department of Children, Youth Justice and Multicultural Affairs resumed in July 2020.

The hearing of this matter was listed for 10 days from 8 to 19 February 2021. On 8 February 2021, the hearing commenced and evidence of Together Queensland's first witness (expert witness in Economics) was heard by the Full Bench. After that evidence was heard, the hearing was adjourned by consent to allow the Government time to deliberate in relation to a potential settlement offer. That offer was subsequently made to Together Queensland on 11 February 2021. On 15 February 2021, Together Queensland advised the Commission that the offer had been accepted by the majority of relevant Together Queensland members such that the matter would settle and the hearing could be vacated.

Queensland Services, Industrial Union of Employees v Moreton Bay Regional Council

An appeal is before President Davis in the Industrial Court of Queensland about whether overtime rates should apply to a Moreton Bay Regional Council worker. The Council was successful at first instance that overtime rates should not apply.

In the appeal, the Council challenges the validity of different determinations about the Local Government Industry Award made during the award modernisation process, particularly during 2014 and 2017.

Davis P directed that all affected parties wishing to be heard on the Council's argument about the invalidity of Awards were to appear at a mention on 4 February 2021.

Mr Adrian Duffy QC appeared at the mention and advised that the Minister for Education and Minister of Industrial Relations wished to be heard on the invalidity argument.

The appeal was heard on 3 June 2021. Mr Adrian Duffy QC appeared at the appeal hearing for the Minister for Education and Minister of Industrial Relations. The President has reserved his decision.

Together Queensland v State of Queensland (CB/2020/78 & CB/2020/79)

The *State Government Entities Certified Agreement 2019* and the *Department of Education Certified Agreement 2019* include clauses allowing the parties to the respective agreements to apply to the Queensland Industrial Relations Commission (QIRC) for determination of the wage rates payable to the employees covered by these agreements by arbitration if the parties could not negotiate an outcome after the release of the 2020 Annual Wage Review decision.

The parties reached an agreement in relation to the wages determination prior to the commencement of the hearing. The listing of the matter on 1, 2 and 3 March 2021 was consequently vacated.

On 1 March 2021 the QIRC agreed to final orders for the Core/Education arbitration.

On 15 March 2021 the parties were required to file schedules detailing the rates to supersede the existing salary schedules to the *State Government Entities Certified Agreement 2019* and the *Department of Education Certified Agreement 2019*.

The new wage rates took effect as of 1 September 2021.

Christensen & Anor v Deputy State Coroner [2021] QSC 38

On 4 March 2021, A/Justice Rafter delivered judgment in the above matter. The proceedings involved an attempt to judicially review the decision of the Deputy State Coroner to excuse a key witness from giving oral evidence in the Alva Beach Inquest.

In considering the scope of the broad discretion afforded to the Coroners Court to inform itself in any way it considers appropriate under the *Coroners Act 2003*, His Honour held that there was nothing in the text of the Act which required evidence to be provided orally, nor was there any textual support for the proposition that the parties to an inquest have the right or entitlement to insist the Coroner compel a witness to give oral evidence: [41]. Accordingly, the application was dismissed.

Queensland Floods Class Action

Crown Law acted for the State of Queensland in class action proceedings brought against the State, Seqwater and Sunwater arising out of the January 2011 flood events in South-East Queensland. The proceedings were conducted in the Supreme Court of New South Wales.

The State and Sunwater have reached an agreement with the class action plaintiff to settle the plaintiff's claim against them. The confidential settlement has been approved by the Supreme Court of New South Wales.

Hans Pearson v State of Queensland – Federal Court Representative Proceedings QUD714/2016 (DOC452/742)

Mr Hans Pearson filed a representative proceedings originating application and statement of claim with the Federal Court on 12 September 2016, alleging a breach of trust, breach of fiduciary duty and unlawful discrimination by the State of Queensland.

The allegations relate to the handling of accounts and the management of wages obtained under a series of Indigenous protection legislation in the 1950s to early 1970s (Controls). The Applicant filed a third amended statement of claim on 12 July 2018, making significant amendments to the pleadings including allegations of wilful default in relation to the alleged trust account, and slavery for work performed on missions and settlements, and seeking aggregate damages.

