



Crown
Solicitor's
Office

Annual Report

2019-20



Crown
Solicitor's
Office

16 November 2020

The Hon Mark Speakman SC MP
Attorney General
52 Martin Place
SYDNEY NSW 2000

Dear Attorney General

I am pleased to submit for presentation to Parliament the annual report of the NSW Crown Solicitor's Office for the period 1 July 2019 to 30 June 2020.

The report has been prepared in accordance with the *Annual Reports (Departments) Act 1985* and the *Public Finance and Audit Act 1983*.

Yours faithfully

Karen Smith
Crown Solicitor

Annual Report 2019-20

CROWN SOLICITOR'S MESSAGE	1
AGENCY OVERVIEW	2
MANAGEMENT & STRUCTURE	3
OPERATIONS & ACHIEVEMENTS	6
DIVERSITY & INCLUSION	16
HUMAN RESOURCES	20
WORK, HEALTH & SAFETY	22
MANAGEMENT & ACTIVITIES	24

Appendices

1. FINANCIAL STATEMENTS	26
2. PAYMENT OF ACCOUNTS	72
3. TIME FOR PAYMENT OF ACCOUNTS	72
4. CONSULTANT EXPENDITURE	72
5. RISK MANAGEMENT & INSURANCE	72
6. CYBER SECURITY POLICY ATTESTATION	74
7. PROMOTION	75
8. CONSUMER RESPONSE	75
9. GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT	75
10. PRIVACY & PERSONAL INFORMATION	75
11. PUBLIC INTEREST DISCLOSURES	75
12. LEGAL CHANGE	75
13. REPORT PRODUCTION COSTS & ACCESS	75

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CROWN SOLICITOR'S MESSAGE

I am pleased to present the CSO's annual report for the financial year ended 30 June 2020.

This financial year, NSW has experienced unprecedented events – the 'Black Summer' bushfires, followed by the global COVID-19 pandemic.

A key priority for the CSO has been the provision of high quality and cost-effective legal services to support our clients, the NSW government and its agencies, to respond to these events.

During this time, we have focussed on providing timely, clear, authoritative legal advice and resolving legal disputes effectively and efficiently.

We have continued to explore ways to improve our services for our clients, and to adapt to the changing environment.

We have invested in digital solutions to improve our performance and facilitate our agile transition to flexible working. In December 2019, we introduced a unified legal technology practice management system, Elite 3E. The introduction of Elite enabled us to continue to provide uninterrupted legal services, particularly during the height of the COVID-19 pandemic. Elite offers the potential for further improvements in our digital performance, with additional investment.

We have shared our knowledge and expertise with the government sector. In March 2020, we delivered our first annual CPD conference enabling NSW Government lawyers to earn CPD units across all mandatory CPD fields. During April 2020, we prioritised our 'legal alerts' to clients to increase awareness of critical legal developments during the COVID-19 pandemic.

We have continued to deliver training and information sessions for clients in a range of specialised areas, and we have started developing an induction program for lawyers new to the government sector.

Our performance

The 2019-20 financial year operating result for the office was a net surplus of \$3.2M, \$1.8M better than budgeted. We will make a distribution payment of \$1.4M from the distributable operating surplus, as approved by the Treasurer. We have experienced increased volumes of work in the CSO's Inquiries, Criminal Law and Child Protection practice groups.

Throughout this extraordinary year, our people have demonstrated resilience, flexibility, and highly developed legal acumen. I am proud to present CSO's achievements in this report.

Karen Smith
Crown Solicitor

AGENCY OVERVIEW

The Crown Solicitor's Office (CSO) exists to be the NSW Government's most trusted legal advisors. Our principal objective is to advise and represent agencies to support them in delivering the NSW Government's policies, programs and projects in a lawful, effective and efficient manner. Our strategic direction is guided by the State Outcome, "Effective and efficient resolution of legal disputes."

The CSO is a public service executive agency established under the *Government Sector Employment Act 2013*. The CSO is within the Stronger Communities cluster, where the Principal Department is the Department of Communities and Justice. The CSO is headed by the NSW Crown Solicitor, who is responsible to the Attorney General for the general conduct and management of the functions and activities of the CSO.

Under s.44 of the *Legal Profession Uniform Law Application Act 2014*, the Crown Solicitor may act as solicitor for:

- ▶ the State of NSW
- ▶ a person suing or being sued on behalf of the State of NSW
- ▶ a Minister of the Crown acting in his or her official capacity
- ▶ a body established by an Act or other law of NSW
- ▶ a statutory officer or employee of the Public Service or any other service of the State of NSW or of a body established by an Act or other law of NSW
- ▶ a person holding office under an Act or other law of NSW or because of the person's appointment to that office by the Governor or a Minister of the Crown
- ▶ any other person or body, or any other class of persons or bodies, approved by the Attorney General.

The Crown Solicitor does not provide legal services to the general public.

Under Premier's Memorandum 2016-04, the Crown Solicitor must be engaged by government agencies (subject to that Memorandum) to perform "core legal work". A matter constitutes core legal work where: the best interests of the NSW Government as a whole require a single source of authoritative legal advice and central management; or it relates to the statutory or common law functions of the Attorney General. The Crown Solicitor's legal fees and disbursements for core legal work are met from the Attorney General's Legal Fund, unless some other source of funding is available, such as the Treasury Managed Fund (TMF).

OUR WORK

The CSO is the largest provider of legal services to the NSW Government and its agencies. The Crown Solicitor is the solicitor on the record for the purpose of legal proceedings when representing the State, agencies or Ministers.

Through her office, the Crown Solicitor is the sole provider of legal services in all matters which are regarded as core legal work. Approximately 70% of the CSO's work is core legal work and is performed at cost recovery rates.

The CSO also competes with the private sector to deliver non-core legal work to government agencies. As part of its non-core work, the CSO delivers services under several legal services panel arrangements. In 2019-20, these were:

- ▶ NSW State Insurance Corporation/Treasury Managed Fund (since 2012)
- ▶ NSW Government Legal Services Panel (since 2016)
- ▶ Treasury Managed Fund (TMF)/NSW Health Medical Liability Legal Services Panel (since 2016)
- ▶ Australian Health Practitioner Regulation Agency panel (since 2018).

MANAGEMENT & STRUCTURE

ORGANISATION STRUCTURE

As at 30 June 2020

CROWN SOLICITOR KAREN SMITH				
GOVERNMENT LAW				
DIVISIONS				
CORPORATE SERVICES Practice Manager Position vacant ¹	CIVIL LAW Assistant Crown Solicitor Cheryl Drummy	COMMERCIAL & PROPERTY LAW Assistant Crown Solicitor Felicity Shaw	INQUIRIES & CRIMINAL LAW Assistant Crown Solicitor Naomi Malhotra	ADMINISTRATIVE LAW, EMPLOYMENT & CHILD PROTECTION Assistant Crown Solicitor John McDonnell
CORPORATE SERVICES	LEGAL PRACTICE GROUPS			
FINANCE & SUPPORT SERVICES <i>Director</i> Anna Brennan	TORTS (SERVICE/ REGULATORY AGENCIES) <i>Director</i> Fiona Read	PROPERTY & NATIVE TITLE <i>Director</i> Jodi Denehy	INQUIRIES <i>Director</i> Alana McCarthy	CONSTITUTIONAL & ADMINISTRATIVE LAW <i>Director</i> Paolo Buchberger
HUMAN RESOURCES <i>Director, People & Transformation</i> Position vacant ²	TORTS (JUSTICE/ LAW ENFORCEMENT AGENCIES) <i>Director</i> Richard Kelly	COMMERCIAL LAW <i>Director</i> Michael Granziera	CRIMINAL LAW <i>Director</i> Sarah-jane Morris	EMPLOYMENT LAW & INDUSTRIAL RELATIONS <i>Director</i> Marina Rizzo
INFORMATION MANAGEMENT & TECHNOLOGY <i>Director</i> David Schneider	COMMUNITY LAW <i>Director</i> Penny Csenderits		CRIMINAL LAW (THRO) <i>Director</i> Enzo Camporeale	CHILD PROTECTION <i>Director</i> Nick Mitrevski

¹ The role of Practice Manager has been vacant since 30 March 2020. Prior to this, the role was held by Tom Gilmartin.

² The role of Director, People & Transformation, has been vacant since 1 February 2020. Prior to this, the role was held by Erin Torsello.

DIVISIONS & PRACTICE GROUPS

GOVERNMENT LAW

The Crown Solicitor heads a small practice group focussed on significant government legal issues, including Parliament and Executive power.

CIVIL LAW DIVISION

TORTS (SERVICE/REGULATORY AGENCIES)

This practice group specialises in the defence and settlement of civil claims, with a focus on personal injury and negligence actions against health and other State service agencies. The practice group also represents agencies in coronial inquests.

TORTS (JUSTICE/LAW ENFORCEMENT AGENCIES)

This practice group undertakes all aspects of the defence and settlement of civil claims, specialising in claims for intentional torts involving law enforcement and justice agencies.

COMMUNITY LAW

This practice group specialises in highly sensitive and complex matters for the State, including public interest immunity claims and charitable trusts; as well as adult guardianship and non-employment related discrimination matters.

COMMERCIAL & PROPERTY LAW DIVISION

PROPERTY & NATIVE TITLE

This practice group provides advice and representation in all native title and Aboriginal land rights matters for the State, as well as property transactions and advice regarding Crown land and compulsory acquisitions.

COMMERCIAL LAW

This practice group delivers targeted, specialist assistance in areas of commercial law that apply to agencies, including government procurement, public finance and Crown copyright. The group also handles general commercial and revenue litigation and provides strategic advice in major litigation matters involving consumer and competition law issues..

INQUIRIES & CRIMINAL LAW DIVISION

INQUIRIES

This practice group specialises in complex inquisitorial proceedings, including coronial inquests, royal commissions and special commissions of inquiry, as well as parole related matters and matters concerning investigatory powers and procedures.

CRIMINAL LAW

This practice group specialises in criminal law and quasi-criminal law matters, spanning high risk offender post-sentence detention and supervision applications, summary prosecutions of regulatory and other criminal offences, reviews of conviction and sentence, contempt of court, prerogative of mercy and other criminal law/statutory interpretation advisory matters.

CRIMINAL LAW (THRO)

This practice group specialises in high risk terrorist offender post-sentence detention and supervision applications, and adult and juvenile parole of terrorist-related offenders.

ADMINISTRATIVE LAW, EMPLOYMENT & CHILD PROTECTION DIVISION

CONSTITUTIONAL & ADMINISTRATIVE LAW

This practice group specialises in the area of constitutional law, intergovernmental agreements, statutory interpretation, administrative law, privacy and access to information.

EMPLOYMENT LAW & INDUSTRIAL RELATIONS

This practice group specialises in all aspects of employment law and industrial relations in both State and federal jurisdictions, including in relation to workplace discrimination, licensing and work, health and safety obligations.

CHILD PROTECTION

This practice group specialises in child protection law in the State and federal jurisdictions, contested and non-contested adoptions, and wills, estates, family provision and statutory wills for children.

THE CSO EXECUTIVE

As at 30 June 2020, the CSO Executive comprised:

- ▶ Karen Smith, Crown Solicitor
- ▶ Cheryl Drummy, Assistant Crown Solicitor
- ▶ Felicity Shaw, Assistant Crown Solicitor
- ▶ Naomi Malhotra, Assistant Crown Solicitor
- ▶ John McDonnell, Assistant Crown Solicitor
- ▶ Practice Manager (role vacant since 30 March 2020).

Executive profiles

CROWN SOLICITOR



KAREN SMITH

Appointed to the role of Crown Solicitor in April 2019, Karen has spent more than 20 years as a lawyer with various NSW Government agencies. Prior to commencing as Crown Solicitor, Karen was General Counsel and Deputy Secretary at the Department of Premier and Cabinet, with responsibilities encompassing legal, governance and corporate services. She has provided expert and strategic legal advice to the Premier, Ministers, and senior government officials on critical legal and legislative issues. *Qualifications:* BEc, LLB, LLM

ASSISTANT CROWN SOLICITORS



CHERYL DRUMMY

Cheryl leads the Civil Law division, with responsibility for all public interest immunity claims made on behalf of NSW government clients; advising the Attorney General in regard to Charitable Trusts; the defence of tortious claims brought against the State of NSW; representation of agencies in complex coronial inquests, and for the conduct of historical child abuse claims. A solicitor at the CSO for 18 years, Cheryl has extensive experience across a variety of legal areas, including six years as Director of the Child Protection practice group. As Special Counsel, Cheryl assisted the Special Commission of Inquiry into the Greyhound Racing Industry in NSW. *Qualifications:* BA(Politics), LLB(Hons)



NAOMI MALHOTRA

Naomi leads the Inquiries & Criminal Law division. Naomi has over 16 years' experience in government law and litigation, with expertise in criminal and inquisitorial matters. She practised in, and later led as Director, the CSO's Criminal Law practice group, managing the conduct of regulatory prosecutions and high-risk offender matters and providing advice regarding complex criminal-law related issues. As Special Counsel, Naomi led the CSO team representing the State of NSW in the Royal Commission into Institutional Responses to Child Sexual Abuse, coordinating a whole-of-government response. *Qualifications:* BA, LLB (Hons)



JOHN MCDONNELL

John leads the Administrative Law, Employment & Child Protection division. His expertise includes representing State government agencies in relation to statutory interpretation, judicial and merits review, access to information and privacy. John has instructed in numerous High Court constitutional matters, including *Ha v State of NSW* (1997) 189 CLR 465 (s. 90 excises) and *Re Residential Tenancies Tribunal; Ex parte Defence Housing Authority* (1997) 190 CLR 410 (confirming the State's power to bind the Commonwealth). *Qualifications:* BA, LLB



FELICITY SHAW

Felicity leads the Commercial & Property Law division. She has extensive transactional and advisory experience in government, commercial and corporate law matters, procurement and risk management, and finance transactions. Her prior experience in the public sector (in both State and Commonwealth agencies) involved a range of commercial initiatives, including asset divestments and infrastructure projects. *Qualifications:* BSc, LLB (Hons), MEL, GAICD

OPERATIONS & ACHIEVEMENTS

DELIVERING LEGAL SERVICES TO THE STATE OF NSW

The CSO accepted instructions in 4,202 new matters during the 2019-20 financial year.

An overview of significant achievements of the office is set out below, followed by a selection of some of the more significant cases our solicitors have been involved with.

Response to the COVID-19 pandemic

The CSO provided legal advice and assistance to NSW Government agencies in response to the COVID-19 pandemic, including in relation to:

- ▶ emergency COVID-19 legislative reforms
- ▶ contractual arrangements
- ▶ privacy
- ▶ statutory interpretation.

Considering the imperative for agencies to respond swiftly, the CSO issued 12 legal alerts to clients between March and May 2020 in connection with the various COVID-19 reforms.

The CSO also acted in several parole-related matters in relation to the COVID-19 pandemic, including providing urgent advice on Part 15: Special provisions for COVID-19 pandemic of the *Crimes (Administration of Sentences) Act 1999*.

Solicitors from the CSO were also engaged, by way of secondment, to assist with the Special Commission of Inquiry into the voyage of the Ruby Princess and subsequent efforts to diagnose and treat, and to contain the community transmission of COVID-19 by, Ruby Princess passengers.

NSW bushfires

The CSO provided urgent legal advice and assistance to several NSW Government agencies in response to the 2019-20 'Black Summer' bushfires. Several staff supported the NSW Rural Fire Service and Fire and Rescue NSW through urgent secondments to assist with document management.

Major litigation & representation

The CSO successfully represented agencies in a range of matters, including those related to revenue litigation, liquor licensing, employment matters, child protection, adoptions, privacy, the *Government Information (Public Access) Act 2009*, judicial review proceedings, and compensation appeals with respect to the compulsory acquisition of land.

In complex and high-profile intentional tort litigation, the CSO achieved successes for the State in the High Court in the Gordon Wood malicious prosecution proceedings, and in the Hamilton Supreme Court misfeasance in public office proceedings involving the Kenja group.

Transactions & major projects

The CSO drafted and reviewed various agreements for a range of significant commercial and property projects, including commercial arrangements for major public events and industry collaborations.

We acted for the National Parks and Wildlife Service in its acquisition of the Blue Mountains' Radiata Plateau from the Maharishi Foundation. This land is the habitat of several endangered species and will now be incorporated into the NSW national park reserve system.

The CSO combined native title and commercial transaction expertise in acting for the Health Administration Corporation with respect to an indigenous land use agreement and agreement for lease for the construction and development of the Buronga HealthOne community centre.

Resolution of native title claims

The CSO continued to be the NSW Government's representative in native title claims. We advised and represented a NSW Government agency in novel proceedings involving compensation for native title under the *Land Acquisition (Just Terms Compensation) Act 1991* in *Bandjalang Aboriginal Corporation v Transport for NSW* [2020] NSWLEC 1008.

Settlement of civil claims

The CSO is at the forefront of trauma-informed settlement approaches to survivors of institutional child abuse, consistent with the NSW Guiding Principles and Model Litigant policy. In 2019-20, the CSO resolved more than 150 matters, and were instructed in over 250 claims.

The Crown Solicitor advised and represented the State in remuneration-related proceedings commenced by Copyright Australia in the Copyright Tribunal. The proceedings were ultimately settled in the Tribunal and a new whole-of-government copyright agreement was concluded with Copyright Australia.

Advice & statutory interpretation

The Crown Solicitor continued to provide authoritative and strategic advice to NSW Government agencies on a broad range of matters, including constitutional law issues, interpretation of NSW and Commonwealth statutes, statutory powers of NSW Government agencies (including providing joint advices to agencies where the intersection of their statutory powers might be in dispute) and delegation issues. We also advised in circumstances where commercial, property and public law intersect. This encompassed advising in relation to:

- ▶ procurement reforms, including the *NSW Procurement Board Direction on Enforceable Procurement Provisions*
- ▶ the powers of certain State entities to enter into contractual arrangements
- ▶ public finance requirements attaching to significant commercial transactions
- ▶ the status of Crown lands and other property held by agencies
- ▶ regulatory compliance by government agencies engaging in commercial activity
- ▶ the interaction between equitable interests and statutory licensing frameworks.

