

Government Solicitors Conference and Dinner
Attorney General Keynote Address
31 August 2011

Introduction

The term “government lawyer” covers a wide range of legal disciplines. Some here today prosecute breaches of criminal law. Some advise on state-wide policy, some in relation to departmental or agency policy. Some draft commercial and property documents for government. Others represent the government in civil proceedings in courts and tribunals. More still draft legislation. The list goes on.

I would like to speak about two issues which are of profound and ongoing importance for **all** government lawyers;

- a commitment to continuous learning; and
- a commitment to giving frank and fearless advice.

This morning also provides me with a welcome opportunity to release the Government’s *Legal Services Blueprint*.

1) Legal Services Blueprint

The Blueprint outlines important legal service delivery reforms for the NSW Government.

It follows the findings of a Review of Legal Services Expenditure in NSW that was undertaken by the NSW Treasury and the then Department of Justice and Attorney General in 2010.

As part of that Review, about 100 NSW Government agencies were surveyed on their legal service expenditure, procurement arrangements for legal services, and the type, cost and reasons for legal services. Many of you here will have been involved.

The review found NSW has a highly complex and decentralised model of providing legal services.

In 2008/09, the state spent \$296 million on legal services. This figure included services provided by external law firms and Counsel - and internal legal expenditure involving Government lawyers and the Crown Solicitor's Office.

The *Legal Services Blueprint* outlines reforms that target expenditure in six key areas.

They are:

- Procurement;
- Fee arrangements;
- In-house legal services;
- Measurement and Monitoring;
- Information Sharing; and
- Whole of Government co-ordination.

I shall briefly outline the reform in each of these key areas.

Procurement

The reforms to the procurement of legal services by NSW Government agencies will:

- improve procurement practices through the implementation of the informed purchaser model across Government;
- establish specialist legal panels at the Cluster level; and
- lead to standardised tender documentation.

The result should be a more co-ordinated approach to the procurement of legal services across Government.

Fee Arrangements

There are two key reforms to the fee arrangements commonly used by NSW Government agencies.

The first will allow agencies to make greater use of alternative fee arrangements. The second covers the process for approval of Counsel by the Attorney General, which should assist the management of Counsel fees across the government.

In-house Legal Services

As part of the new Cluster arrangements, the Government is requesting the Directors General of each cluster to review their legal services.

In addition, the Government recognises the need for training opportunities that are directly relevant to the day-to-day work of government lawyers.

The Law Society Government Solicitors' Committee provides opportunities for professional development for

government lawyers such as today's Conference, and seminars tailored to the various species of Government lawyer. One recent session was on "Preparing Legislation and Instructing Parliamentary Counsel".

There are obvious benefits in extending the opportunities for more specialised training. Yet the Blueprint reminds us that more co-ordinated training will improve the efficiency and capability of in-house teams.

Measurement and Monitoring

Another significant reform involves the new requirements for reporting legal services expenditure.

Agencies will be required to report on their expenditure for the current financial year and, for the Annual Report for the next financial year, there will be a new requirement for certain information on legal expenditure to be made available in that Report.

These reforms are consistent with the Government's focus on increasing the transparency of the use of legal services across the NSW public sector. They will also assist in the identification of emerging legal expenditure issues.

Information Sharing

The *Legal Services Blueprint* recognises there are opportunities for agencies to share legal service resources, such as libraries and subscriptions, as well as precedents and in certain situations, legal advices.

Two reforms are designed to assist this process. They are:

- cross-government access to legal resources through developing whole of government subscriptions; and
- an electronic web database for sharing precedents and advice.

Whole of Government co-ordination

To ensure these reforms are implemented across Government, a new unit has been established within the Department of Attorney General and Justice. It is called Legal Services Co-ordination.

Legal Services Co-ordination will advise agencies on how best to maximise the efficiency of their legal expenditure and in-house legal teams.

It will also review all current legal services policies with the aim of developing a comprehensive policy.

The creation of a central document will assist agencies, external legal service providers and the community to comply with Government policy for the delivery of legal services in the NSW public sector.

The Government recognises many agencies have effective in-house legal teams and efficient processes for the procurement of legal services. What we would like to do is take the bits that work and apply them across the whole public sector.