The parties reached an agreement to settle the proceeding. For the settlement to be binding, the Federal Court is required to approve the settlement.

A settlement approval hearing was held before Justice Murphy on 19 December 2019. Justice Murphy advised the parties in open court that he would approve the settlement. On 17 January 2020, he issued orders approving the settlement in the terms set out in the Settlement Deed and the Settlement Distribution Scheme. On 8 May 2020, Justice Murphy delivered his reasons for judgment.

The settlement monies have been paid in accordance with the Settlement Deed and are in the process of administration by the court appointed Administrator. The State has provided the Administrator with access to the State's reparations data base in accordance with the Orders of the Court. On 8 September 2020, Justice Murphy made orders which made various amendments to the settlement distribution scheme, and made orders about maintaining the confidentiality of the State's reparations data base. Crown Law and counsel continue to advise the Department of Aboriginal and Torres Strait Islander Partnerships as required.

Coonan v Registrar of Births, Deaths and Marriages [2020] QCAT 434

This matter concerned an application to review a decision of the Registrar to register the Applicant as his child's 'mother' rather than his 'father' in circumstances where the Applicant gave birth to his child and identifies as male.

Having regard to the structure of the *Births, Deaths and Marriages Registration Act 2003*, and the fundamental assumptions upon which the relevant provisions of the Act operate, the Tribunal accepted that only a 'mother' can give birth in the requisite sense: [71]; see also [61], [63] & [64].

Ultimately, the Tribunal held at [73] that: The use of the word 'mother' is therefore a word used to delineate who carried the child for nine months and delivered it. The Applicant, though male, is that person. The Act reflects that a child is entitled to know who that person is.

The Tribunal also accepted that the transitional provisions of the *Human Rights Act 2019* meant that it did not apply to the matter: [75]. Notwithstanding this conclusion, the Tribunal nevertheless considered whether it would be possible to have registered the Applicant as the child's 'parent', finding that even though that outcome may have been more compatible with the Applicant's human rights, for the reasons outlined, that option was not available on the proper construction of the *Births, Deaths and Marriages Registration Act*: [78]. The Tribunal drew on the case of *YY v Registrar General* [2020] EWCA Civ 559 in support of the view that if the *Human Rights Act 2019* had applied, and another option was open, the rights of the child to know who their biological mother was would have justified the decision: see [79]-[84].

In light of this analysis, the Tribunal concluded at [85] that: The proper construction of the *Births, Deaths and Marriages Registration Act 2003* leads to the conclusion that the correct and preferable decision is to register the Applicant as the child's 'mother'.

Hanson & Ors v Walters [2021] QCA 18

On 12 February 2021, the Court of Appeal dismissed an appeal brought by Metro North Hospital and Health Service (MNHHS) against Justice Ryan's judgment in *Walters v Hanson & Ors* [2020] QSC 216 which quashed two decisions from the dates on which they were respectively made. The first decision was made on 28 August 2019 (the suspension decision) to suspend Professor Walters from duty pursuant to s 137 of the *Public Service Act 2008* and the second decision was made on 3 September 2019 (the credentialing decision) to suspend Professor Walters' scope of clinical practice applicable to MNHHS, on the basis his employment with MNHHS was suspended.

Mullins JA (with whom Sofronoff P and Fraser JA agreed) held that:

Section 137 requires the notice of suspension to convey the period of the suspension by stating when the suspension starts and ends. That means the period of suspension has to be specified in, or ascertainable from, the notice. There is no difficulty with the end of the period of the suspension being specified by reference to an event, provided the notice describes in clear terms the event that ends the period. It was not apparent from the notice in question what event would bring the suspension to an end: [23]-[27].

There was no error shown in relation to the primary judge's choice of the date on which the order quashing the suspension decision took effect: [34]-[40].

As the credentialing procedure regulates credentialing for the provision of health services to the public by practitioners in any facility administered by MNHHS, it was properly characterised as having a public function, purpose or operation. There was therefore no error in the primary judge's conclusion that the credentialing procedure is a standard or guideline of a public nature, and therefore a statutory instrument, and therefore the credentialing decision was a decision under an enactment for the purposes of the *Judicial Review Act 1991*: [5], [41]-[51].