Constitutional litigation

The CSO worked closely with the Solicitor General on several significant constitutional cases in the High Court and Court of Appeal, in some of which the Attorney General intervened, including:

- ▶ *Vella and ors v Commissioner of Police and State of NSW* [2019] HCA 38
- ▶ *Minogue v Victoria* [2019] HCA 31
- ▶ *Gaynor v Attorney General for NSW* [2020] NSWCA 48.

Judicial review

The CSO acted for NSW government agencies in relation to many judicial review applications in the Supreme Court and Court of Appeal. The CSO was instructed in judicial review proceedings brought by Kathleen Folbigg in respect of the findings made by the Hon Reginald Blanch AM QC in the Inquiry into the convictions of Kathleen Folbigg for murder, manslaughter, and grievous bodily harm of her children.

Court of Appeal examples included *Randren House v Water Administration Ministerial Corporation* [2020] NSWCA 14, and *DRJ and ors v Commissioner for Victims Rights (No 2)* [2020] NSWCA 242.

Privacy

The 2019-20 Financial Year was very active in relation to privacy matters. We provided numerous advices covering a broad range of issues concerning the collection, use and disclosure of information held by agencies. We acted for agencies in NCAT matters (including in the Appeal Panel and, on appeal, to the Court of Appeal), and we had a surge in requests for assisting agencies with privacy internal reviews. We also drafted s. 41 directions and codes of practice.

High risk offenders

During 2019-20, the Crown Solicitor acted for the State of NSW in 38 Supreme Court applications for extended supervision orders (ESOs) and continuing detention orders (CDOs) under the *Crimes (High Risk Offenders) Act 2006* (CHRO Act) and the *Terrorism (High Risk Offenders) Act 2017* (THRO Act).

We acted in appeal proceedings related to these matters, including:

- ▶ *Baldwin v State of NSW*, in which the NSW Court of Appeal accepted the State's submission that the power under the CHRO Act to make an ESO subject to conditions abrogates the privilege against self-incrimination in certain respects.
- ▶ *Lawrence v State of NSW*, in which the NSW Court of Appeal accepted the State's submission that the THRO Act is not constitutionally invalid and does not interfere with the institutional integrity of the Supreme Court (details of this case are provided in the following section, 'Significant matters: a selection').

The Crown Solicitor also acted for the State, the Secretary of the Department of Communities and Justice and the Commissioner of Corrective Services in parole matters concerning terrorist and other high-risk offenders under the *Crimes (Administration of Sentences) Act 1999* and the *Children (Detention Centres) Act 1987*.

Complex inquests & inquiries

The CSO assisted the State Coroner and her deputies in inquests and fire inquiries that considered issues of public safety. This included matters relating to Aboriginal deaths in custody that resulted in recommendations to improve procedures aimed at the safety of inmates, particularly concerning the quality of mental health care and suicide prevention. We also assisted in an inquest into the death of two infants, resulting in recommendations concerning a revised inter-agency approach to the investigation and management of Sudden Unexplained Deaths in Infancy in NSW.

We acted for the Attorney General as intervenor in appeal proceedings against a declaration made by the Supreme Court on the application of Melco Resorts, arising from the Inquiry into matters concerning the Crown Casino. The Court of Appeal accepted the Attorney General's submissions that witnesses summoned to attend the inquiry or to produce documents to it may not refuse to comply on any ground of privilege (see details of this case in the following section, 'Significant matters: a selection').

The CSO also represented agencies in significant inquests, including appearing for the Department of Communities and Justice and advising the Commissioner of Police during the Inquest into the disappearance of William Tyrrell. The findings are due to be delivered on 18 June 2021.

ROYAL COMMISSIONS

Since 2019, the CSO has been representing the State of NSW, from a whole-of-government perspective, in the Royal Commission into Aged Care Quality and Safety, the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, and, since 2020, in the Royal Commission into National Natural Disaster Arrangements. We have provided significant volumes of information to each Royal Commission concerning issues affecting multiple government agencies. The CSO advised and appeared for the State before public hearings relating to a range of case studies, including those considering the experiences of persons in aged care, and those with disability, during the ongoing COVID-19 pandemic.

Public interest immunity

The CSO advised and represented agencies in public interest immunity claims in more than 500 matters in civil proceedings and criminal trials. Significantly, in November 2019, the Crown Solicitor appeared for the Commissioner of Police when the High Court confirmed that a successful public interest immunity claim means that the information is prevented from being admitted into evidence at all; it is exclusionary. Details of *HT v The Queen & Anor* [2019] HCA 40 are included in 'Significant matters:', below.

Charitable trusts

The CSO advised and acted for the Attorney General and other agencies in numerous Court proceedings concerning charitable trusts and with respect to applications made pursuant to the *Charitable Trusts Act 1993*. The Crown Solicitor appeared on behalf of the Attorney General in Supreme Court judicial advice proceedings, which concerned an application for advice by the Trustees of the NSW Rural Fire Service and Brigades Donations Fund in relation to monies raised in a charitable fundraising appeal by Ms Celeste Barber during the 2019-2020 bushfires, *In the matter of New South Wales Rural Fire Service and Brigades Donations Fund; Application of Macdonald & Or* [2020] NSWSC 604.

SIGNIFICANT MATTERS: A SELECTION

RESOLVING ONE OF THE OLDEST NATIVE TITLE CLAIMS IN NSW

Williams on behalf of the Gumbaynggirr People and Attorney General of NSW [2019] FCA 1915; *Pacey on behalf of the Gumbaynggirr People and Attorney General of NSW* [2019] FCA 1916

The CSO acted for the Attorney General of NSW in two Federal Court native title determinations, resolving one of the oldest native title claims in NSW. The consent determinations, handed down in late 2019, saw a day of great celebration by all parties. They were the result of extensive negotiation between the State, the Gumbaynggirr People and other stakeholders.

On 26 November 2019, the Federal Court made two determinations by consent, recognising the Gumbaynggirr People's native title rights and interests in land and waters on the mid-north coast of NSW, between Urunga and Valla Beach.

The original native title applications were filed by the Gumbaynggirr People in 1996 and 1998 and determined in 2014 and 2017. The land was excised from the area in the original applications to resolve land administration and usage issues.

The determinations were the result of extensive negotiation between the State, the Gumbaynggirr People and other stakeholders.

The Wanggaan (Southern) Gumbaynggirr Nation Aboriginal Corporation RNTBC ICN 8095, and the Gumbaynggirr Wenonah Head Aboriginal Corporation RNTBC ICN 7376 will hold the determined native title in trust for the common law native title holders pursuant to s. 56 of the *Native Title Act*.

Robertson J was satisfied that the determination was within the Court's power pursuant to ss. 87(2) and 94A of the Act and congratulated the parties and their advisors on achieving the result.

The parties' approach, with the Attorney General agreeing to waive his credible evidence assessment of the applicant's connection material, subject to the applicant satisfying certain conditions, was "the most prudent, as well as the quickest, most inexpensive and efficient means of facilitating the just resolution of [the] proceedings".

CHALLENGE TO THE CONSTITUTIONAL VALIDITY OF SERIOUS CRIME PREVENTION ORDERS

Vella & Ors v Commissioner of Police & State of New South Wales [2019] HCA 38

The Crown Solicitor acted for the NSW Commissioner of Police and the State, the defendants in a High Court challenge to the constitutional validity of the scheme for serious crime prevention orders found in the *Crimes (Serious Crime Prevention Orders) Act 2016*. The challenge, based on the principle in *Kable*, was rejected by a 5-2 majority of the High Court.

The plaintiffs were defendants to a Supreme Court application under the Act by the Commissioner of Police, in which the Commissioner sought serious crime prevention orders (SCPOs) against the defendants, including restrictions on movement, association and communication.

In the High Court, the plaintiffs argued that, contrary to the *Kable* principle, the Act established an “alternative criminal justice

regime” that undermined the finality of criminal proceedings and the operation of the criminal justice system, requiring the Supreme Court to depart from traditional judicial processes and to apply uncertain standards. The Commissioner and the State, represented by the Crown Solicitor, responded that the Act established a civil regime analogous to preventative order regimes upheld as valid by the High Court.

In rejecting the *Kable* challenge, a 5-2 majority of the High Court found that the Act did not impermissibly impair the Supreme Court’s institutional integrity contrary to *Kable*. The majority held that the Act required the Court, in making an SCPO, to assess the future risk of serious criminal activity and balance this against the effect of the SCPO on the individual, consistent with the exercise of judicial power.

PROCEDURAL FAIRNESS AND THE PROTECTION OF SENSITIVE INFORMATION

HT v The Queen & Anor [2019] HCA 40

The CSO represented the Commissioner of Police regarding the High Court’s consideration of whether procedural fairness required an offender, *HT*, who had provided assistance to authorities, to have access to an affidavit of assistance which contained information subject to public interest immunity (PII).

The District Court judge applied a discount on sentence after considering the affidavit of assistance. While the Crown had viewed the affidavit, *HT*’s legal representatives had agreed not to, after having been informed by the Commissioner that the affidavit would need to be modified if they sought to view it.

The Crown appealed the sentence as being manifestly inadequate. In the Court of Criminal Appeal (CCA), *HT* sought access to the affidavit. The Commissioner claimed PII over its contents, which the Court upheld, denying *HT* and her legal representatives access to it. The appeal was allowed, resulting in a longer sentence.

On appeal to the High Court, the Court allowed *HT*’s appeal on the grounds that *HT* was denied procedural fairness. The Court noted that a successful PII claim means that the document is prevented from being produced or admitted into evidence at all. The Court found that the appellant was denied the opportunity of considering and testing the accuracy of the affidavit, or making submissions as to the mandatory considerations in s. 23(2) of the *Crimes (Sentencing Procedure) Act*.

The majority judgment considered that orders can be tailored to protect sensitive evidence, although noting that in rare cases this may not be possible. Justices Nettle and Edelman, concurring, were less sanguine about how far courts may go to protect such information in the absence of a detailed legislative solution.

The Court further observed that the CCA should have declined to exercise residual discretion provided by s. 5D(1) of the *Criminal Appeal Act*, and should have dismissed the Crown appeal. The affidavit remains suppressed.

MALICIOUS PROSECUTION APPEAL

Wood v State of New South Wales [2019] NSWCA 313; *Wood v State of New South Wales* [2020] HCSL

In 2008, the appellant, Gordon Wood, was convicted of the murder of Caroline Byrne, who was found dead at The Gap on 8 June 1995. He was acquitted on appeal in February 2012. Mr Wood subsequently brought civil proceedings in the Supreme Court against the State of NSW, seeking damages for malicious prosecution. The Crown Solicitor represented the Director of Public Prosecutions and the Commissioner of Police.

At first instance, her Honour Justice Fullerton was critical of aspects of the conduct of the criminal proceedings. However, her Honour considered this conduct was better explained by a lack of insight by the prosecutor as to flaws in his approach, rather than a determination to press for a conviction even if it entailed a breach of prosecutorial obligations.

On appeal, the Court of Appeal noted the extensive and painstaking examination of evidence undertaken by Fullerton J, and considered that her Honour's findings should not be disturbed unless they were shown to be wrong by "incontrovertible facts or uncontested testimony", or were "glaringly improbable" or "contrary to compelling inferences" (applying *Fox v Percy* [2003] HCA 22).

The Court found that the appellant had not demonstrated her Honour's conclusions were wrong by reference to these standards and held that her Honour was correct to conclude that malice was not established in this case.

On 14 August 2020, the High Court, comprising Justices Nettle and Gordon, refused the applicant special leave to appeal on the basis that the appeal enjoyed insufficient prospects of success to warrant the grant of leave.

NO ENTITLEMENT TO COMPENSATION FOR COMPULSORY ACQUISITION OF SUBSTRATUM LAND

Landan Development Pty Ltd & Ors v Sydney Metro [2019] NSWLEC 65

The CSO acts for Sydney Metro in a series of Land and Environment Court proceedings concerning compensation for the compulsory acquisition of land under the surface for the purpose of the Sydney Metro City & Southwest project. On 20 June 2019, judgment was delivered in a separate question in *Landan Development Pty Ltd & Ors v Sydney Metro*.

The proceedings concern the applicants' entitlement to compensation in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* for the compulsory acquisition of substratum land for the purposes of underground rail facilities.

Under the *Transport Administration Act 1988* (the Act), no compensation is payable in respect of such underground acquisitions unless certain factual circumstances are met. These circumstances are that the surface of the overlying soil is disturbed, or the support of that surface is destroyed or injuriously affected by the construction of those underground rail facilities (the "Mandatory Factors").

The Court (by way of separate question) was asked whether the Mandatory Factors are limited to circumstances occurring after the construction of the underground rail facilities.

Sydney Metro submitted that the Mandatory Factors could not be addressed until the tunnel construction was sufficiently advanced to provide a basis for assessing whether the circumstances had occurred. The applicants submitted that the Mandatory Factors were satisfied by the effect of the acquisition on the residue land parcel – that is, on the basis of predicted disturbance or injurious affectation.

The Land and Environment Court preferred Sydney Metro's approach and determined that there can be no entitlement to compensation for the compulsory acquisition of sub-stratum land for the purpose of underground rail facilities before the facilities are constructed.

CROWN CASINO INQUIRY MAY COMPEL THE PRODUCTION OF PRIVILEGED DOCUMENTS

Attorney General for New South Wales v Melco Resorts & Entertainment Limited [2020] NSWCA 40; *Melco Resorts & Entertainment Limited v The Independent Liquor and Gaming Authority* [2020] NSWSC 53

The CSO acted for the Attorney General who appeared as contradictor in Supreme Court and Court of Appeal proceedings in which it was contended that a power to compel witnesses to reveal privileged information, under s. 17(1) of the *Royal Commissions Act 1923* (the RC Act), did not apply in the Inquiry under s. 143 of the *Casino Control Act 1992* (the CC Act) into matters concerning the Crown Casino.

By instrument of appointment made under s. 143A of the CC Act, the Commissioner of the Inquiry was granted the “powers and authorities” conferred under Div. 2 of Pt 2 of the RC Act, “except for s. 17(4) and (5)”. Melco Resorts & Entertainment Limited sought declarations to the effect that s. 143A of the CC Act did not pick up s. 17(1) of the RC Act.

At first instance, Adamson J made the declarations sought by Melco, finding that the

language of s. 143A was not sufficiently clear to pick up a provision which abrogated privilege.

The Attorney General appealed. The Court of Appeal reversed the first instance decision and held that: s. 17(1) of the RC Act conferred a “power or authority” by extending the general power to compel the production of documents, and thus fell within the ambit of s. 143A(1)(b) of the CC Act; and s. 17(1) was also applied to witnesses before the inquiry pursuant to s. 143A(2). The Court accepted the Attorney General’s submission that the principle of legality, relied upon by Adamson J, does not override the usual exercise of statutory construction by reference to text, purpose and context.

Melco’s application for special leave to appeal to the High Court was refused ([2020] HCASL 129).

DEFINITION OF “COMMUNITY” WHEN CONSIDERING PAROLE ORDERS

Whiteoak v State Parole Authority and the Attorney General of NSW [2020] NSWSC 185

The CSO acted for the Attorney General and the State Parole Authority (the Authority) in judicial review proceedings brought by Barry Whiteoak, in which Mr Whiteoak challenged the Authority’s determination to refuse his application for release on parole. The case considered whether the Authority’s assessment of the plaintiff’s risk to the safety of the “community” extended to the community in the UK to which the plaintiff proposed to relocate upon release and deportation.

In July 2018, the Authority considered whether to grant parole to the plaintiff, who had been convicted of murder in 1984. It was not in dispute that, upon release, the plaintiff would be deported to the UK, where he would not be subject to supervision. On 16 November 2018, the Authority refused parole, finding that it was not in the interests of the safety of the community to release the plaintiff to parole. In doing so, the Authority construed the term “community” in s. 135 of the *Crimes (Administration of Sentences) Act 1999* (CAS Act) as extending to the community in the UK.

The plaintiff argued that the Authority had erred by considering both the fact that he would be deported upon release to parole, and the safety of the community to which he would be released. The Attorney General submitted that the text and context of the CAS Act and the legislative responsibilities placed upon the Authority were sufficient to displace the operation of ss. 5(2) and 12(1)(b) of the *Interpretation Act*, so that the word “community” is not limited to the community of NSW. Rather, it should be construed as extending to the community to which the plaintiff proposes to relocate upon release to parole (in this case, the UK).

Bellew J dismissed the proceedings, preferring the Attorney General’s construction of “community”. His Honour held that the plaintiff’s proposed construction would promote an approach at odds with an express objective of the CAS Act, as it would require the Authority to put aside consideration of rehabilitation of offenders, regardless of the risk they posed.

SUPREME COURT REJECTS CHALLENGE TO VALIDITY OF THRO ACT

State of New South Wales v Lawrence (Preliminary) [2019] NSWSC 1101, *State of New South Wales v Lawrence* [2019] NSWSC 1441 and *Lawrence v State of New South Wales* [2020] NSWCA 248

The Crown Solicitor represents the State of NSW in proceedings seeking a continuing detention order against the defendant. The defendant challenged the validity of the *Terrorism (High Risk Offenders) Act 2017* (NSW) (THRO Act) on the basis that it undermines the institutional integrity of the NSW Supreme Court.

At the preliminary hearing of the State's application for an interim detention order, the defendant's submissions included that the *THRO Act* is invalid because it contravenes the principle in *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51 (*Kable*).