The *Legal Services Blueprint* will be available on the Legal Services Coordination website, which is accessible via lawlink. I encourage you all to read it.

2) Importance of Commitment to Continued Learning

Continuing legal development is part of your commitment to life-long learning as a lawyer. It maintains critical thinking. It safeguards the public and promotes public confidence in the profession.

It also helps you keep up with not only movements in the law - think about the impact of the Internet – but legislation.

In 2010, for example, more than 30 acts and 500 regulations were passed in NSW. It's no wonder that a frequent question of appellate courts these days is: "Is this the latest version of the legislation". Woe betide any lawyer who cannot provide the right answer.

It helps that the Law Society of NSW offers educational programs across 14 areas of practice. I have noted that they commenced an accredited Government and Administrative Law Specialisation. The first of these sessions was held in April 2011 and close to 100 delegates attended the session.

Many government departments also offer in-house training programs, which you can either attend or present. If your organisation doesn't have any programs like this, suggest it to your manager.

3) Importance of frank and fearless advice

The old concept of Sovereign Immunity, or the “The King Can Do No Wrong” has little bearing on modern government. King Charles the First learnt this the hard way in the 17th century, when he was publicly beheaded for crimes against his people and his country.

What distinguishes government lawyers from other lawyers is not always the content of the work they do. Sometimes, the work itself can be similar to that done by other lawyers. It is the responsibility that comes from advising and representing governments that sets government lawyers apart.

In many respects, a government lawyer acts not for one but all.

Lawyers in private practice might have only one focus, perhaps securing the best financial deal for a client. But government lawyers have to keep an eye on the bigger game. A case about a financial security can turn into a case about privacy. A case about an assault can turn into a case about a liquor licence. A case about a breach of an employment contract can turn into a case about discrimination.

A government lawyer is often held to a higher standard than that of the general legal profession. As so we should be. We are the custodians of people's rights and liberties. We owe them the duty of being hard working, honest, professional, and fulfilling our duties with the utmost integrity.

This heightened level of responsibility is reflected in the Government's Model litigant policy. The Government should not only be a Model Litigant, but the Model Litigant. In short, this means that acting as a government lawyer does not mean winning a case at all costs. What is important is how you win. Let's call it "playing hard but fair"

As a government lawyer, you must give frank and fearless legal advice. The role of government lawyers is not be 'yes men', or 'rubber stamp' officials.

Giving advice simply because you think it may be what your client wants to hear is not just "bad advice". You need to stand by the advice that you give. It is your reputation at stake. And you only get one reputation

No one is going to blame you for giving correct legal advice. The independence of your advice is well supported by various codes of practice, caselaw and legislation.

For example, an object of the *NSW Public Sector Employment and Management Act 2002* is: “to ensure that the public interest is protected.”¹ The “public interest” in expert, independent legal advice to government is well accepted.

The Premier’s Model Code of Conduct also supports the independence of legal officers. It says “employees are to promote confidence in the integrity of public administration and always act in the public interest and not in their private interest.”

Sometimes that will involve saying no to a client – and sticking by unwelcome advice. But all lawyers – not just government lawyers- should be wary of being the one who only locates problems, rather than offering solutions. A client will soon tire of the lawyer who only explains why something can’t be done, rather than how it can be done.

¹ Part 2.7, Ch 2

Close

It was the former US President Ronald Reagan who said “The nine most terrifying words in the English language are, 'I'm from the government and I'm here to help.'”

But government lawyers should perhaps take more notice of another American official, the former Solicitor-General John P Davis.

“True, (as lawyers) we build no bridges. We raise no towers. We construct no engines. We paint no pictures - unless as amateurs for our own principal amusement. There is little of all that we do which the eye of man can see. But we smooth out difficulties; we relieve stress; we correct mistakes; we take up other men's burdens and by our efforts we make possible the peaceful life of men in a peaceful state.”²

That sounds like recipe for good government.

Thank you for your attendance and I look forward to hearing about what was discussed today over dinner.

² John W Davis, (address), New York, Mar. 16, 1946, in 1 Record of the Association of the Bar of the City of New York 101, 102 (1946)