The decision confirms that the end date for a suspension can be specified by reference to an event.

Kohler & others v Croton as delegate of the Minister for Natural Resources, Mines & Energy [2021] QSC 72

On 9 April 2021, Bond J delivered judgment in this matter dismissing three separate proceedings brought by Mr Kohler and two companies of which he is the sole director seeking judicial review of various decisions to refuse to grant exploration permits for minerals under the *Mineral Resources Act 1989*. Relevantly, the Minister's delegate decided to refuse to grant the exploration permits for minerals on the basis that it would not be in the public interest to grant them without also considering the 'prescribed criteria' set out in s 137 of the *Mineral Resources Act 1989*.

Justice Bond's reasons provide a helpful summary of the operation of the *Mineral Resources Act 1989*. In particular, His Honour held that:

That there is only one ground for granting an application, being only where the prescribed criteria are met: [15].

That there are three grounds for refusing an application: [16]-[18]; (1) the Minister is not satisfied that the prescribed criteria are met; (2) all or any part of the land falls within the description of s 136(3)(a) or (b); or (3) another reasonable or relevant ground.

Sections 386M and 386N greatly widen the scope of "relevant considerations" and greatly narrow "irrelevant considerations" for a decision under s 136: at [33].

The Minister is entitled to refuse an application on the second and third grounds above without considering the prescribed criteria: [49]-[51].