On 21 August 2019, the Court made the interim orders sought by the State, finding that the statutory preconditions had been met. The Court stayed the operation of those orders pending resolution of the constitutional challenge: *State of New South Wales v Lawrence (Preliminary)* [2019] NSWSC 1101.

On 23 October 2019, the Court rejected the defendant's constitutional challenge and lifted the stay on the interim orders: *State of New South Wales v Lawrence* [2019] NSWSC 1441. The Court concluded that the *THRO Act* does not undermine its capacity to act fairly and impartially, nor does it depart to a significant degree from the methods and standards that characterise the exercise of judicial power.

On appeal to the Court of Appeal, Mr Lawrence again submitted that the *THRO Act* is invalid because it contravenes the principle in *Kable*. On 7 October 2020, the Court of Appeal dismissed the appeal: *Lawrence v State of New South Wales* [2020] NSWCA 248.

While the Court acknowledged that there was "force" in the appellant's submission that the conferral of power on the Supreme Court to order preventative detention for reasons unrelated to past offending is incompatible with the Court's institutional integrity, the Court held that current High Court authority does not lead to the conclusion that the *THRO Act* is, for that reason, invalid.

The Court concluded that the power to order preventative detention for a protective purpose does not compromise the institutional integrity of the Supreme Court. The Court further held that the evidentiary provisions in the *THRO Act* do not deny a defendant procedural fairness in such a way as to undermine the institutional integrity of the Court.

MAJOR PROJECTS

The CSO continued to build on the core elements of the office's comprehensive Workplace Modernisation Program to secure the CSO's future ability to deliver effective and efficient legal services to the State of NSW.

The key focus area in 2019-20 was the implementation of a new practice management system. Other information and communications technology initiatives also supported our continuing shift towards a more flexible, digital-first work environment. We continued to maintain and enhance the office's digital capabilities while meeting business objectives and security requirements.

The CSO's investment in information and communications technology capabilities placed us in a strong position to support our staff working remotely as a result of the COVID-19 pandemic.

New practice management system

In December 2019, the CSO launched its new practice management system, Thomson Reuters Elite, with the support of specialised agency staff. The office has already gained benefits from the new system – most notably, the significant and unanticipated benefit of allowing us to transition seamlessly to remote working in response to the COVID-19 pandemic. Over the next year, the CSO will continue refining the system for increased flexibility and responsiveness to meet client needs, enhanced business intelligence and reporting capabilities, and improved risk management and efficiency.

Information & communications technology

We developed a new ICT technology architecture roadmap and ICT strategy. A core theme of the strategy is to support a "digital first" culture, enabling our staff to work anywhere, anytime.

We continued to progress key projects, including the phased upgrade to Windows 10 and Office 365 from June 2020 for all office laptops, and replacing all remaining desktop PCs with laptops by the end of August 2020. This has increased the flexibility of working arrangements, providing remote access via 4G SIM and alternative access via a Virtual Private Network to CSO systems and information. It has reduced business continuity risk and enabled a further reduction in paper usage that in turn will reduce printing costs and storage fees related to hard copy.

As a result of the COVID-19 pandemic, the CSO saw significantly increased use of video conferencing and collaboration technologies. CSO staff and clients regularly utilised this technology for virtual court appearances and other official meetings. We also deployed secure electronic file exchange facilities to both enable and improve delivery of services to our clients.

The CSO continued its document digitisation program, and the further enablement of content search on documents to support ease of access. We maintained a services contract to engage electronic litigation support services for matters with large document volumes, where we identified efficiency and cost benefits for CSO clients.

Looking ahead

During 2020-21, focus areas for the CSO will be:

- ▶ continuing to enhance the Elite practice management system to deliver further efficiencies and improve quality of services
- ▶ upgrading our core electronic document management system to improve access and useability
- ▶ completing migration to, and expanding our use of, the Microsoft Office 365 environment, providing improved access to information by CSO staff.

Cyber security will continue to be a focus for the CSO. We are working closely with the Department of Communities and Justice to ensure our office's cyber security compliance.

TRAINING, SEMINARS & VALUE-ADD SERVICES

The CSO delivered a range of free and low-cost training, seminars, and value-add services to clients in 2019-20.

CPD seminars

In 2019-20, the CSO delivered five CPD seminars for NSW Government lawyers and members of the NSW public sector, which were also live-streamed, reaching approximately 1,000 client contacts. These provided government lawyers with the opportunity to earn up to 1.5 CPD units for each seminar.

Additionally, we live-streamed a full-day CPD conference in March for NSW Government lawyers. The event gave government lawyers the opportunity to hear from experts on topical issues affecting NSW government agencies and earn CPD units across all compulsory CPD fields. There were more than 700 registered attendees.

“ The 2020 CPD Conference was excellent in its content and delivery, and highly pertinent to government lawyers.

Specialised training

Senior CSO legal officers provided specialised training on the *Government Information (Public Access) Act 2009* and NSW Privacy legislation, attended by staff from more than 20 departments and agencies.

Legal alerts

The CSO issued 18 legal alerts in 2019-20 to keep clients updated on key decisions, legislative updates and other critical legal developments as they occurred. Ten of these alerts related to legislative reforms made in response to the COVID-19 pandemic. Selected alerts were more widely published on LinkedIn and the CSO website.

Newsletters

Clients received issues of our quarterly e-newsletter, ClientNews, summarising recent legal developments and significant cases, and listing government bills that have been assented to and Acts that have commenced, and those introduced during that period that are still progressing through the legislative process.

Tailored training & education

The CSO delivered tailored training and educational seminars to specific clients on key legal issues relevant to their organisation. This included a presentation on recent procurement reforms, a series of professional development sessions covering issues commonly arising in the context of long service leave, and a presentation to improve decision-making processes in compensation cases.

Reporting to clients

Monthly summary status reports provided clients with information on their active matters. We continued to deliver periodic tailored reporting to clients on their legal matters. From October 2019, the CSO introduced quarterly reporting to cluster General Counsel. These reports provide an overview of the cluster's core legal expenditure from the Attorney General's Legal Fund.

Responding to feedback

Each year, the CSO invites clients to complete a confidential, online client service survey to provide feedback on how the CSO is performing in its delivery of legal services. The survey includes a benchmark question to measure the CSO's Program Performance Indicator (PPI): "Overall, how do you rate the CSO's legal services compared with other law firms you use?" For the 2019-20 period, 97.1% of clients rated the CSO's legal services better than or about the same as other law firms.

The PPI is driven by the State Outcome of "effective and efficient resolution of legal disputes".

DIVERSITY & INCLUSION

WORKFORCE DIVERSITY

Trends in the representation of EEO groups

% OF TOTAL EMPLOYEES (BY FINANCIAL YEAR)

EEO GROUP	BENCHMARK/ TARGET	2015	2016	2017	2018	2019	2020
Women ¹	50%	73.8%	73.6%	73.3%	75.1%	74.7%	73.7%
Aboriginal people & Torres Strait Islanders ²	3%	1.4%	1.1%	0.6%	0.8%	0.7%	0.7%
People whose first language was not English ³	23.3%	15.4%	13.5%	16.6%	13.4%	11.7%	10.6%
People with a disability ⁴	5.6%	3.4%	2.63%	2.1%	1.8%	1.8%	1.5%
People with a disability requiring work-related adjustments ⁵	N/A	1.1%	1.6%	0.3%	0.8%	0.9%	0.7%

Notes on trends in the representation of EEO groups:

1 The benchmark of 50% for representation of women across the sector is intended to reflect the gender composition of the NSW community.

2 The NSW Public Sector Aboriginal Employment Strategy 2019-25 sets a target of 3% Aboriginal employment at each grade of the public sector by 2025.

3 A benchmark from the Australian Bureau of Statistics (ABS) Census of Population and Housing has been included for people whose first language spoken as a child was not English. The ABS Census does not provide information about first language but does provide information about country of birth. The benchmark of 23.2% is the percentage of the NSW general population born in a country where English is not the predominant language.

4 The NSW Premier's Priorities aim to have 5.6% of government sector roles held by people with a disability by 2025.

5 Work is underway to improve the reporting of disability information in the sector to enable comparisons with population data. For this reason, no benchmark has been provided for People with a Disability Requiring Work-Related Adjustment.

Trends in the distribution of EEO groups

DISTRIBUTION INDEX¹ (BASED ON EMPLOYEE NUMBERS AS AT 30 JUNE)

EEO GROUP	BENCHMARK/ TARGET	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
Women	100	92	96	101	296	326	333
Aboriginal people & Torres Strait Islanders	100	N/A	N/A	N/A	N/A	N/A	N/A
People whose first language was not English	100	86	90	87	53	51	48
People with a disability	100	N/A	N/A	N/A	N/A	N/A	N/A
People with a disability requiring work-related adjustment	100	N/A	N/A	N/A	N/A	N/A	N/A

Notes on trends in the distribution of EEO groups:

1 A Distribution Index of 100 indicates that the centre of the distribution of the workforce diversity group across salary levels is equivalent to that of other employees. Values less than 100 mean that the workforce diversity group tends to be more concentrated at lower salary levels than is the case for other employees. The more pronounced this tendency is, the lower the index will be. In some cases, the index may be more than 100, indicating that the workforce diversity group is less concentrated at lower salary levels. The Distribution Index is not calculated where workforce diversity group or non-workforce diversity group numbers are less than 20.

WORKFORCE DIVERSITY ACHIEVEMENTS

The CSO is committed to building its workforce capability and enhancing its culture and composition to meet today's needs and future business requirements.

Workforce diversity strategies

The CSO progressed key actions identified for the 2019-20 financial year period, including:

- ▶ Developing a diversity and inclusion strategy for the CSO (to be implemented in 2020-21).
- ▶ Leveraging the Public Service Commission's (PSC) partnership with CareerTrackers to support the CSO's focus on increasing Aboriginal representation in our workforce. In December 2019, we welcomed our first intern through the PSC's Aboriginal Internship Program. The intern spent 12 weeks with the CSO's Inquiries & Criminal Law division, gaining insight into prosecutorial work and coronial inquests.
- ▶ Building on the CSO's Aboriginal Employment and Engagement plan, including options for targeted early career roles and traineeships. On 1 July 2020, the CSO was granted an exemption from Anti-Discrimination NSW to advertise, designate and recruit two graduate solicitor positions per year for Aboriginal and Torres Strait Islander persons only.

The CSO continued to participate in the Stepping Into internship program through our membership with the Australian Network on Disability. In 2019-20, the CSO provided two paid internships for university students who identified as having a disability.

We also continued our association with GradAustralia to promote career opportunities and increase awareness of the CSO as an attractive NSW Government employer, including through GradAustralia's GenerationOne Indigenous Careers Guide publication.

The office participated in the Stronger Communities Cluster Inclusion and Diversity Council, and implemented policies and processes to support and enable flexible work practices.

Other activities we undertook to support workforce diversity included implementing policies and processes to support and enable flexible work practices, maintaining gender diversity and independence on recruitment panels, and promotion of our commitment to inclusion in all our recruitment advertisements and selection processes.

Developing the awareness and capability of our people in relation to diversity and inclusion remained a focus, supported by online training modules covering 'Aboriginal Cultural Inclusion', and 'Valuing Diversity', which aim to enhance understanding of the value of diversity in the workplace.

We celebrated events across the year that reinforced our visible and active commitment to providing an inclusive environment. The CSO's events and awareness calendar includes International Women's Day, Harmony Day, World Day for Cultural Diversity for Dialogue and Development, NAIDOC week, and International Day of People with Disability.

Workforce diversity strategies for 2020-21

Key opportunities in 2020-21 to support and develop our workforce diversity commitment include implementing the CSO's diversity and inclusion strategy, developed in 2019-20. The strategy aligns to the Stronger Communities cluster's diversity and inclusion plans and the Public Service Commission's plans, including the NSW Public Sector Aboriginal Employment strategy (2019-2025).

We will continue to explore partnership opportunities with external providers to support focus on increasing Aboriginal representation in our workforce, and to develop the CSO's Aboriginal Employment and Engagement plan, including options for targeted early career roles and traineeships.

MULTICULTURAL POLICIES & SERVICES PROGRAM

The CSO does not provide legal services to the general public. However, we are committed to implementing multicultural principles in the way we work and do business, and supporting the themes of the Multicultural Policies and Services Program. We support our culturally, linguistically and religiously diverse workforce.

The office continued its participation in the Stronger Communities Cluster Inclusion and Diversity Council, shared e-learning modules with staff on aspects of multicultural diversity and inclusion, and promoted events and awareness days, including Harmony Day, World Day for Cultural Diversity for Dialogue and Development, and NAIDOC week.

A comprehensive leadership develop program, commenced in September 2019, will provide further support for women from all backgrounds in leadership roles across the office.

The CSO's office environment addresses the diverse needs of its people, including through the provision of a purpose-built parent's room and designated "wellbeing rooms" that can be used as prayer rooms.

Multicultural strategies for 2020-21

The CSO's multicultural strategies for 2020-21 are tied to our workforce diversity strategies. They include actions and initiatives such as:

- ▶ implementing the CSO's diversity and inclusion strategy
- ▶ increasing workforce diversity survey response rates to improve multicultural community workforce data.

Additionally, we are focussed on building a pipeline of diverse talent and implementing talent and succession planning processes and reporting. This will help us to better identify the diversity of our talent pipeline and options to further develop groups people from CALD backgrounds, and Aboriginal staff.

We will continue our work to:

- ▶ increase Aboriginal representation in our workforce, including options for targeted early career roles and traineeships
- ▶ develop our people and leaders to foster an inclusive and diverse workplace, including through awareness of unconscious bias
- ▶ support and increase opportunities for flexible working
- ▶ leverage our strength in promoting and celebrating the diverse backgrounds of our people
- ▶ reinforce our commitment to inclusion through our Diversity & Inclusion calendar.

The CSO's recruitment practices are regularly reviewed and developed to reflect our commitment to inclusion in our recruitment activities, including for gender diversity and CALD backgrounds. Internal policies and practices, such as flexible work practices, contribute to improving the attraction and retention of women in leadership.

AGREEMENTS WITH MULTICULTURAL NSW

The CSO does not have any agreements in place with Multicultural NSW. The CSO provides services directly to NSW Government agencies. The Crown Solicitor does not provide legal services to the general public.

DISABILITY INCLUSION ACTION PLAN

The CSO is not required to have a disability inclusion action plan, under the terms of the *Disability Inclusion Act 2014*. However, the CSO is dedicated to supporting the NSW Government's commitment to remove systemic and attitudinal barriers, and to providing access to and inclusion in meaningful employment.

“ When I finished my internship, I felt a sense of confidence I have not felt since I started my degree.

Karl Perkins, intern

The office maintained its Silver membership of the Australian Network on Disability in 2019-20, through which we participated in the Stepping Into internship program. We provided two paid internships for university students who identified as having a disability.

The students were provided with hands-on work experience as paralegals in our Constitutional & Administrative Law practice group for up to eight weeks. Workplace adjustments were made to ensure the students were able to successfully complete their placement

Participating in the Australian Network on Disability also allowed us to access resources and advise on development and implementation of disability and inclusion practices.

The CSO continued to apply the Department of Communities and Justice's *Reasonable Adjustments Guideline* to ensure that employees with disabilities can work to their full potential and have equitable access to opportunities for development within the office.

HUMAN RESOURCES

OFFICERS & EMPLOYEES BY CATEGORY

The figures below are estimates compiled from the Annual Workforce Profile, showing the current reporting period plus the previous three years for comparison.

FIGURES AS AT 30 JUNE

OCCUPATION CLASSIFICATION (ANZSCO)	2016-17	2017-18	2018-19	2019-20
Managers	2	2	2	1
Professionals	208	245	251	270
Technicians and Trades Workers	2	1	1	3
Clerical and Administrative Workers	115	152	184	178

Note: These figures do not include agency staff numbers.

EXCEPTIONAL MOVEMENTS IN WAGES, SALARIES OR ALLOWANCES

Employees of the CSO are covered by the *Crown Employees (Public Sector – Salaries 2019) Award*.

Section 240 of the *Statutory and Other Offices Remuneration Act 1975* requires the Statutory and Other Offices Remuneration Tribunal to make a determination of remuneration packages for senior executives on and from 1 July each year.

PERSONNEL POLICIES & PRACTICES

In 2019-20, the CSO continued to review and update its policies and practices to meet the needs of the business and its people. Our focus was on progressing initiatives driven by staff feedback received through the NSW People Matter Employee Survey:

- ▶ delivering the first two modules of the CSO's Leading Teams program to grade 5 managers and above across the organisation
- ▶ delivering the *Managing for team wellbeing* workshop
- ▶ developing a new performance development policy and framework
- ▶ updating recruitment policies and temporary assignment procedures.

In 2020-21, we will continue to design and implement programs to support and develop our people, including delivering further modules of our Leading Teams program. Other focus areas include:

- ▶ client service and engagement
- ▶ legal supervision
- ▶ performance management
- ▶ refreshing mandatory e-learning programs
- ▶ continuing legal education/professional development
- ▶ mandatory respectful workplace program.

We plan to implement our Aboriginal Employment Strategy, introduce a new e-recruitment system (through SAP SuccessFactors), and update policies and procedures related to flexible working.

INDUSTRIAL RELATIONS POLICIES & PRACTICES

The CSO continues to actively engage with employees and their industrial representatives through regular Joint Consultative Committee (JCC) forums. During 2019-20, the JCC terms of reference was developed, recognising the importance of communication and consultation, particularly during periods of change.