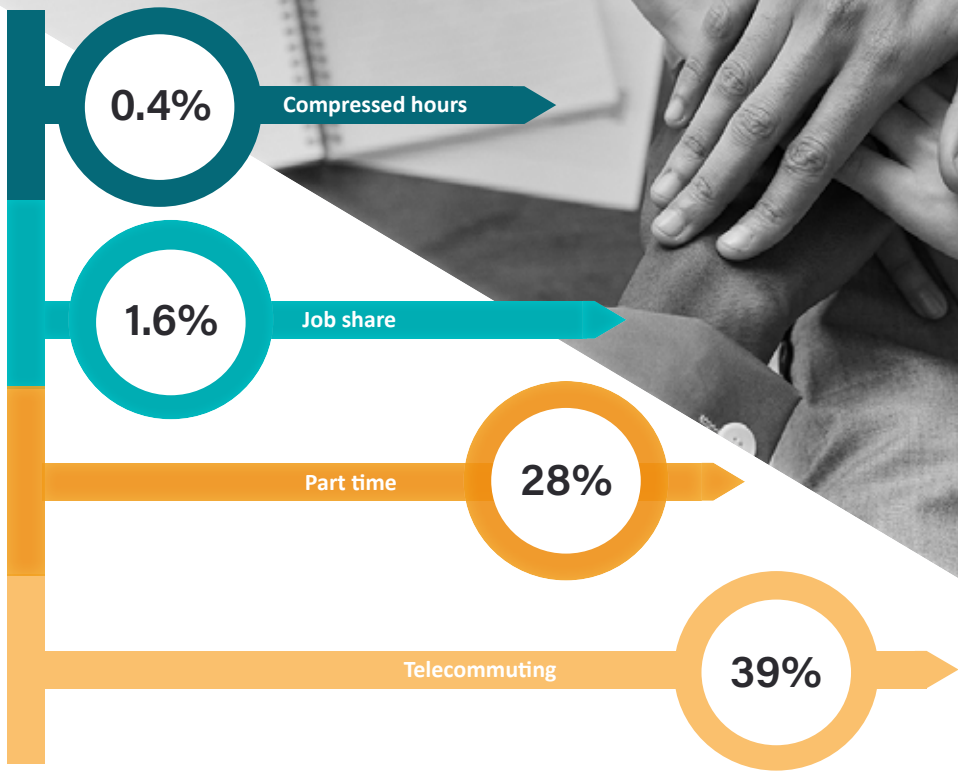
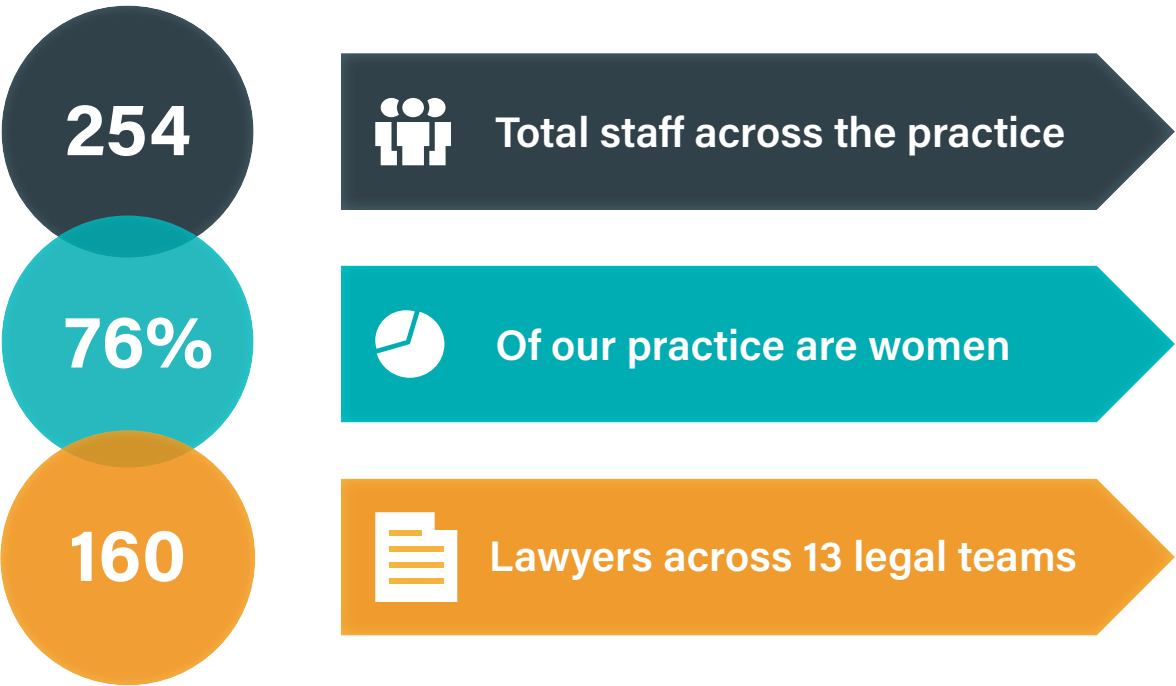
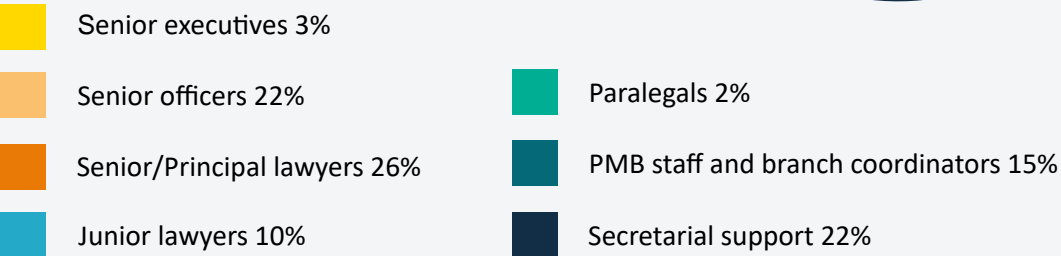
OUR PEOPLE

Crown Law is committed to attracting and retaining experienced staff who contribute to our continued success, viability and the high level of service we deliver to our clients.

Our practice currently employs 160 lawyers and 55 secretarial support staff. In addition, there are 39 staff across seven teams in the Practice Management Branch.

Crown Law prides itself on workforce diversity, equal opportunity and flexible work/life balance options. Employees have access to flexible working arrangements such as compressed hours, job share arrangements, part-time employment and telecommuting.

Seventy-six per cent of our 254 staff are women and make up two-thirds of our leadership team.



Health and wellbeing

Crown Law is committed to prioritising the health and wellbeing of staff. The Strategic Leadership Team supports and encourages Crown Law staff to engage in health and wellbeing initiatives to help live healthy, happy and productive working lives.

The health and wellbeing initiatives conducted in 2020-21 included:

- twice-weekly virtual meditation sessions to assist with emotional wellbeing and your overall health
- influenza vaccination program
- publishing regular links to health and wellbeing blogs and articles for staff
- ergonomic assessments.

Vicarious trauma framework

Crown Law is committed to supporting staff with the necessary skills, knowledge and resources to actively manage the risk of vicarious trauma through their work. To promote and maintain a healthy work environment, Crown Law has developed a framework to assist in the prevention and management of vicarious trauma by reducing risk factors and enhancing protective factors that have been demonstrated to influence vicarious trauma.

EDUCATION AND TRAINING

Annual legal conference

Due to COVID-19 restrictions, the mode of delivery of Crown Law's 2020 Annual Legal Conference changed from a face-to-face conference to pre-recorded sessions. The recordings received more than 800 views and included discussions on the following topics:

- COVID-19 matters
- the exercise of Prosecutorial Discretion: is the veil being lifted?
- update on defamation law
- cultural rights of Aboriginal and Torres Strait Islander persons under s 28 of the *Human Rights Act 2019* – Native title and cultural heritage considerations
- update on Human Rights in Queensland Courts
- Holzinger/Ogawa cases.

Continuing Legal Education

Government legal officers holding practising certificates must complete ten units of Continuing Professional Development (CPD) per year. Government legal officers not holding practising certificates are strongly recommended to comply with these requirements. Crown Law's Continuing Legal Education (CLE) Program continued throughout 2020-21 with legal staff and clients attending presentations on:

- model litigant: disclosure requirements in civil and criminal litigation
- Statements of Reasons for decision
- commissions of inquiry
- courtroom etiquette and addressing the court
- understanding and meeting the needs of departmental lawyers
- international human rights developments in 2020
- PIPA and WorkCover pre-court procedures
- GST essentials in practice for all lawyers
- advice writing training presented by the Australian Government Solicitor's Office.

Online learning

To assist lawyers and non-lawyers in the Queensland Government to develop and maintain their legal knowledge, Crown Law offers a free online CPD Training Program. Developed by senior Crown Law lawyers, the four modules provide practical legal training that can be conducted at the user's own pace. The module content has been developed to provide legal and nonlegal officers with a clearer understanding of the legal framework of government and the principles that guide it.

During the 2020-21 year, there were 66 enrolments in the online CPD program from officers across 44 agencies.

Our four online CPD modules available free to all government officers are:

- introduction to government law
- model litigant principles
- legal professional privilege
- statutory interpretation.

Legal training

Crown Law offers our Queensland Government clients a variety of training workshops and briefings on key public sector issues to develop our clients' legal skills and keep them informed about current and emerging legal topics. The practice continued its commitment to the development of our clients by finding alternative ways to deliver training that were compliant with social distancing and travel restrictions.

Crown Law delivered 34 training presentations to more than 570 government officers in 2020-21 by offering virtual attendance at most of our training sessions. Notable training sessions held throughout the year included:

- statutory interpretation training – 10 workshops for 222 clients
- sound decision making training – six workshops for 110 clients
- *Human Rights Act 2019* training – eight workshops for 129 clients
- Commercial and Property CPD update – delivered to 33 clients on following topics:
 - *Human Rights Act* implications for decision makers
 - *Environmental Protection Act*
 - contracts in the time of COVID-19
 - Queensland Government procurement, including Queensland Information Technology Contracting
- emerging practitioners' program – five presentations for 21 clients
- cultural rights of Aboriginal and Torres Strait Islander persons under s 28 of the *Human Rights Act 2019* – native title and cultural heritage considerations – viewed online by 358 clients.

CROWN LAW THROUGH COVID-19

The COVID-19 pandemic drastically changed the lives of many people around the world, especially their work environment and practices. Queensland's first lockdown in March 2020 saw most of Crown Law's staff begin working from home. All teams from across the practice worked together to provide solutions and ensure that we continued to deliver high-quality and accessible services to our clients.

The Business Systems Team rapidly adapted to the increased amount of staff working remotely and utilised our existing technologies in different ways to continue delivering our services. Many of our client events were moved to online formats, lawyers began appearing in court via video and teleconference and the Library delivered key resources in an online format.

Staff from various teams across the practice have detailed some of the key changes they made to ensure we continued to deliver our services throughout the pandemic.