SENIOR EXECUTIVES

Number of senior executives by band & gender

BAND	CSO SENIOR EXECUTIVE ROLES	2018-19		2019-20	
		FEMALE	MALE	FEMALE	MALE
Band 4	(Secretary)	–	–	–	–
Band 3	Crown Solicitor (Agency Head)	1	–	1	–
Band 2	Assistant Crown Solicitors & Practice Manager (Executive Director equivalent)	2	3	3	1
Band 1	Directors & Special Counsel	9	5	9	8
Total		12	8	13	9
		20		22	

Note: For the 2019-20 period, three senior executive roles were vacant as at the census date (two Band 2, one Band 1). In 2018-19, five senior executive roles were temporarily filled as at census date, and two senior executive roles were filled by agency contractors, which are not included in the above figures.

Average total remuneration package for senior executives

BAND	CSO SENIOR EXECUTIVE ROLES	AVERAGE REMUNERATION		
		2018-19	2019-20	RANGE
Band 4	(Secretary)	–	–	–
Band 3	Crown Solicitor (Agency Head)	\$440,578	\$487,017	\$345,551 to \$487,050
Band 2	Assistant Crown Solicitors & Practice Manager (Executive Director equivalent)	\$297,015	\$298,602	\$274,701 to \$345,550
Band 1	Directors & Special Counsel	\$231,961	\$235,750	\$192,600 to \$274,700

Percentage of total employee-related expenditure (senior executives)

The percentage of total employee-related expenditure in 2019-20 associated with senior executives was 12.6%, compared with 13.5% for 2018-19.

WORK, HEALTH & SAFETY

WHS PERFORMANCE

The health, safety and overall wellbeing of our staff continued to be a priority for the CSO in 2019-20. The CSO's WHS Management System Framework incorporates best-practice wherever feasible, taking a whole of person approach.

Health and wellbeing

Wellbeing is a significant element of our WHS framework, supporting holistic health management. We continued to invest in and promote health and wellbeing programs and early intervention strategies to promote health, safety and wellbeing.

Mental health is a particularly critical issue in the legal profession. The CSO's mental health initiatives address issues specific to the legal profession in addition to tackling broader topics around mental health in the workplace. We seek to align our mental health plans with the *NSW Mentally Healthy Workplaces Strategy 2018-22*.

During 2019-20, the CSO maintained its comprehensive training programs addressing mental health. Leading mental health consultant and trainer, Robyn Bradey, delivered the following sessions, available to all staff:

- ▶ Building resilience in a pandemic
- ▶ Demystifying mental illness
- ▶ Smart, cool and well: a guide for young lawyers
- ▶ Suicide: it could be any one of us
- ▶ Tough talk: how to have difficult conversations
- ▶ Using your mind to change your brain: understanding mindfulness
- ▶ Why zebras don't get ulcers: stress management.

In partnership with the Black Dog Institute, we offered a series of workshops to staff: The CSO's Executive, Directors, and supervisors attended a workshop on *Managing for team wellbeing*. A session open to all staff, *Mental health is everybody's business*, addressed the prevalence of mental illness, its causes and the help available within and outside the office. Two other workshops were provided to targeted staff: *Building workplace resilience* and *Working smarter*.

Additionally, the CSO completed a workplace audit through the Black Dog Institute. The audit reviewed key areas to provide us with an understanding of how well we are supporting the mental health and wellbeing of our employees. Areas spanned: leadership, policy and process; education and training; support mechanisms; risk management.

Clinical social worker, Kate Turner (Birchtree Centre), offered one-on-one wellbeing check-in sessions to CSO staff exposed to sensitive or confronting material as part of their work. The sessions were an opportunity for staff to proactively focus on their wellbeing, reflect on their professional or personal experiences, and receive guidance on dealing with the challenges they may be facing. Further sessions will be offered in 2020-21.

All staff had access to the CSO's Employee Assistance Program, which provides confidential counselling through an approved provider (including through limited sessions on-site at the CSO office in 2019). In response to the COVID-19 pandemic, face-to-face counselling services ceased, but continued to be available via phone and through the service provider's virtual platform.

WHS risk management

Mitigating risks associated with ergonomics remained a priority for the CSO during 2019-20. The office provided workstation assessments, appropriate ergonomic equipment, and effective rehabilitation case management services to help manage complex workplace issues and injuries.

We also developed and implemented ways to identify and manage work health and safety risks associated with COVID-19. Our approach was informed by NSW Government advice and SafeWork NSW guidelines.

WHS RESPONSE TO COVID-19

- ▶ Developed an intranet page for centralised updates, information and guidelines on COVID-19 and our responses and actions.
- ▶ Published and communicated the office's infection control measures to reduce the spread of COVID-19.
- ▶ Increased cleaning on all floors, with high-touch surfaces thoroughly cleaned daily.
- ▶ Introduced strict limits on the number of people (staff and visitors) permitted on each floor of the office at any given time.
- ▶ Provided information for staff required to work at another place of business (e.g. client's office; courts) to help manage potential risks and protect their health and safety.
- ▶ Posted WHS and spatial guidelines in all communal areas of the office.

We implemented ways to ensure that staff working from home were appropriately supported and resourced. This included providing ergonomics guides and a home-office WHS checklist, and distributing a weekly e-newsletter that included hints, tips and advice on staying well (physically and mentally) during COVID-19.

WHS statistics

The CSO responded to seven workplace injuries in 2019-20 that resulted in workers compensation claims, including two claims that resulted in lost time, and two psychological injury claims. There were no prosecutions. All claims were open as at 30 June 2020.

MANAGEMENT & ACTIVITIES

FINANCIAL PERFORMANCE

The CSO achieved a net surplus of \$3.2M, \$1.8M better than the budgeted \$1.4M. The office will make a distribution payment of \$1.4M from the distributable operating surplus, as approved by the Treasurer.

The operational result comprised revenue that was \$11.5M greater than budget, and \$1.8M higher than 2018-19. Expenses were \$9.7M greater than budget, which is consistent with supporting the increased activity reflected in the higher-than-budgeted revenues.

Higher workload included new matters under the *Terrorism (High Risk Offenders) Act 2017* and increased volumes of work in the CSO's Inquiries, Criminal Law and Child Protection practice groups.

PERFORMANCE MEASURES

MEASURE	2018-19		2019-20	
	ACTUAL	BUDGET	ACTUAL	BUDGET
Net surplus	\$7.5M	\$1.4M	\$3.2M	\$1.4M
New matters	4,172	n/a	4,161	n/a
Employee utilisation (solicitors' average daily billable hours)	4.9hrs	5.0hrs	4.8hrs	5.0hrs
% of clients rating the CSO's legal services as better than or equal to that of other law firms they use*	68%	85%	97.1%	85%

* Data comes from the CSO's annual client service survey

Annual Report

Appendices



Crown
Solicitor's
Office

Crown Solicitor's Office

Annual Financial Statements

for the year ended 30 June 2020

TABLE OF CONTENTS

Statement by the Crown Solicitor	1
Independent Auditor's Report	2
Statement of Comprehensive Income	5
Statement of Financial Position.....	6
Statement of Changes in Equity	7
Statement of Cash Flows	8
1. STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES	9
2. EXPENSES EXCLUDING LOSSES	14
3. REVENUE	16
4. OTHER GAINS/(LOSSES)	18
5. FINANCIAL DISTRIBUTION TO THE CROWN ENTITY	19
6. PROGRAM GROUP STATEMENTS	19
7. CURRENT ASSETS - CASH AND CASH EQUIVALENTS	19
8. CURRENT ASSETS - RECEIVABLES	20
9. CONTRACT ASSETS	21
10. CURRENT - OTHER FINANCIAL ASSETS	21
11. PROPERTY, PLANT AND EQUIPMENT	22
12. LEASES	25
13. INTANGIBLE ASSETS	28
14. CURRENT/NON-CURRENT ASSETS – OTHER	29
15. FAIR VALUE MEASUREMENT OF NON-FINANCIAL ASSETS	30
16. CURRENT LIABILITIES - PAYABLES.....	31
17. CURRENT/NON-CURRENT LIABILITIES – BORROWINGS	32
18. CURRENT/NON-CURRENT LIABILITIES - PROVISIONS	33
19. EQUITY.....	36
20. COMMITMENTS FOR EXPENDITURE.....	36
21. CONTINGENT LIABILITIES AND CONTINGENT ASSETS.....	36
22. BUDGET REVIEW.....	36
23. RECONCILIATION OF OPERATING CASH FLOWS TO NET RESULT	38
24. TRUST FUNDS	38
25. FINANCIAL INSTRUMENTS	38
26. RELATED PARTY DISCLOSURES.....	43
27. EVENTS AFTER THE REPORTING PERIOD	44

Crown Solicitor's Office

Financial Statements for the year ended 30 June 2020

Statement by the Crown Solicitor

Pursuant to Section 45F of the *Public Finance and Audit Act 1983*, I state that:

- (a) The accompanying financial statements have been prepared in accordance with applicable Australian Accounting Standards (which include Australian Accounting Interpretations), the provisions of the *Public Finance and Audit Act 1983* (the Act), the Public Finance and Audit Regulation 2015 and Treasurer's Directions issued under the Act.
- (b) The financial statements exhibit a true and fair view of the financial position as at 30 June 2020 and financial performance of the Crown Solicitor's Office for the year then ended.
- (c) As at the date of this statement, I am not aware of any circumstances which would render any particulars included in the financial statements to be misleading or inaccurate.



Karen Smith
Crown Solicitor
13 October 2020

Independent Auditor's Report



INDEPENDENT AUDITOR'S REPORT

Crown Solicitor's Office

To Members of the New South Wales Parliament

Opinion

I have audited the accompanying financial statements of the Crown Solicitor's Office (the Office), which comprise the Statement of Comprehensive Income for the year ended 30 June 2020, the Statement of Financial Position as at 30 June 2020, the Statement of Changes in Equity and the Statement of Cash Flows for the year then ended, notes comprising a Statement of Significant Accounting Policies and other explanatory information.

In my opinion, the financial statements:

- give a true and fair view of the financial position of the Office as at 30 June 2020, and of its financial performance and its cash flows for the year then ended in accordance with Australian Accounting Standards
- are in accordance with section 45E of the *Public Finance and Audit Act 1983* (PF&A Act) and the Public Finance and Audit Regulation 2015.

My opinion should be read in conjunction with the rest of this report.

Basis for Opinion

I conducted my audit in accordance with Australian Auditing Standards. My responsibilities under the standards are described in the 'Auditor's Responsibilities for the Audit of the Financial Statements' section of my report.

I am independent of the Office in accordance with the requirements of the:

- Australian Auditing Standards
- Accounting Professional and Ethical Standards Board's APES 110 'Code of Ethics for Professional Accountants (including Independence Standards)' (APES 110).

I have fulfilled my other ethical responsibilities in accordance with APES 110.

Parliament promotes independence by ensuring the Auditor-General and the Audit Office of New South Wales are not compromised in their roles by:

- providing that only Parliament, and not the executive government, can remove an Auditor-General
- mandating the Auditor-General as auditor of public sector agencies
- precluding the Auditor-General from providing non-audit services.

I believe the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Other Information

The Office's annual report for the year ended 30 June 2020 includes other information in addition to the financial statements and my Independent Auditor's Report thereon. The Crown Solicitor is responsible for the other information. At the date of this Independent Auditor's Report, the other information I have received comprise the Statement by the Crown Solicitor.

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Crown Solicitor's Office Financial Statements

for the year ended 30 June 2020

Independent Auditor's Report (cont)

My opinion on the financial statements does not cover the other information. Accordingly, I do not express any form of assurance conclusion on the other information.

In connection with my audit of the financial statements, my responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or my knowledge obtained in the audit, or otherwise appears to be materially misstated.

If, based on the work I have performed, I conclude there is a material misstatement of the other information, I must report that fact.

I have nothing to report in this regard.

The Crown Solicitor's Responsibilities for the Financial Statements

The Crown Solicitor is responsible for the preparation and fair presentation of the financial statements in accordance with Australian Accounting Standards and the PF&A Act and for such internal control as the Crown Solicitor determines is necessary to enable the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Crown Solicitor is responsible for assessing the Office's ability to continue as a going concern, disclosing as applicable, matters related to going concern and using the going concern basis of accounting.

Auditor's Responsibilities for the Audit of the Financial Statements

My objectives are to:

- obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error
- issue an Independent Auditor's Report including my opinion.

Reasonable assurance is a high level of assurance, but does not guarantee an audit conducted in accordance with Australian Auditing Standards will always detect material misstatements. Misstatements can arise from fraud or error. Misstatements are considered material if, individually or in aggregate, they could reasonably be expected to influence the economic decisions users take based on the financial statements.

A description of my responsibilities for the audit of the financial statements is located at the Auditing and Assurance Standards Board website at: www.auasb.gov.au/auditors_responsibilities/ar4.pdf. The description forms part of my auditor's report.

The scope of my audit does not include, nor provide assurance:

- that the Office carried out its activities effectively, efficiently and economically
- about the assumptions used in formulating the budget figures disclosed in the financial statements
- about the security and controls over the electronic publication of the audited financial statements on any website where they may be presented
- about any other information which may have been hyperlinked to/from the financial statements.



Chris Harper
Director, Financial Audit

Delegate of the Auditor-General for New South Wales

14 October 2020
SYDNEY

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Start of Audited Financial Statements

Statement of Comprehensive Income

		Actual	Budget	Actual
		2020	2020	2019
	Notes	\$'000	\$'000	\$'000
Expenses excluding losses				
Employee related expenses	2(a)	50,999	45,642	45,487
Operating expenses	2(b)	10,612	6,750	16,178
Depreciation and amortisation	2(c)	7,612	7,006	2,189
Finance costs	2(d)	828	931	-
Total expenses excluding losses		70,051	60,329	63,854
Revenue				
Sale of goods and services	3(a)	-	60,532	70,409
Sale of goods and services from contracts with customers	3(a)	72,538	-	-
Investment revenue	3(b)	92	382	364
Other revenue	3(c)	234	59	234
Acceptance by the Crown Entity of employee benefits	3(d)	365	733	385
Total revenue		73,229	61,707	71,392
Operating result		3,178	1,378	7,538
Net result		3,178	1,378	7,538
Other comprehensive income		-	-	-
Total other comprehensive income		-	-	-
Total comprehensive income		3,178	1,378	7,538

The accompanying Notes form part of these financial statements.

Statement of Financial Position

	Notes	Actual 2020 \$'000	Budget 2020 \$'000	Actual 2019 \$'000
Assets				
Current assets				
Cash and cash equivalents	7	3,633	12,987	15,770
Receivables	8	30,389	25,842	11,873
Contract assets	9	8,035	-	-
Other financial assets	10	-	-	11,982
Other current assets	14	9,737	7,523	8,010
Total current assets		51,794	46,352	47,635
Non-current assets				
Property, plant and equipment	11			
- Plant and equipment		1,624	1,682	904
- Leasehold improvements		14,705	14,570	16,270
Total property, plant and equipment		16,329	16,252	17,174
Right-of-use asset	12	39,448	35,518	-
Intangible assets	13	9,046	6,150	5,035
Other non-current assets	14	847	640	696
Total non-current assets		65,670	58,559	22,905
Total assets		117,464	104,912	70,540
Liabilities				
Current liabilities				
Payables	16	10,008	8,148	5,556
Borrowings	17	4,206	3,842	-
Provisions	18	17,468	15,072	17,539
Total current liabilities		31,682	27,061	23,095
Non-current liabilities				
Borrowings	17	36,163	32,621	-
Provisions	18	2,805	744	2,370
Total non-current liabilities		38,968	33,365	2,370
Total liabilities		70,650	60,426	25,465
Net assets		46,814	44,486	45,075
Equity				
Accumulated funds	19	46,814	44,486	45,075
Total equity		46,814	44,486	45,075

The accompanying Notes form part of these financial statements.

Statement of Changes in Equity

	Notes	Accumulated funds \$'000
Balance at 1 July 2019		45,075
Net result for the year		3,178
Other comprehensive income		-
Total other comprehensive income		-
Total comprehensive income for the year		3,178
Transactions with owners in their capacity as owners		
Distribution payable to Crown Entity	5	(1,438)
Balance at 30 June 2020		46,815
		Accumulated funds \$'000
Balance at 1 July 2018		42,090
Net result for the year		7,538
Other comprehensive income		-
Total other comprehensive income		-
Total comprehensive income for the year		7,538
Transactions with owners in their capacity as owners		
Distribution payable to Crown Entity	5	(4,553)
Balance at 30 June 2019		45,075

The accompanying Notes form part of these financial statements.

**Crown Solicitor's Office
Financial Statements**

For the year ended 30 June 2020

Statement of Cash Flows

		Actual 2020 \$'000	Budget 2020 \$'000	Actual 2019 \$'000
	Notes			
Cash flows from operating activities				
Payments				
Employee related		(48,850)	(44,789)	(45,280)
Suppliers for goods and services		(9,608)	(6,671)	(22,210)
Finance costs		(804)	(931)	-
Total payments		(59,262)	(52,391)	(67,490)
Receipts				
Legal Fees from clients		60,379	59,666	66,983
Interest received		93	382	365
Other		234	59	5,961
Total receipts		60,707	60,107	73,309
Net cash flows from operating activities	23	1,445	7,716	5,819
Cash flows from investing activities				
Purchase of property, plant and equipment		(483)	(365)	(15,016)
Purchase of intangible assets		(4,591)	(300)	(3,008)
Net cash flows from investing activities		(5,075)	(665)	(18,024)
Cash flows from financing activities				
Financial distribution to the Crown Entity	5	(4,553)	(4,553)	(5,826)
Payment of principal portion of lease liabilities		(3,955)	(3,615)	-
Net cash flows from financing activities		(8,508)	(8,168)	(5,826)
Net decrease in cash and cash equivalents		(12,137)	(1,117)	(18,031)
Opening cash and cash equivalents		15,770	14,104	33,801
Closing cash and cash equivalents	7	3,633	12,987	15,770

The accompanying Notes form part of these financial statements.

1. STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES

(a) Reporting entity

The Crown Solicitor's Office ("CSO") is a NSW government entity and is controlled by the State of New South Wales, which is the ultimate parent. Although the CSO is managed under the Commercial Policy Framework and is required to deliver a surplus from non-core work for which it competes with the private sector, the majority of the CSO's revenue is from core legal work delivered on a cost recovery basis only. Accordingly, the CSO is classified as a not-for-profit entity (as profit is not its principal objective). The CSO has no cash generating units.

These financial statements for the year ended 30 June 2020 have been authorised for issue by the Crown Solicitor, after recommendation by the Audit and Risk Committee, on 12 October 2020.

(b) Basis of preparation

The financial statements are general purpose financial statements which have been prepared on an accruals basis and in accordance with:

- Applicable Australian Accounting Standards (AAS) (which include Australian Accounting Interpretations);
- The requirements of the Public Finance and Audit Act 1983 (the Act) and Public Finance and Audit Regulation 2015; and
- Treasurer's Directions issued under the Act.

Property, plant and equipment are measured at fair value. Other financial statement items are prepared in accordance with the historical cost convention except where specified otherwise.

Judgements, key assumptions and estimations that management has made are disclosed in the relevant Notes to the financial statements.

All amounts are rounded to the nearest one thousand dollars and are expressed in Australian currency, which is the CSO's presentation and functional currency.

(c) Statement of Compliance

The Financial Statements and Notes comply with Australian Accounting Standards, which include Australian Accounting Interpretations.

(d) Accounting for the Goods and Services Tax (GST)

Income, expenses and assets are recognised net of the amount of GST, except that the:

- amount of GST incurred by the CSO as a purchaser that is not recoverable from the Australian Taxation Office is recognised as part of an asset's cost of acquisition or as part of an item of expense; and
- receivables and payables are stated with the amount of GST included.

Cash flows are included in the statement of cash flows on a gross basis. However, the GST components of cash flows arising from investing and financing activities which are recoverable from, or payable to, the Australian Taxation Office are classified as operating cash flows.

(e) Comparative information

Except when an Australian Accounting Standard permits or requires otherwise, comparative information is presented in respect of the previous period for all amounts reported in the financial statements.

(f) Changes in accounting policy, including new or revised Australian Accounting Standards

(i) Effective for the first time in 2019-20

The CSO applied AASB 15 Revenue from Contracts with Customers and AASB 16 Leases for the first time. The nature and effect of the changes as a result of adoption of these new accounting standards are described below.

AASB 15 Revenue from Contracts with Customers

AASB 15 supersedes AASB 111 Construction Contracts, AASB 118 Revenue and related Interpretations and it applies, with limited exceptions, to all revenue arising from contracts with customers. AASB 15 establishes a five-step model to account for revenue arising from contracts with customers and requires that revenue be recognised at an amount that reflects the consideration to which an entity expects to be entitled in exchange for transferring goods or services to a customer. Contracts with customers are presented in an entity's statement of financial position as a contract liability, a contract asset, or a receivable, depending on the relationship between the entity's performance and the customer's payment. Customer acquisition costs and costs to fulfil a contract can, subject to certain criteria, be capitalised as an asset and amortised over the contract period. This is described further in the accounting policies below.

In accordance with the transition provisions in AASB 15, the CSO has adopted AASB 15 retrospectively with the cumulative effect of initially applying the standard recognised at the date of initial application, i.e. 1 July 2019. The entity has used the transitional practical expedient permitted by the standard to reflect the aggregate effect of all of the modifications that occur before 1 July 2018 when:

- identifying the satisfied and unsatisfied performance obligations
- determining the transaction price
- allocating the transaction price to the satisfied and unsatisfied performance obligations.

The impact of applying the above practical expedients is not expected to significantly affect the financial statements.

Crown Solicitor's Office
Notes to the Financial Statements

For the year ended 30 June 2020

Impact of adoption

Impact on Statement of Financial Position

	Note	30 June 2020 AASB 15 \$'000	30 June 2020 Without adoption of AASB 15 \$'000	30 June 2020 Impact of AASB 15 \$'000
Assets				
Contract assets	9	8,035	-	8,035
Other financial assets - current	10	-	8,035	(8,035)

The adoption of AASB 15 did not have any impact on the financial performance, net position or cash flow of the CSO and therefore there was no impact on opening retained earnings.

AASB 16 Leases

AASB 16 supersedes AASB 117 Leases, Interpretation 4 Determining whether an Arrangement contains a Lease, Interpretation 115 Operating Leases – Incentives and Interpretation 127 Evaluating the Substance of Transactions Involving the Legal Form of a Lease. The standard sets out the principles for the recognition, measurement, presentation and disclosure of leases and requires lessees to recognise most leases on the balance sheet.

As a lessee, AASB 16 requires the CSO to account for all leases under a single on-balance sheet model similar to the accounting for finance leases under AASB 117.

The CSO occupies leased premises at 60-70 Elizabeth Street Sydney and recognises a lease liability and right-of-use asset in respect of this. The lease liability is measured at the present value of the future lease payments, discounted using the NSW Treasury Corporation incremental borrowing rate as at 1 July 2019 as indicative of the CSO's incremental borrowing rate. The corresponding right-of-use asset is measured at the value of the lease liability adjusted for lease payments before inception, lease incentives, initial direct costs and estimates of costs for dismantling and removing the asset or restoring the site on which it is located.

The CSO has adopted the partial retrospective option in AASB 16, where the cumulative effect of initially applying AASB 16 is recognised on 1 July 2019 and the comparatives for the year ended 30 June 2019 are not restated.

In relation to leases that had previously been classified as 'operating leases' under AASB 117, a lease liability is recognised at 1 July 2019 at the present value of the remaining lease payments, discounted using the NSW Treasury Corporation incremental borrowing rate at the date of initial application. The weighted average rate applied to the lease liabilities on 1 July 2019 was 2.0%.

The corresponding right-of-use asset is initially recorded on transition at an amount equal to the lease liability, adjusted by the amount of any prepaid or accrued lease payments relating to that lease recognised in the statement of financial position as at 30 June 2019. The exception is right-of-use assets that are subject to accelerated depreciation. These assets should be measured at their fair value at 1 July 2019.

The CSO currently has no lease contracts that, at their commencement date, have a lease term of 12 months or less and do not contain a purchase option (short-term

Crown Solicitor's Office
Notes to the Financial Statements

For the year ended 30 June 2020

leases), or lease contracts for which the underlying asset is valued at \$10,000 or under when new (low-value assets).

In applying AASB 16 for the first time, the CSO has used the following practical expedients permitted by the standard:

- not reassess whether a contract is, or contains, a lease at 1 July 2019, for those contracts previously assessed under AASB 117 and Interpretation 4.
- applying a single discount rate to a portfolio of leases with reasonably similar characteristics
- relying on its previous assessment on whether leases are onerous immediately before the date of initial application as an alternative to performing an impairment review
- not recognise a lease liability and right-of-use-asset for short-term leases that end within 12 months of the date of initial application
- excluding the initial direct costs from the measurement of the right-of-use asset at the date of initial application
- using hindsight in determining the lease term where the contract contained options to extend or terminate the lease.

Impact of adoption

The effect of adopting AASB 16 as at 1 July 2019 is as follows:

	\$'000
Assets	
Right-of-use asset	44,323
Total assets	44,323
Liabilities	
Borrowings	44,323
Total liabilities	44,323
Equity	
Accumulated funds	-

The lease liabilities as at 1 July 2019 can be reconciled to the operating lease commitments as of 30 June 2019, as follows:

	\$'000
Operating lease commitments as at 30 June 2019 (GST included)	57,476
(Less): GST included in operating lease commitments	(5,226)
Operating lease commitments as at 30 June 2019 (GST excluded)	52,250
(Less): Adjustments relating to changes in the index or rate affecting variable payments	(1,527)
	50,723
Weighted average incremental borrowing rate as at 1 July 2019	2.0%
Discounted operating lease commitments as at 1 July 2019	46,603
(Less): Outgoings & cleaning contracts excluded at transition	(2,280)
Lease liabilities as at 1 July 2019	44,323

Several other amendments and interpretations apply for the first time in FY2019-20, but do not have an impact on the financial statements of the entity:

- AASB 1058 Income of Not-for-Profit Entities
- AASB 2017-1 Amendments to Australian Accounting Standards – Transfers of Investment Property, Annual Improvements 2014–2016 Cycle and Other Amendments
- AASB 2017-6 Amendments to Australian Accounting Standards – Prepayment Features with Negative Compensation
- AASB 2017-7 Amendments to Australian Accounting Standards – Long-term Interests in Associates and Joint Ventures
- AASB 2018-1 Amendments to Australian Accounting Standards – Annual Improvements 2015–2017 Cycle
- AASB 2018-2 Amendments to Australian Accounting Standards – Plan Amendment, Curtailment or Settlement
- AASB 2018-5 Amendments to Australian Accounting Standards – Deferral of AASB 1059
- AASB 2018-8 Amendments to Australian Accounting Standards – Right-of-Use Assets of Not-for-Profit Entities

(ii) Issued but not yet effective

NSW public sector entities are not permitted to early adopt new AAS, unless Treasury determines otherwise.

The following new AAS have not been applied and are not yet effective, as per NSW Treasury Circular TC 20/01:

- AASB 17 Insurance Contracts
- AASB 1059 Service Concession Arrangements: Grantors
- AASB 2018-5 Amendments to Australian Accounting Standards – Deferral of AASB 1059
- AASB 2018-6 Amendments to Australian Accounting Standards – Definition of a Business
- AASB 2018-7 Amendments to Australian Accounting Standards – Definition of Material
- AASB 2019-1 Amendments to Australian Accounting Standards – References to the Conceptual Framework
- AASB 2019-2 Amendments to Australian Accounting Standards – Implementation of AASB 1059
- AASB 2019-3 Amendments to Australian Accounting Standards - Interest Rate Benchmark Reform

Crown Solicitor's Office
Notes to the Financial Statements

For the year ended 30 June 2020

- AASB 2019-4 Amendments to Australian Accounting Standards – Disclosure in Special Purpose Financial Statements of Not-for-Profit
- AASB 2019-5 Amendments to Australian Accounting Standards – Disclosure of Effect of New IFRS Standards Not Yet Issued in Australia
- AASB 2019-7 Amendments to Australian Accounting Standards – Disclosure of GFS Measures of Key Fiscal Aggregates and GAAP/GFS Reconciliations.
- AASB 2014-10 Amendments to Australian Accounting Standards – Sale or Contribution of Assets between an Investor and its Associate and Joint Venture
- AASB 2015-10 Amendments to Australian Accounting Standards – Effective Date of Amendments to AASB 10 and AASB 128.
- AASB 2017-5 Amendments to Australian Accounting Standards – Effective Date of Amendments to AASB 10 and AASB 128 and Editorial Corrections

The CSO has assessed the impact of the new standards and interpretations on issue but not yet effective where relevant and considers the impact to be not material.

2. EXPENSES EXCLUDING LOSSES

(a) Employee related expenses

	2020	2019
	\$'000	\$'000
Salaries and wages (including annual leave)*	43,296	38,445
Superannuation - defined benefit plans	346	365
Superannuation - defined contribution plans	3,427	3,022
Long service leave	1,067	856
Workers' compensation insurance	146	138
Payroll tax and fringe benefit tax	2,717	2,373
Redundancy payments	-	288
	50,999	45,487

* \$Nil employee related costs (2019: \$167k) have been capitalised to intangible assets, and therefore excluded from the above.

(b) Operating expenses

	2020 \$'000	2019 \$'000
Auditor's remuneration		
- audit of the financial statements	85	71
- audit of the Trust Account	10	8
Operating Lease Rental Expense – minimum lease payments	-	6,094
Consultants	15	63
Contractors	3,652	3,444
Efficiency Dividend	700	333
Electricity	88	97
Fees for services rendered	1,677	1,493
Fees – other	1,060	1,112
Insurance	74	73
Printing	220	264
Publications and subscriptions	465	366
Repairs and routine maintenance*	1,002	1,513
Stores & stationery	296	344
Telephone and data	367	163
Other operating expenses	901	740
	10,612	16,178

* Reconciliation - Total maintenance

Maintenance expense - contracted labour and other (non-employee related)
as above

Total maintenance expenses included in Note 2(b)

1,002	1,513
1,002	1,513

Recognition and Measurement

Maintenance expense

Day-to-day servicing costs or maintenance are charged as expenses as incurred, except where they relate to the replacement or an enhancement of a part or component of an asset, in which case the costs are capitalised and depreciated.

Insurance

The CSO's insurance activities are conducted through the NSW Treasury Managed Fund Scheme of self-insurance for Government entities. The expense (premium) is determined by the Fund Manager based on past claims experience.

Lease expense (up to 30 June 2019)

Operating leases

Up to 30 June 2019, operating lease payments are recognised as an operating expense in the Statement of Comprehensive Income on a straight-line basis over the lease term. An operating lease is a lease other than a finance lease. There are no finance lease arrangements.

Lease expense (from 1 July 2019)

From 1 July 2019, lease payments associated with short-term or low-value assets are recognised as an expense. CSO does not currently have any such leases.

Crown Solicitor's Office
Notes to the Financial Statements

For the year ended 30 June 2020

Variable lease payments not included in the measurement of the lease liability (i.e. variable lease payments that do not depend on an index or a rate, initially measured using the index or rate as at the commencement date). These payments are recognised in the period in which the event or condition that triggers those payments occurs.

(c) Depreciation and amortisation

	2020 \$'000	2019 \$'000
Depreciation		
Property, plant and equipment	457	312
Leasehold improvements	1,700	1,671
Right-of-use asset	4,875	-
Total depreciation	7,032	1,983
Amortisation		
Intangible assets	580	206
Total amortisation	580	206
Total depreciation and amortisation	7,612	2,189

Refer to Notes 11, 12 and 13 for recognition and measurement policies on depreciation and amortisation.

(d) Finance costs

	2020 \$'000	2019 \$'000
Interest expense on lease liabilities	804	-
Unwinding of discount rate on make good provisions	24	-
	828	-

Recognition and Measurement

Finance costs consist of interest expense from lease liabilities and other costs incurred in connection with the borrowing of funds. Borrowing costs are recognised as expenses in the period in which they are incurred, in accordance with Treasury's Mandate to not-for-profit NSW GGS entities.

3. REVENUE

Recognition and Measurement

Until 30 June 2019, income is recognised in accordance with AASB 111 Construction Contracts, AASB 118 Revenue and AASB 1004 Contributions.

From 1 July 2019, income is recognised in accordance with the requirements of AASB 15 Revenue from Contracts with Customers or AASB 1058 Income of Not-for-Profit Entities, dependent on whether there is a contract with a customer defined by AASB 15 Revenue from Contracts with Customers. Comments regarding the accounting policies for the recognition of income are discussed in the following paragraphs.

(a) Sale of goods and services from contracts with customers / Sale of goods and services

	2020	2019
	\$'000	\$'000
Rendering of services – legal fees	-	70,409
Rendering of services – legal fees from contracts with customers	72,538	-
	72,538	70,409

Recognition and Measurement

The CSO's primary revenue-generating activity is the provision of legal services to NSW Government agencies and other approved bodies.

Revenue from rendering of services is recognised when the CSO satisfies performance obligations by transferring the promised legal services. The CSO typically satisfies its performance obligations over time as services are rendered and time is incurred. It is assessed that another legal firm would not have to substantially re-perform the work completed by the CSO to date, as the client effectively gains control of the services as the CSO performs its obligations. The CSO's performance under a contract does not create an asset with an alternative use to the CSO due to the highly specialised nature of the work it performs.

Revenue is recognised under the output method. The CSO recognises the revenue to which it has a right to invoice, in the amount that corresponds directly with the value to the client of the CSO's performance completed to date. Revenue is recognised as time is incurred. Payments are typically due once accrued fees reach \$1000 or more, or every three months, whichever comes first.

The revenue is measured using the applicable hourly rate specified in the contracts. No element of financing is deemed present as payments are due when service is provided.

The adoption of AASB 15 did not have an impact on the Statement of Comprehensive Income or the Statement of Cash Flows for the financial year.

The CSO pays disbursements on behalf of clients, while providing legal services. No economic benefits flow to the CSO as the amounts are reimbursed at cost. As a result, legal disbursements are not recognised in the CSO's Statement of Comprehensive Income.

CSO clients and funding panels may receive funding under appropriations from the Consolidated Fund. Appropriations for each financial year are set out in the Appropriation Act for that year. Due to COVID-19, the State Budget and related 2020-21 Appropriation Bill has been delayed and is anticipated to be tabled in Parliament in November/December 2020. However, pursuant to section 4.10 of the GSF Act, the Treasurer has authorised Ministers to spend specified amounts from Consolidated Fund. This authorisation is current from 1 July 2020 until the earlier of 31 December 2020 (or another day prescribed by the regulations) or enactment of the 2020-21 annual Appropriations Act.

(b) Investment revenue

	2020	2019
	\$'000	\$'000
Interest revenue	92	364
	92	364

Recognition and Measurement

Interest revenue

Interest income is calculated by applying the effective interest rate to the gross carrying amount of a financial asset except for financial assets that subsequently become credit-impaired. For financial assets that become credit impaired, the effective interest rate is applied to the amortised cost of the financial asset (i.e. after deducting the loss allowance for expected credit losses).

(c) Other revenue

	2020	2019
	\$'000	\$'000
TMF Hindsight Adjustment - Workers' Compensation	-	33
Other services provided	234	201
	<u>234</u>	<u>234</u>

Recognition and Measurement

Make good provision reversal

Provisions are reviewed at the end of each reporting period and adjusted to reflect the current best estimate. If it is no longer probable that an outflow of resources embodying economic benefits will be required to settle the obligation, the provision is reversed.