Adam – Assistant Manager, Business Systems

The Business Systems Team were required to rapidly adapt and utilise our existing technologies in different ways to support the increased number of staff working remotely throughout the pandemic.

Key initiatives undertaken by the Business Team included:

- working with the Department of Justice and Attorney-General's Information and Technology Services to improve the stability of Always On VPN which connects remote Department of Justice and Attorney-General trusted devices to the department's network
- obtaining additional Remote Desktop Services licenses to give Crown Law users an alternate method of connecting to the network if the Always On VPN services were unavailable
- educating staff of the additional IT services available to them while working on a non-trusted device to give them the ability to continue to work effectively if remote services are inaccessible
- educating staff on the Microsoft Office 365 suite of applications to ensure communication was maintained between our teams and their clients as well as allowing access to documents while offline
- making additional hardware available for staff to use remotely to improve their IT experience while working outside the office.

Our team also ensured that a staff member was always available on premises during lockdowns. This allowed staff to contact us for assistance on-site, so that if remote services were down there was always support staff available who had access to all Department of Justice and Attorney-General services.

Mari – Library Manager

In response to the COVID-19 pandemic, the Library continued to offer research assistance, albeit remotely. We also delivered key resources in an online format to support Crown Law legal teams and other business units, including:

- core legal texts being offered digitally via the major legal research platforms
- an alternative access guide for library and legal research resources for those without direct access when working from home
- presenting induction sessions via Microsoft Teams.

Andrew – Advocacy Lawyer

Since the beginning of the COVID-19 lockdown on 23 March 2020, our team appeared on behalf of the Attorney-General in 265 more Mental Health Review Tribunal hearings from the previous year. We also saw a sharp increase in the number of dangerous prisoner orders.

Our team successfully handled the significant increase in dangerous prisoner orders and Mental Health Review Tribunal hearings by quickly adjusting to a remote working environment. We continued to work at full capacity remotely from home by appearing in court via video and teleconference, filing Supreme Court documents electronically and providing counsel and psychiatrists with eBriefs. These changes have also seen the team make considerable steps towards a paper light office.

Our team's handling of the increased number of matters was also achieved on the back of the introduction of the *Human Rights Act 2019* (Qld) which added further complexity and length to the hearings.

Our work involves daily exposure to distressing and objectionable content. Through the pandemic and the challenges we faced, our team maintained a safe, collegiate and supportive workplace so we could remain focused on our critical legal work.

Penelope – Business Development Officer

Crown Law's event schedule for 2020 was filled with training workshops, client events and our annual legal conference when the COVID-19 pandemic hit Queensland in March 2020.

When Queensland was placed into lockdown and subsequently many public servants began working from home, we began offering our popular training workshops online via Microsoft Teams. We also pre-recorded our annual legal conference and made these recordings available to all our clients online.

We continue to provide training workshops online and in person, for those who prefer that mode of delivery, in a COVID safe environment.

CROWN LAW LIBRARY

The Crown Law Library provides research and reference services for business units and statutory bodies within the Department of Justice and Attorney-General, including commissions of inquiries and taskforces.

During the 2020-21 financial year, the Crown Law Library recorded the following reference and research statistics:

- 551 research hours spent on 6,673 reference services requests
- 5,636 print and electronic items were supplied in response to requests.

The Library also distributed 48 issues each of the electronic Current Awareness Bulletin and info@library bulletin. Two new quarterly subject specialist bulletins were launched across the department in 2020-21. These were Criminal Law News and the Courts Program and Policy Bulletin.

The Library also conducted 42 training sessions in the 2020-21 financial year.

CROWN LAW CHOIR

The Crown Law Choir has been singing since 2002 and consists of a group of volunteer singers from across the legal system. At its inception, the Choir was made up almost exclusively of Crown Law staff, but has now grown to include members from the Department of Justice and Attorney-General, the Law Courts and the private Bar.

The choir usually performs at various events each year including annual Christmas performances and at the Supreme Court's Opening of the Law Year Ecumenical Church Service. Due to the COVID-19 pandemic, the choir was unable to undertake their usual performances.

The Crown Law Choir has recently commenced rehearsals again and are looking forward to performing in 2021-22.



BUSINESS IMPROVEMENT AND TRANSFORMATION

The Business Improvement and Transformation (BIT) project was launched in July 2018 to deliver a program of work focused on technology and process improvements across Crown Law.

Improved technology capabilities aim to provide a more modern working experience for staff and systems that are featured, fast and reliable. They will enable us to streamline digital work processes in a way that reduces risk and helps to improve efficiencies.

A key objective for the project is to reduce Crown Law's reliance on paper documents and requirements for printing, archiving and storage. Throughout 2020-21, the BIT project team successfully implemented several paper light initiatives across the practice. Recent achievements include:

- Reaching a key milestone in the transition towards all legal files being managed digitally with 50% of all new matters now being created as digital legal files. Achieving this milestone involved the creation of new practice management guidelines and file management workflows.
- Completing the roll out of the eDOCS FlexFolders module that enables staff to access documents through a digital interface resembling a paper legal file. FlexFolders have been configured to meet the unique requirements of each legal area and have been widely adopted across the practice.
- Implementing an internal eDiscovery system and facilitating a pilot cases across a number of legal teams. The system provides improved efficiency and reduced paper use during litigation document review.
- Preparing for a significant system upgrade to Elite 3E, released on 11 October 2021.

PERFORMANCE AND ACCOUNTABILITY

Quality Assurance

Crown Law has developed and implemented a quality management system based on ISO9001:2015.

Our continued accreditation to the ISO9001:2015 standard demonstrates our strong management practices which are focused on realising clients’ expectations of quality and outcomes. Good record keeping and developing, implementing and improving processes and procedures together with quality auditing are key elements to maintaining our Quality Assurance certification.

ISO9001:2015 has a base set of standards and practices, adding specific requirements for businesses including:

- knowledge, understanding and compliance with processes and standards
- demonstrating how processes add value to business and client outcomes
- evaluating ongoing results of system performance, effectiveness and outcomes
- risk assessment and management
- continuous improvement of processes based on objective management.

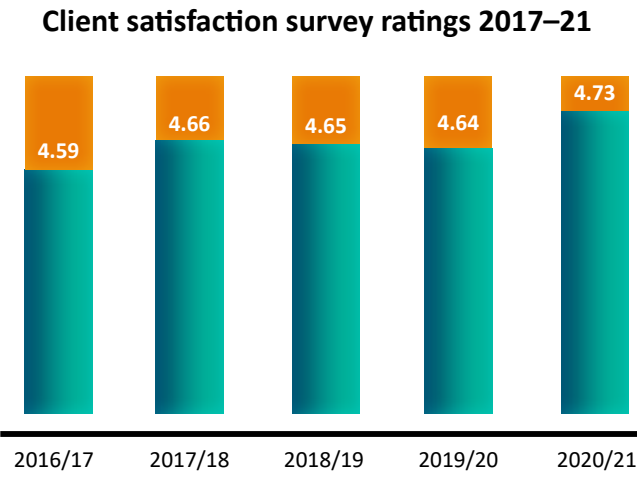
Crown Law’s compliance with this standard is subject to an annual external audit and is further supported by our continuous improvement philosophy, based on robust client feedback mechanisms and performance management processes.

Client satisfaction surveys

To continuously improve the delivery of our legal services, online surveys are sent to all clients with current matters each quarter to ascertain their satisfaction and comments on key performance indicators. These indicators are:

- our understanding of our client’s matter and objectives
- our level of technical skill and knowledge
- our communication with clients
- value for money.

Crown Law’s overall satisfaction rating for 2020-21 based on these surveys was 4.73 out of 5.



Growth and productivity

Crown Law reported a total of 142.39 full-time equivalent (FTE) legal staff for 2020-21. This was a 3.5% increase on the previous financial year. The practice also reported 105% productivity for the fiscal year, the same as the 2019-20 financial year.

Full-time equivalent legal staff growth

2016-17	2017-18	2018-19	2019-20	2020-21
100.86	112.06	135.2	137.5	142.39

Annual productivity comparison

2016-17	2017-18	2018-19	2019-20	2020-21
97%	100%	104%	105%	105%

CONTACT US



State Law Building, 50 Ann Street
Brisbane, Queensland 4000



07 3031 5600



crownlaw@qld.gov.au