Other services provided

Other services provided comprise monies received from outside entities not categorised in the revenue headings above. The revenue is recognised when the CSO satisfies a performance obligation by transferring a promised service to a customer. The revenue is recognised at the amount of the transaction price that is allocated to the performance obligation.

(d) Acceptance by the Crown Entity of employee benefits

The following liabilities and/or expenses have been assumed by the Crown Entity:

	2020	2019
	\$'000	\$'000
Superannuation – defined benefit	365	385
	<u>365</u>	<u>385</u>

Refer to Note 0 for recognition and measurement policies on employee benefits

4. OTHER GAINS/(LOSSES)

Recognition and Measurement

Impairment losses

Impairment losses may arise on non-financial assets held by the CSO from time to time. Accounting for impairment losses is dependent upon the individual asset (or group of assets) subject to impairment. Accounting Policies and events giving rise to impairment losses are disclosed in the following Notes:

Trade receivables and contract assets – Note 25

Property, plant and equipment – Note 11

Intangible Assets – Note 13

Leases – Note 12

5. FINANCIAL DISTRIBUTION TO THE CROWN ENTITY

As a government business operating under the Commercial Policy Framework, the CSO is required to make a financial distribution to owners. The CSO provides for the financial distribution on the basis of a payout ratio of 70% of the CSO's forecast distributable operating surplus for the year as at 30 April. This is the forecast net operating surplus before adjustments for material non-cash items. The operating surplus is generated mainly from legal work for which the CSO competes against the private sector. This distribution is in accordance with TPP16-04 Financial Distributions Policy for Government Businesses. The amount due is recognised in the year to which it relates, even though payment is made in the following year. A provision for a distribution payment of \$1.438m (2019: \$4.553m) has been recognised this year in accordance with the Treasurer's approval.

6. PROGRAM GROUP STATEMENTS

The CSO operates under the single State Outcome of Effective and Efficient Resolution of Legal Disputes. The CSO provides legal services to the NSW Government. The Crown Solicitor must be engaged by government agencies to perform core legal services described in Premier's Memorandum 2016-04. The CSO also competes with the private legal profession for non-core (general) legal work.

The expenses, revenues, assets and liabilities of the program group are presented in these financial statements.

7. CURRENT ASSETS - CASH AND CASH EQUIVALENTS

	2020	2019
	\$'000	\$'000
Cash at bank and on hand	3,633	15,770
	<u>3,633</u>	<u>15,770</u>

For the purposes of the Statement of Cash Flows, Cash and Cash Equivalents include cash at bank and cash on hand.

Cash and cash equivalent assets recognised are the same in both the Statement of Financial Position and Statement of Cash Flows.

Refer Note 25 for details regarding credit risk and market risk arising from financial instruments.

8. CURRENT ASSETS - RECEIVABLES

	2020 \$'000	2019 \$'000
Current receivables		
Trade receivables from contracts with customers	27,371	-
Sale of goods and services	-	11,187
Less: Allowance for expected credit losses		
-Trade receivables from contracts with customers	-	-
	27,371	11,187
 Prepayments	456	437
Recoverable Disbursements	2,562	-
Interest receivable	-	2
GST recoverable from the Australian Taxation Office	-	247
	30,389	11,873

Details regarding credit risk of trade debtors that are neither past due nor impaired are disclosed in Note 25.

Recognition and Measurement

All 'regular way' purchases or sales of financial asset are recognised and derecognised on a trade date basis. Regular way purchases or sales are purchases or sales of financial assets that require delivery of assets within the time frame established by regulation or convention in the marketplace.

Receivables are initially recognised at fair value plus any directly attributable transaction costs. Trade receivables that do not contain a significant financing component are measured at the transaction price.

Subsequent measurement

The CSO holds receivables with the objective to collect the contractual cash flows and therefore measures them at amortised cost using the effective interest method, less any impairment. Changes are recognised in the net result for the year when impaired, derecognised or through the amortisation process.

Impairment

Receivables are subject to an annual review for impairment. The CSO recognises an allowance for expected credit losses (ECLs) for all debt financial assets not held at fair value through profit or loss. ECLs are based on the difference between the contractual cash flows and the cash flows that the CSO expects to receive, discounted at the original effective interest rate. The amount of impairment loss is recognised in the net result for the year.

For trade receivables, the CSO applies a simplified approach in calculating ECLs. The CSO recognises a loss allowance based on lifetime ECLs at each reporting date.

Recoverable disbursements

Recoverable disbursements are legal disbursements incurred on behalf of clients that will be reimbursed at cost by clients and which remain unbilled as at balance date. Recoverable disbursements were disclosed as Current Assets – Other Financial Assets in the Financial Statements as at 30 June 2019.

9. CONTRACT ASSETS

	2020 \$'000	1 July 2019 \$'000 adjusted for AASB 15
Contract assets - current	8,035	10,005
Less: impairment allowance	-	-
	8,035	10,005
Contract receivables (included in Note 8)	27,371	-

Recognition and Measurement

Contract assets relate to the CSO's right to consideration in exchange for legal services rendered, but not billed at the reporting date in respect of its contracts with clients. Contract assets arise because revenue is recognised as time is incurred while payments are typically due once accrued fees reach \$1000 or more, or every three months, whichever comes first. Contract assets are assessed annually and not carried at an amount that exceeds its net recoverable amount. The contract asset balance is materially in line with prior year.

Contract assets were disclosed as 'Work in Progress' in the Financial Statements as at 30 June 2019.

The CSO recognises revenue to which it has a right to invoice, in the amount that corresponds directly with the value to the client of the CSO's performance completed to date therefore no revenue will be recognised in the current year from performance obligations satisfied in previous periods. CSO services are contracted on the basis of a cost estimate not a fixed price and without a fixed time period. Therefore, it is not possible to quantify the transaction price allocated to the remaining performance obligations from contracts with customers.

10. CURRENT - OTHER FINANCIAL ASSETS

	2020 \$'000	2019 \$'000
Work in Progress	-	10,005
Recoverable Disbursements	-	1,977
	-	11,982

Refer to Note 25 for further information regarding fair value measurement, credit risk and market risk arising from financial instruments.

Recognition and Measurement

Work in Progress is now disclosed as Contract Assets, see note 9.

Recoverable disbursements are now disclosed as Current Assets – Receivables, see note 8.

11. PROPERTY, PLANT AND EQUIPMENT

	Plant and equipment \$'000	Leasehold Improvements \$'000	Total \$'000
At 1 July 2019 - fair value			
Gross carrying amount	1,646	17,775	19,421
Accumulated depreciation and impairment	(742)	(1,505)	(2,247)
Net carrying amount	904	16,270	17,174
At 30 June 2020- fair value			
Gross carrying amount	2,748	17,909	20,657
Accumulated depreciation and impairment	(1,124)	(3,204)	(4,328)
Net carrying amount	1,624	14,705	16,329

Reconciliation

A reconciliation of the carrying amount of each class of plant and equipment at the beginning and end of the current reporting period is set out below:

	Plant and equipment \$'000	Leasehold Improvements \$'000	Total \$'000
Year ended 30 June 2020			
Net carrying amount at start of year	904	16,270	17,174
Additions*	1,177	135	1,312
Depreciation expense-asset owned	(457)	(1,700)	(2,157)
Net carrying amount	1,624	14,705	16,329

*Additions of \$1.3m include \$1.0m held in Work in Progress for the Windows 10 upgrade and office accommodation fit-out.

	Plant and equipment \$'000	Leasehold Improvements \$'000	Total \$'000
At 1 July 2018 - fair value			
Gross carrying amount	1,712	4,412	6,124
Accumulated depreciation and impairment	(637)	(108)	(745)
Net carrying amount	1,075	4,304	5,379
At 30 June 2019- fair value			
Gross carrying amount	1,646	17,775	19,421
Accumulated depreciation and impairment	(742)	(1,505)	(2,247)
Net carrying amount	904	16,270	17,174

Reconciliation

A reconciliation of the carrying amount of each class of plant and equipment at the beginning and end of the prior reporting period is set out below:

	Plant and equipment \$'000	Leasehold Improvements \$'000	Total \$'000
Year ended 30 June 2019			
Net carrying amount at start of year	1,075	4,304	5,379
Additions*	141	13,637	13,778
Depreciation expense	(312)	(1,671)	(1,983)
Net carrying amount	904	16,270	17,174

*Additions of \$13.8m include \$0.7m held in Work in Progress for the office accommodation fit-out.

Recognition and Measurement

Acquisition of property, plant and equipment

Property, plant and equipment are initially measured at cost and subsequently revalued at fair value less accumulated depreciation and impairment. Cost is the amount of cash or cash equivalents paid or the fair value of the other consideration given to acquire the asset at the time of its acquisition or construction or, where applicable, the amount attributed to that asset when initially recognised in accordance with the requirements of other Australian Accounting Standards.

Fair value is the price that would be received to sell an asset in an orderly transaction between market participants at measurement date.

Where payment for an asset is deferred beyond normal credit terms, its cost is the cash price equivalent; i.e. deferred payment amount is effectively discounted over the period of credit.

Assets acquired at no cost, or for nominal consideration, are initially recognised at their fair value at the date of acquisition.

Capitalisation thresholds

Plant and equipment and intangible assets costing \$5,000 and above individually (or forming part of a network costing more than \$5,000) are capitalised.

Restoration costs

The present value of the expected cost for the restoration or cost of dismantling an asset after its use is included in the cost of the respective asset if the recognition criteria for a provision are met.

Depreciation of plant and equipment

Depreciation is provided for on a straight-line basis so as to write off the depreciable amount of each asset as it is consumed over its useful life to the CSO.

All material identifiable components of assets are depreciated separately over their useful lives.

Crown Solicitor's Office
Notes to the Financial Statements

For the year ended 30 June 2020

The depreciation rates used for each class of assets are as follows:

Plant & Equipment	% Rate
Make good assets	Over the term of lease
Computer equipment, voice and data communications and laptops	25
Desktop PCs	25
Furniture and fittings	10
Other plant and equipment	20
Leasehold improvements	Over the term of lease
Software projects	10% or over the useful life of the asset where that is assessed at less than 10 years

Right-of-Use Assets acquired by lessees (under AASB 16 from 1 July 2019)

From 1 July 2019, AASB 16 Leases (AASB 16) requires a lessee to recognise a right-of-use asset for most leases. The CSO has elected to present right-of-use assets separately in the Statement of Financial Position.

Further information on leases is contained at Note 12.

Revaluation of property, plant and equipment

Physical non-current assets are valued in accordance with the 'Valuation of Physical Non-Current Assets at Fair Value' Policy and Guidelines Paper (TPP 14-01). This policy adopts fair value in accordance with AASB 13 Fair Value Measurement and AASB 116 Property, Plant and Equipment.

The CSO's plant and equipment are non-specialised assets with short useful lives. They are measured at depreciated historical cost, which for these assets approximates fair value. The CSO has assessed that any difference between fair value and depreciated historical cost is unlikely to be material.

The residual values, useful lives and methods of depreciation of plant and equipment are reviewed at each financial year end.

Refer to notes 15 and 25(e) for further information regarding fair value.

Impairment of property, plant and equipment

As a not-for-profit entity with no cash generating units, impairment under AASB 136 *Impairment of Assets* is unlikely to arise. Since property, plant and equipment is carried at fair value, or an amount that approximates fair value, impairment can only arise in the rare circumstances such as where the costs of disposal are material.

The CSO assesses, at each reporting date, whether there is an indication that an asset may be impaired. If any indication exists, or when annual impairment testing for an asset is required, the CSO estimates the asset's recoverable amount. When the carrying amount of an asset exceeds its recoverable amount, the asset is considered impaired and is written down to its recoverable amount.

As a not-for-profit entity, an impairment loss is recognised in the net result to the extent that the impairment loss exceeds the amount in the revaluation surplus for the class of asset.

After an impairment loss has been recognised, it is reversed only if there has been a change in the assumptions used to determine the asset's recoverable amount. The reversal is limited so that the carrying amount of the asset does not exceed its recoverable amount, nor exceed the carrying amount that would have been determined, net of depreciation, had no

impairment loss been recognised for the asset in prior years. Such reversal is recognised in net result and is treated as a revaluation increase. However, to the extent that an impairment loss on the same class of asset was previously recognised in net result, a reversal of that impairment loss is also recognised in net result.

12. LEASES

The CSO leases 6 floors under 6 separate leases at 60-70 Elizabeth St, Sydney. The contracts are for fixed periods of 7 years with an extension option of 3 years. There are no variable payments in the 7 year term. Lease terms are negotiated collectively with the same terms and conditions. The lease agreements do not impose any covenants, but leased assets may not be used as security for borrowing purposes. The entity does not provide residual value guarantees in relation to leases.

In determining the lease term, management considers all facts and circumstances that create an economic incentive to exercise an extension option, or not exercise a termination option. Extension options (or periods after termination options) are only included in the lease term if the lease is reasonably certain to be extended (or not terminated). The assessment is reviewed if a significant event or a significant change in circumstances occurs which affects this assessment and that is within the control of the lessee.

From 1 July 2019, AASB 16 Leases (AASB 16) requires a lessee to recognise a right-of-use asset for most leases. The right-of-use asset and corresponding liability are initially measured at the present value of the future lease payments.

The CSO has elected to recognise payments for short-term leases and low value leases as expenses on a straight-line basis, instead of recognising a right-of-use asset and lease liability. Short-term leases are leases with a lease term of 12 months or less. Low value assets are assets with a fair value of \$10,000 or less when new. The CSO currently has no such leases.

Right-of-use assets under leases

The following table presents right-of use assets that do not meet the definition of investment property.

	Buildings	Total
	\$'000	\$'000
Balance at 1 July 2019	44,323	44,323
Depreciation expense	(4,875)	(4,875)
Balance at 30 June 2020	39,448	39,448

Lease liabilities

The following table presents liabilities under leases.

	Lease
	Liabilities
	\$'000
Balance at 1 July 2019	44,323
Interest expense	804
Payments	(4,759)
Balance at 30 June 2020	40,368

Crown Solicitor's Office
Notes to the Financial Statements

For the year ended 30 June 2020

The following amounts were recognised in the statement of comprehensive income for the year ending 30 June 2020 in respect of leases where the entity is the lessee:

	\$'000
Depreciation expense of right-of-use assets	4,875
Interest expense on lease liabilities	804
Total amount recognised in the statement of comprehensive income	5,679

The CSO had total cash outflows for leases of \$4.759m in FY2019-20.

Future minimum lease payments under non-cancellable Operating leases as at 30 June 2019 are, as follows:

	\$'000
Within one year	5,468
Later than one year and not later than five years	24,375
Later than five years	27,632
Total (including GST)	57,475
Less: GST recoverable from the Australian Tax Office	5,225
Total (excluding GST)	52,250

Recognition and measurement (under AASB 16 from 1 July 2019)

The CSO assesses at contract inception whether a contract is, or contains, a lease. That is, if the contract conveys the right to control the use of an identified asset for a period of time in exchange for consideration.

The CSO recognises lease liabilities to make lease payments and right-of-use assets representing the right to use the underlying assets.

i. Right-of-use assets

The CSO recognises right-of-use assets at the commencement date of the lease (i.e. the date the underlying asset is available for use). Right-of-use assets are initially measured at the amount of initial measurement of the lease liability (refer ii below), adjusted by any lease payments made at or before the commencement date and lease incentives, any initial direct costs incurred, and estimated costs of dismantling and removing the asset or restoring the site.

Right-of-use assets are subsequently measured at cost. They are depreciated on a straight-line basis over the shorter of the lease term and the estimated useful lives of the assets, as follows:

- Buildings 10 years

If ownership of the leased asset transfers to the entity at the end of the lease term or the cost reflects the exercise of a purchase option, depreciation is calculated using the estimated useful life of the asset.

The right-of-use assets are also subject to impairment under AASB 136 *Impairment of Assets*. The CSO assesses, at each reporting date, whether there is an indication that an asset may be impaired. If any indication exists, or when annual impairment testing for an asset is required, the CSO estimates the asset's recoverable amount.

When the carrying amount of an asset exceeds its recoverable amount, the asset is considered impaired and is written down to its recoverable amount. After an impairment loss

has been recognised, it is reversed only if there has been a change in the assumptions used to determine the asset's recoverable amount. The reversal is limited so that the carrying amount of the asset does not exceed its recoverable amount, nor exceed the carrying amount that would have been determined, net of depreciation, had no impairment loss been recognised for the asset in prior years. Such reversal is recognised in the net result.

ii. Lease liabilities

At the commencement date of the lease, the CSO recognises lease liabilities measured at the present value of lease payments to be made over the lease term. Lease payments include:

- fixed payments (including in substance fixed payments) less any lease incentives receivable;
- variable lease payments that depend on an index or a rate;
- amounts expected to be paid under residual value guarantees;
- exercise price of purchase options reasonably certain to be exercised by the entity; and
- payments of penalties for terminating the lease, if the lease term reflects the entity exercising the option to terminate.

Variable lease payments that do not depend on an index or a rate are recognised as expenses (unless they are incurred to produce inventories) in the period in which the event or condition that triggers the payment occurs.

The lease payments are discounted using the CSO's incremental borrowing rate, being the NSW Treasury Corporation rate that the CSO would have to pay to borrow the funds necessary to obtain an asset of similar value to the right-of-use asset in a similar economic environment with similar terms, security and conditions.

After the commencement date, the amount of lease liabilities is increased to reflect the accretion of interest and reduced for the lease payments made. In addition, the carrying amount of lease liabilities is remeasured if there is a modification, a change in the lease term, a change in the lease payments (e.g., changes to future payments resulting from a change in an index or rate used to determine such lease payments) or a change in the assessment of an option to purchase the underlying asset.

The CSO's lease liabilities are included in borrowings.

Recognition and measurement (under AASB 117 until 30 June 2019)

The determination of whether an arrangement is (or contains) a lease is based on the substance of the arrangement at the inception of the lease. The arrangement is, or contains, a lease if fulfilment of the arrangement is dependent on the use of a specific asset or assets and the arrangement conveys a right to use the asset (or assets), even if that asset (or those assets) is not explicitly specified in an arrangement.

Until 30 June 2019, a lease was classified at the inception date as a finance lease or an operating lease. A lease that transferred substantially all the risks and rewards incidental to ownership to the entity was classified as a finance lease. There were no finance lease arrangements.

Crown Solicitor's Office
Notes to the Financial Statements

For the year ended 30 June 2020

An operating lease is a lease other than a finance lease. Operating lease payments were recognised as an operating expense in the statement of comprehensive income on a straight-line basis over the lease term.

13. INTANGIBLE ASSETS

	Software \$'000	Total \$'000
At 1 July 2019		
Cost (gross carrying amount)	6,044	6,044
Accumulated amortisation and impairment	(1,009)	(1,009)
Net carrying amount	<u>5,035</u>	<u>5,035</u>
At 30 June 2020		
Cost (gross carrying amount)	10,635	10,635
Accumulated amortisation and impairment	(1,589)	(1,589)
Net carrying amount	<u>9,046</u>	<u>9,046</u>

Reconciliation

A reconciliation of the carrying amount of each class of intangible assets at the beginning and end of the current reporting period is set out below:

	Software \$'000	Total \$'000
Year ended 30 June 2020		
Net carrying amount at start of year	5,035	5,035
Additions*	4,591	4,591
Amortisation (recognised in "depreciation and amortisation")	(580)	(580)
Net carrying amount at end of year	<u>9,046</u>	<u>9,046</u>

*Additions of \$4.6m include \$0.7m for upgrades to the Practice Management System held in Work in Progress.

At 1 July 2018		
Cost (gross carrying amount)	3,035	3,035
Accumulated amortisation and impairment	(803)	(803)
Net carrying amount	<u>2,232</u>	<u>2,232</u>
At 30 June 2019		
Cost (gross carrying amount)	6,044	6,044
Accumulated amortisation and impairment	(1,009)	(1,009)
Net carrying amount	<u>5,035</u>	<u>5,035</u>

Reconciliation

A reconciliation of the carrying amount of each class of intangible assets at the beginning and end of the prior reporting period is set out below:

	Software \$'000	Total \$'000
Year ended 30 June 2019		
Net carrying amount at start of year	2,232	2,232
Additions*	3,009	3,009
Amortisation (recognised in "depreciation and amortisation")	(206)	(206)
Net carrying amount at end of year	<u>5,035</u>	<u>5,035</u>

*Additions of \$3.0m include \$2.1m for upgrades to the Practice Management System held in Work in Progress.

Recognition and Measurement

Intangible assets are recognised only if it is probable that future economic benefits will flow to the CSO and the cost of the asset can be measured reliably. Intangible assets are measured initially at cost. Where an asset is acquired at no or nominal cost, the cost is its fair value as at the date of acquisition. Following initial recognition, intangible assets are subsequently measured at fair value only if there is an active market. If there is no active market, the assets are carried at cost less any accumulated amortisation and impairment losses. As there is no active market for CSO's intangible assets they are carried at cost less any accumulated amortisation and impairment losses.

All research costs are expensed. Development costs are only capitalised when certain criteria are met.

The useful lives of intangible assets are assessed to be finite.

The CSO's intangible assets are amortised using the straight-line method over a period ranging from three to ten years.

The amortisation period and the amortisation method for an intangible asset with a finite useful life are reviewed at least at the end of each reporting period.

Intangible assets are tested for impairment where an indicator of impairment exists. If the recoverable amount is less than the carrying amount, the carrying amount is reduced to recoverable amount and the reduction is recognised as an impairment loss.

14. CURRENT/NON-CURRENT ASSETS – OTHER

	2020 \$'000	2019 \$'000
Crown Acceptance of long service leave liability - current	9,737	8,010
Crown Acceptance of long service leave liability – non-current	847	696
	<u>10,584</u>	<u>8,706</u>

15. FAIR VALUE MEASUREMENT OF NON-FINANCIAL ASSETS

Fair value measurement and hierarchy

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The fair value measurement is based on the presumption that the transaction to sell the asset or transfer the liability takes place either in the principal market for the asset or liability or in the absence of a principal market, in the most advantageous market for the asset or liability.

When measuring fair value, the valuation technique used maximises the use of relevant observable inputs and minimises the use of unobservable inputs. Under AASB 13, the CSO categorises, for disclosure purposes, the valuation techniques based on the inputs used in the valuation techniques as follows:

- Level 1 - quoted (unadjusted) prices in active markets for identical assets / liabilities that the CSO can access at the measurement date.
- Level 2 - inputs other than quoted prices included within Level 1 that are observable, either directly or indirectly.
- Level 3 - inputs that are not based on observable market data (unobservable inputs).

The CSO recognises transfers between levels of the fair value hierarchy at the end of the reporting period during which the change has occurred.

(a) Fair value hierarchy

		2020			Total fair value
		Level 1 \$'000	Level 2 \$'000	Level 3 \$'000	\$'000
Right-of-Use Asset	12	-	-	39,448	39,448
		-	-	39,448	39,448

		2019			Total fair value
		Level 1 \$'000	Level 2 \$'000	Level 3 \$'000	\$'000
Right-of-Use Asset	12	-	-	-	-
		-	-	-	-

There were no transfers between levels of the fair value hierarchy during the periods.

(b) Valuation techniques, inputs and processes

Right-of-Use Asset under lease

The Right-of-Use Asset is valued using market evidence (that is, based on a market selling price), with adjustments for varying characteristics including condition, location and comparability and is therefore categorised at Level 3.

The Direct Comparison Method has been utilised as the primary method of valuation. In this approach, the relative merits of the asset and rental prices of comparable spaces are

analysed and compared, having regard to matters such as location, aspect, quality and condition of improvements and current market sentiment.

Plant and Equipment and Leasehold Improvements

These assets are classified as non-specialised assets. For non-specialised assets with short useful lives, recognition at historical depreciated costs as an acceptable surrogate for fair value is allowed. Historical cost is an appropriate surrogate because any difference between fair value and depreciated historical cost is unlikely to be material.

(c) Reconciliation of recurring Level 3 fair value measurements

	ROUA	Total
	\$'000	\$'000
Fair value as at 1 July 2019	44,323	44,323
Depreciation	(4,875)	(4,875)
Fair value as at 30 June 2020	39,448	39,448
Fair value as at 1 July 2018	-	-
Additions	-	-
Depreciation	-	-
Fair value as at 30 June 2019	-	-

16. CURRENT LIABILITIES - PAYABLES

	2020	2019
	\$'000	\$'000
Accrued salaries, wages and on-costs	739	188
Creditors	6,784	4,926
Accrued expenses	2,354	442
GST payable to the Australian Taxation Office	131	-
	10,008	5,556

Details regarding liquidity risk, including a maturity analysis of the above payables, are disclosed in Note 25.

Recognition and Measurement

Payables represent liabilities for goods and services provided to the CSO and other amounts. Short-term payables with no stated interest rate are measured at the original invoice amount where the effect of discounting is immaterial.

Payables are financial liabilities at amortised cost, initially measured at fair value, net of directly attributable transaction costs. These are subsequently measured at amortised cost using the effective interest method. Gains and losses are recognised in the net result when the liabilities are derecognised as well as through the amortisation process.

17. CURRENT/NON-CURRENT LIABILITIES – BORROWINGS

	2020 \$'000	2019 \$'000
Current borrowings		
Lease liability (see Note 12)	4,206	-
	4,206	-
Non-Current borrowings		
Lease liability (see Note 12)	36,163	-
	36,163	-

Details regarding liquidity risk, including a maturity analysis of the above payables, are disclosed in Note 25.

Recognition and Measurement

Borrowings classified as financial liabilities at amortised cost are initially measured at fair value, net of directly attributable transaction costs. These are subsequently measured at amortised cost using the effective interest method. Gains and losses are recognised in net result when the liabilities are derecognised as well as through the amortisation process.

Changes in liabilities arising from financing activities:

	Financial Distribution payable \$'000	Leases \$'000	Total liabilities from financing activities \$'000
1 July 2018	5,826	-	5,826
Cash flows	(5,826)	-	(5,826)
Provision for Distribution 30 June 2019	4,553	-	4,553
30 June 2019	4,553	-	4,553
Recognised on adoption of AASB 16	-	44,323	44,323
1 July 2019	4,553	44,323	48,876
Cash flows	(4,553)	(4,759)	(9,312)
Interest	-	804	804
Provision for Distribution 30 June 2020	1,438	-	1,438
30 June 2020	1,438	40,368	41,806

18. CURRENT/NON-CURRENT LIABILITIES - PROVISIONS

	2020 \$'000	2019 \$'000
Current		
Employee benefits and related on-costs		
Annual leave	4,130	3,315
Long service leave	9,737	8,010
Related Oncost	2,163	1,661
	16,030	12,986
Other provisions		
Distribution to the Crown Entity	1,438	4,553
	1,438	4,553
Total current provisions	17,468	17,539
Non-Current		
Employee benefits and related on-costs		
Long service leave	847	696
Long service leave - related oncost	126	105
	973	801
Other provisions		
Make good	1,832	1,569
	1,832	1,569
Total non-current provisions	2,805	2,370
Aggregate employee benefits and related on-costs		
Provisions – current	16,030	12,986
Provisions - non-current	973	801
Accrued salaries, wages and on-costs (Note 16)	739	188
	17,742	13,975

Movements in provisions (other than employee benefits)

	Distribution Payments \$'000	Make good (non-current) \$'000
2020		
Carrying amount at the beginning of financial year	4,553	1,569
Additional provisions recognised	1,438	240
Unwinding of discount of make good provision	-	24
Amounts paid out	(4,553)	-
Carrying amount at end of the year	1,438	1,833

(a) Annual Leave

The liability at 30 June 2020 was \$4.836m (2019: \$3.781m). This is based on leave entitlements at 30 June using remuneration rates to be payable post 30 June.

Of this liability, the value expected to be taken within 12 months is \$4.180m (2019: \$3.402m) and \$0.656m (2019: \$0.379m) after 12 months. This calculation is based on the current

Crown Solicitor's Office
Notes to the Financial Statements

For the year ended 30 June 2020

levels of annual leave taken by staff and the minimum required to be taken to achieve the target of 30 days by June 2021.

(b) Long Service Leave

The total liability at 30 June 2020 was \$10.584m (2019: \$8.706m) which is shown as current \$9.737m (2019: \$8.010m) and non-current \$0.847m (2019: \$0.696m). This liability comprises:

	2020 \$'000	2019 \$'000
Short term – expected to be settled within 12 months	961	950
Long term – not expected to be settled within 12 months	9,623	7,756
	10,584	8,706

The CSO contributed \$0.910m (2019: \$0.994m) to the Crown Finance Entity pool account during this financial year including leave entitlement transfers received from other agencies. Reimbursements from the Crown Finance Entity because of payments to staff or transfers of entitlement to other agencies were \$0.466m (2019: \$1.187m).

Recognition and Measurement

Employee benefits and related on-costs

Salaries and wages, annual leave and sick leave

Salaries and wages (including non-monetary benefits) and paid sick leave that are expected to be settled wholly within 12 months after the end of the period in which the employees render the service are recognised and measured at the undiscounted amounts of the benefits.

Annual leave is not expected to be settled wholly before twelve months after the end of the annual reporting period in which the employees render the related service. As such, it is required to be measured at present value in accordance with AASB 119 Employee Benefits (although short-cut methods are permitted).

Actuarial advice obtained by Treasury has confirmed that using the nominal annual leave balance plus the annual leave entitlements accrued while taking annual leave (calculated using 7.9% of the nominal value of annual leave) can be used to approximate the present value of the annual leave liability. The CSO has assessed the actuarial advice based on the CSO's circumstances and determined that the effect of discounting is immaterial to annual leave. All annual leave is classified as a current liability even where the CSO does not expect to settle the liability within 12 months as the CSO does not have an unconditional right to defer settlement.

Unused non-vesting sick leave does not give rise to a liability, as it is not considered probable that sick leave taken in the future will be greater than the benefits accrued in the future.

Long service leave and superannuation

The CSO contributes to the Agency Funded Crown LSL Pool and these payments are included in Employee Related Expenses. The amount of payments expected to be made to the employees is recognised as LSL liabilities and the amounts expected to be reimbursed by the Crown Finance entity as assets.

Long service leave is measured at the present value of expected future payments to be made in respect of services provided up to the reporting date. Consideration is given to certain

factors based on actuarial review, including expected future wage and salary levels, experience of employee departures, and periods of service. Expected future payments are discounted using the Commonwealth government bond rate at the reporting date.

Superannuation assumed by the Crown

The CSO's liability for defined benefit superannuation is assumed by the Crown. CSO accounts for the liability as having been extinguished; resulting in the amount assumed being shown as part of the non-monetary revenue item described as 'Acceptance by the Crown Entity of employee benefits'. The superannuation expense for the period is determined by using the formulae specified in the Treasurer's Directions. The expense for certain superannuation schemes (i.e. Basic Benefit and First State Super) is calculated as a percentage of the employees' salary. For other superannuation schemes (i.e. State Superannuation Scheme and State Authorities Superannuation Scheme), the expense is calculated as a multiple of the employees' superannuation contributions.

Consequential on-costs

Consequential costs to employment are recognised as liabilities and expenses where the employee benefits to which they relate have been recognised. This includes outstanding amounts of payroll tax, workers' compensation insurance premiums and fringe benefits tax.

Other provisions

Provisions are recognised when: the CSO has a present legal or constructive obligation as a result of a past event; it is probable that an outflow of resources will be required to settle the obligation; and a reliable estimate can be made of the amount of the obligation. When the CSO expects some or all of a provision to be reimbursed, for example, under an insurance contract, the reimbursement is recognised as a separate asset, but only when the reimbursement is virtually certain. The expense relating to a provision is presented net of any reimbursement in the Statement of Comprehensive Income.

If the effect of the time value of money is material, provisions are discounted at a pre-tax rate that reflects the current market assessments of the time value of money and the risks specific to the liability. When discounting is used, the increase in the provision due to the passage of time (i.e. unwinding of discount rate) is recognised as a finance cost.

(c) Make good

Make good provisions represent estimated restoration costs that the CSO is obliged to incur to restore premises to an acceptable condition as agreed with the owners of the premises, upon expiry of operating lease arrangements. CSO occupies levels 4-9 of 60-70 Elizabeth Street Sydney. Levels 4-9 have been refurbished.

The make good provisions for levels 4-9 have a non-current liability payable at the expiry of the leases. The non-current provision is discounted at 0.73% which is the rate based on the market yield on Commonwealth government bonds as per TC11-17. The increase in the provision due to the passage of time (i.e. unwinding of discount rate) is recognised as a finance cost. The increase in the provision due to a change in other assumptions is recognised in the leasehold improvement asset.

(d) Distribution Payable to the Crown Entity

A provision for financial distribution to the Crown Entity of \$1.438m (2019: \$4.553m) is made based on the Treasurer's approval dated 30 July 2020 of the Crown Solicitor's recommendation for the 2019-2020 financial year (refer Note 5).

19. EQUITY

Recognition and Measurement

Accumulated Funds

The category "Accumulated funds" includes all current and prior period retained funds.

20. COMMITMENTS FOR EXPENDITURE

(a) Capital Commitments

	2020 \$'000	2019 \$'000
Aggregate capital expenditure for the enhancement of the Practice Management System (PMS), content management system, and new laptops (2020) and acquisition of the new PMS and the fit out of leased premises (2019) contracted for at balance date and not yet provided for:		
Within one year	193	2,402
Later than one year and not later than five years	-	-
Later than five years	-	-
Total (including GST)	193	2,402

Total commitments for capital expenditure include input tax credits of \$0.02m (2019: \$0.2m) that are expected to be recoverable from the Australian Taxation Office.

21. CONTINGENT LIABILITIES AND CONTINGENT ASSETS

The CSO has no contingent liabilities or contingent assets at 30 June 2020. There were no contingent liabilities or contingent assets at 30 June 2019.

22. BUDGET REVIEW

The budgeted amounts are drawn from the original budgeted financial statements presented to Parliament in respect of the reporting period. Subsequent amendments to the original budget (e.g. adjustment for transfer of functions between entities as a result of Administrative Arrangements Orders; or supplementary funding) are not reflected in the budgeted amounts.

Major variances between the original budgeted amounts and the actual amounts disclosed in the financial statements are explained as follows.

Net result

The net surplus for the year of \$3.178m is \$1.800m greater than budget of \$1.378m.

Revenue of \$73.229m is \$11.522m favourable to the budget of \$61.707m, and \$1.837m higher than 2018-19. The variance is attributable to increased work volumes particularly in the areas of Inquiries, Criminal Law and Terrorism and High Risk Offenders (\$9.612m) and Child Protection (\$3.283m).

During 2019-20 Covid-19 did not impact the overall volume of work however the CSO did observe a change in the mix of new matters, receiving more urgent requests for advice and fewer new litigation matters.

Crown Solicitor's Office
Notes to the Financial Statements

For the year ended 30 June 2020

CSO headcount has been increased during the year to support the increased workload and is reflected in the Employee Related Expenses variance to budget of \$5.357m. This was supplemented by the use of Agency staff (part of Other Operating Expenses) which is \$3.370m above budget for the year. CSO continues to recruit appropriately qualified staff and contractors to ensure that sufficient resources are available to meet client demand whilst maintaining target productivity measures.

Other Operating Expenses (excluding Agency Staff costs) are \$0.492m above budget which is consistent with supporting the increased activity reflected in the higher than budgeted revenues.

The travel restrictions imposed as a result of Covid-19 meant that fewer staff took annual and long service leave than budgeted. Otherwise no material additional costs were incurred as a result of the pandemic.

Service Partnership Agreement costs (support services including payroll and technology provided by the Department of Communities and Justice) increased \$0.313m due to supporting the increased headcount and provision of technology services. Costs associated with the office premises (outgoings and telephone costs) are \$0.225m above budget. Stores are \$0.067m above budget primarily related to the expensing of low value technology assets and software application licences.

Favourable budget variances were achieved with lower than anticipated use of Consultants (\$0.108m). Staff Training costs are down on budget (\$0.185m), which is reflective of servicing the increased workload. CSO continues to develop and enrol staff on training programs to ensure CSO remains at the forefront in the provision of high quality professional legal services to our clients.

Depreciation & Amortisation is \$0.606m above budget, related to a higher ROUA cost at 1 July 2019 than budgeted and acceleration of depreciation on laptops to align them to the projected replacement date.

Finance costs of \$0.828m (2019: \$nil) represent the interest expense from lease liabilities as a result of adopting AASB 16. These are lower than budget by \$0.103m due to a correction in the rental escalation rate in future years.

Assets and liabilities

Total assets of \$117.464m are \$12.552m greater than budget. The increased workload and increased surplus generated has contributed to Work in Progress & Receivables (\$14.611m) being higher than budgeted. There were also planned delays in invoicing to allow for the successful transition to the new practice management system. These factors impact on Cash and Cash Equivalents which is lower than budget (\$9.354m). Intangibles are greater than budget (\$3.737m) due to timing of expenditure. ROUA is \$3.930m higher than budget.

Total Liabilities of \$70.650m are \$10.224m greater than budget. Provisions are \$4.457m higher than budget. The present value of the long service leave balance represents \$2.404m of the increase while annual leave represents \$0.815m. On-costs on long service leave and annual leave are \$0.523m higher than budget. These increases are in part due the restrictions on travel as a result of Covid-19. Provision for distribution to Crown Entity is \$0.484m higher than budget. Lease liability is \$3.905m higher than budget.

Crown Solicitor's Office
Notes to the Financial Statements

For the year ended 30 June 2020

Cash flows

Cash and Cash Equivalents decreased by \$12.137m compared to a budgeted reduction of \$2.783m. The variance of \$9.354m is due to planned delays in invoicing to allow for the successful transition to the new practice management system.

23. RECONCILIATION OF OPERATING CASH FLOWS TO NET RESULT

Reconciliation of cash flows from operating activities to the net result as reported in the Statement of Comprehensive Income as follows:

	2020	2019
	\$'000	\$'000
Net cash flows from operating activities	1,445	5,819
Depreciation and amortisation expense	(7,612)	(2,189)
Decrease/(increase) in provisions	(3,215)	3,668
Increase/(decrease) in receivables, prepayments and other assets	18,417	4,506
Increase/(decrease) in contract assets	(1,970)	-
Decrease/(increase) in payables	(3,887)	(4,266)
Net result	3,178	7,538

24. TRUST FUNDS

The Crown Solicitor operates a Trust Account in accordance with the *Legal Profession Uniform Law Application Regulation 2015*. As the CSO performs only a custodial role in respect of these monies, and because the monies cannot be used for the achievement of the CSO's own objectives, these funds are not recognised in the financial statements. Interest earned on funds held in the Crown Solicitor's Trust Account is retained by NSW Treasury.

	2020	2019
	\$'000	\$'000
Cash balance at the beginning of the financial year	12,159	1,666
Add: Receipts	10,018	49,061
Less: Expenditure	(12,398)	(38,568)
Cash balance at the end of the financial year	9,779	12,159

25. FINANCIAL INSTRUMENTS

The CSO's principal financial instruments are outlined below. These financial instruments arise directly from the CSO's operations. The CSO does not enter into or trade financial instruments, including derivative financial instruments, for speculative purposes.

The CSO's main risks arising from financial instruments are outlined below, together with the CSO's objectives, policies and processes for measuring and managing risk. Further quantitative and qualitative disclosures are included throughout these financial statements.

The Crown Solicitor has overall responsibility for the establishment and oversight of risk management and reviews and agrees policies for managing each of these risks. Risk management policies are established to identify and analyse the risks faced by the CSO, to set risk limits and controls and to monitor risks. Compliance with policies is reviewed by the CSO on a regular basis.

(a) Financial instrument categories

(i) As at 30 June 2020

	Note	Category	2020 Carrying Amount \$'000
Financial Assets			
Cash and cash equivalents	7	Amortised cost	3,633
Receivables ¹	8	Amortised cost	29,933
Contract assets ²	9		8,035
			<u>41,601</u>
Financial Liabilities			
Payables ³	16	Financial liabilities measured at amortised cost	9,848
Borrowings	17	Financial liabilities measured at amortised cost	40,368
			<u>50,216</u>

Notes 1. Excludes statutory receivables and prepayments (i.e. not within scope of AASB 7).

2. While contract assets are also not financial assets, they are explicitly included in the scope of AASB 7 for the purpose of the credit risk disclosures.

3. Excludes statutory payables and unearned revenue (i.e. not within scope of AASB 7).

(ii) As at 30 June 2019

	Note	Category	2019 Carrying Amount \$'000
Financial Assets			
Cash and cash equivalents	7	Amortised cost	15,770
Receivables ¹	8	Amortised cost	11,189
Other financial assets	10	Amortised cost	11,982
			<u>38,941</u>
Financial Liabilities			
Payables ²	16	Financial liabilities measured at amortised cost	5,525
			<u>5,525</u>

Notes 1. Excludes statutory receivables and prepayments (i.e. not within scope of AASB 7).

2. Excludes statutory payables and unearned revenue (i.e. not within scope of AASB 7).

The CSO determines the classification of its financial assets and liabilities after initial recognition and, when allowed and appropriate, re-evaluates this at each financial year end.

(b) Derecognition of financial assets and financial liabilities

A financial asset (or, where applicable, a part of a financial asset or part of a group of similar financial assets) is derecognised when the contractual rights to the cash flows from the financial assets expire; or if the CSO transfers its rights to receive cash flows from the asset

or has assumed an obligation to pay the received cash flows in full without material delay to a third party under a 'pass-through' arrangement; and either:

- the CSO has transferred substantially all the risks and rewards of the asset; or
- the CSO has neither transferred nor retained substantially all the risks and rewards of the asset, but has transferred control.

When the CSO has transferred its rights to receive cash flows from an asset or has entered into a pass-through arrangement, it evaluates if, and to what extent, it has retained the risks and rewards of ownership. Where the CSO has neither transferred nor retained substantially all the risks and rewards or transferred control, the asset continues to be recognised to the extent of the CSO's continuing involvement in the asset. In that case, the CSO also recognises an associated liability. The transferred asset and the associated liability are measured on a basis that reflects the rights and obligations that the CSO has retained.

Continuing involvement that takes the form of a guarantee over the transferred asset is measured at the lower of the original carrying amount of the asset and the maximum amount of consideration that the CSO could be required to repay.

A financial liability is derecognised when the obligation specified in the contract is discharged or cancelled or expires. When an existing financial liability is replaced by another from the same lender on substantially different terms, or the terms of an existing liability are substantially modified, such an exchange or modification is treated as the derecognition of the original liability and the recognition of a new liability. The difference in the respective carrying amounts is recognised in the net result.

(c) Offsetting financial instruments

Financial assets and financial liabilities are offset and the net amount is reported in the Statement of Financial Position if there is a currently enforceable legal right to offset the recognised amounts and there is an intention to settle on a net basis, or to realise the assets and settle the liabilities simultaneously.

(d) Financial Risks

(i) Credit risk

Credit risk arises when there is the possibility that the counterparty will default on their contractual obligations, resulting in a financial loss to the CSO. The maximum exposure to credit risk is generally represented by the carrying amount of the financial assets (net of any allowance for credit losses or allowance for impairment).

Credit risk arises from the financial assets of the CSO, including cash and receivables. No collateral is held by the CSO. The CSO has not granted any financial guarantees.

The CSO considers a financial asset in default when contractual payments are 90 days past due. However, in certain cases, the CSO may also consider a financial asset to be in default when internal or external information indicates that the CSO is unlikely to receive the outstanding contractual amounts in full before taking into account any credit enhancements held by the CSO.

Cash and cash equivalents

Cash comprises cash on hand and bank balances within the NSW Treasury Banking System. Interest is earned on daily bank balances at the monthly average NSW Treasury Corporation (TCorp) 11am unofficial cash rate, adjusted for a management fee to NSW Treasury.

Receivables – trade debtors and contract assets

Collectability of trade debtors is reviewed on an ongoing basis. Procedures as established in the Treasurer's Directions are followed to recover outstanding amounts, including letters of demand.

The CSO applies the AASB 9 simplified approach to measuring expected credit losses which uses a lifetime expected loss allowance for all trade debtors and contract assets.

To measure the expected credit losses, trade receivables and contract assets have been grouped based on shared credit risk characteristics and the days past due.

The expected loss rates are based on historical observed loss rates. The historical loss rates are adjusted to reflect current and forward-looking information on macroeconomic factors affecting the ability of the customers to settle the receivables. The CSO has identified the GDP and the unemployment rate to be the most relevant factors, and accordingly adjusts the historical loss rates based on expected changes in these factors.

Trade debtors and contract assets are written off when there is no reasonable expectation of recovery. Indicators that there is no reasonable expectation of recovery include, amongst others a failure to make contractual payments for a period of greater than 90 days past due.

The CSO is not materially exposed to concentrations of credit risk to a single debtor or groups of debtors at 30 June 2020. The CSO's debtors are primarily other NSW government entities and credit risk is assessed as very low.

The loss allowance for trade debtors and contract assets as at 30 June 2020 and 30 June 2019 was determined to be \$nil.

(ii) Liquidity risk

Liquidity risk is the risk that the CSO will be unable to meet its payment obligations when they fall due. The CSO continuously manages risk through monitoring future cash flows, which coordinates the payment of creditors with cash receipts from debtors.

The CSO has effective billing and debtor management policies and procedures in place to maintain levels of debt within established KPIs and to ensure that work in progress is billed in a timely fashion.

During the current year and prior year, there were no defaults of borrowings. No assets have been pledged as collateral. The CSO's exposure to liquidity risk is deemed insignificant based on prior periods' data and current assessment of risk.

Liabilities are recognised for amounts due to be paid in the future for goods or services received, whether or not invoiced. Amounts owing to suppliers (which are unsecured) are settled in accordance with the policy set out in NSW TC 11/12. For small business suppliers, where terms are not specified, payment is made not later than 30 days from date of receipt of a correctly rendered invoice. For other suppliers, if trade terms are not specified, payment is made no later than the end of the month following the month in which an invoice or a statement is received. For small business suppliers, where payment is not made within the specified time period, simple interest must be paid automatically unless an existing contract specifies otherwise.

Crown Solicitor's Office
Notes to the Financial Statements

For the year ended 30 June 2020

For payments to other suppliers, the payment of simple interest is at the discretion of the Crown Solicitor.

Interest incurred this year was \$nil (2019: \$543) and the rate of interest applied during the year was 0% (2019: 9.96%).

The table below summarises the maturity profile of the CSO's financial liabilities based on contractual undiscounted payments, together with the interest rate exposure.

Maturity analysis and interest rate exposure of financial liabilities

	Weighted average effective interest rate	\$'000 Interest Rate Exposure				Maturity Dates		
		Nominal Amount	Fixed Interest Rate	Variable Interest Rate	Non-interest bearing	< 1 year	1 -5 years	> 5 years
2020								
Payables	-	9,848	-	-	9,848	9,848	-	-
Lease liabilities	2.0%	43,684	43,684	-	-	4,967	22,050	16,666
		53,532	43,684	-	9,848	14,815	22,050	16,666
2019								
Payables	-	5,525	-	-	5,525	5,525	-	-
		5,525	-	-	5,525	5,525	-	-

The amounts disclosed are the contractual undiscounted cash flows of each class of financial liabilities based on the earliest date on which the CSO can be required to pay.

(iii) Market risk

Market risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market prices. The CSO has no exposure to foreign currency risk and does not enter into commodity contracts.

The effect on profit and equity due to a reasonably possible change in risk variable is outlined in the information below, for interest rate risk and other price risk. A reasonably possible change in risk variable has been determined after taking into account the economic environment in which the entity operates and the time frame for the assessment (i.e. until the end of the next annual reporting period). The sensitivity analysis is based on risk exposures in existence at the Statement of Financial Position reporting date. The analysis is performed on the same basis as for 2019. The analysis assumes that all other variables remain constant.

Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market interest rates. Exposure to interest rate risk arises primarily through the CSO's interest bearing assets. The sensitivity analysis is performed based on a reasonably possible change of +/- 0.10 per cent (2019: +/- 0.20%), consistent with current trends in interest rates (based on official RBA interest rate volatility over the last five years). The basis will be reviewed annually and amended where there is a structural change in the level of interest rate volatility.

The following table demonstrates the sensitivity to a reasonably possible change in interest rates:

	2020		2019	
	\$'000		\$'000	
	+0.10%	-0.10%	+0.20%	-0.20%
Net Result	4	(4)	32	(32)
Equity	4	(4)	32	(32)

(e) Fair Value measurement

(i) Fair Value compared to carrying amount

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The fair value measurement is based on the presumption that the transaction to sell the asset or transfer the liability takes place either in the principal market for the asset or liability or in the absence of a principal market, in the most advantageous market for the asset or liability.

The CSO does not hold financial assets and financial liabilities where the fair value differs from carrying amount.

(ii) Fair Value recognised in the Statement of Financial Position

A number of the CSO's accounting policies and disclosures require the measurement of fair values, for both financial and non-financial assets and liabilities. The CSO does not hold financial assets and liabilities that are valued at fair value using valuation techniques.

Management assessed that cash, trade receivables, trade payables, and other current liabilities approximate their fair values, largely due to the short-term maturities of these instruments.

26. RELATED PARTY DISCLOSURES

The CSO has reassessed the key management personnel during 2020 and has concluded that the Executive Team are now key management personnel in addition to the Crown Solicitor. Compensation was as follows (2019 values are not restated):

Short term employee benefits:

	2020	2019
	\$'000	\$'000
Salaries	1,532	354
Other monetary allowances	308	37
Other long-term employee benefits	39	129
Total remuneration	1,879	520

The CSO did not enter into any transactions during the year with key management personnel, their close family members or controlled or jointly controlled entities thereof.

The CSO entered into transactions with other entities that are controlled/jointly controlled /significantly influenced by the NSW Government. These transactions in aggregate are a significant portion of the CSO's rendering of services and receiving of services.

Crown Solicitor's Office
Notes to the Financial Statements

For the year ended 30 June 2020

The CSO provides legal services to the NSW Government and its agencies. \$51.453m (2019: \$49.385m) of the CSO's fee for service revenue is related to the delivery of services on core legal matters which must be referred to the Crown Solicitor under the Premier's Memorandum 2016-04. This work is funded from the Attorney General's Legal Fund, an appropriation administered by the Department of Communities and Justice (DCJ). The remainder of CSO's revenue for services and other revenue is paid by various NSW government agencies or the Treasury Managed Fund.

The CSO receives shared services from DCJ in the areas of payroll, information and technology systems support and library services. The CSO incurred \$1.677m (2019: \$1.493m) in fees to DCJ for these services.

The CSO resides in leased premises and made payments for rent and outgoings due under the lease to Property NSW. These amounts totalled \$5.469m (2019: \$6.056m).

Other transactions with entities that are controlled/jointly controlled or significantly influenced by the NSW Government that are collectively, but not individually, significant include:

- Payments to, and reimbursements from, the Long Service Leave pool in relation to CSO employees.
- Interest revenue received from the NSW Treasury banking system.
- Payments to the Government Records Repository for storage of CSO records.
- Payments to the NSW Treasury Managed Fund for workers' compensation insurance and other insurances.
- Payments to Government Advertising in respect of the advertising of job vacancy notices.

27. EVENTS AFTER THE REPORTING PERIOD

No events have occurred between the financial reporting date and the date of these financial statements that require adjustment to these financial statements.

On 1 October 2020 the Industrial Relations Commission of New South Wales did not agree with the public service union proposal to confer 2.5 per cent pay increases on NSW public servants to take effect from the first pay period on or after 1 July 2020. The Commission instead awarded a reduced pay increase of 0.3 per cent. CSO employee leave entitlement provisions as at 30 June 2020 assume a 2.5 per cent pay increase however the impact on the financial statements is not assessed to be material.

End of audited financial statements.

2. PAYMENT OF ACCOUNTS

The CSO's reporting obligations ceased after the 30 Days to Pay policy ended on 30 November 2018, with a final return covering the October-November 2018 period. The Faster Payment Terms policy replaced the 30 Days to Pay policy, starting on 1 December 2018. The reporting obligations for this policy sit with the Office of the NSW Small Business commissioner.

Initiatives to improve payment performance

The CSO continues to support satisfactory payment performance through the provision of Purchasing Cards, where appropriate, to ensure prompt payment of low-value invoices; use of EFT as the preferred method of paying creditors; payment of major suppliers by way of consolidated invoicing; and ensuring that CSO employees are aware of and abide by the payment performance requirements, including advising all new employees as part of their induction.

The CSO's new practice management system, Thomson Reuters Elite, has been in place since December 2019. This supports centralised receipt of supplier invoices and use of electronic workflow for approval, and is expected to deliver continuous improvement to our payment performance.

3. TIME FOR PAYMENT OF ACCOUNTS

Interest payments are no longer applicable for late payments but are at the discretion of agencies to pay. The CSO's supplier payment policy does not include a condition to pay interest on late accounts.

4. CONSULTANT EXPENDITURE

Total consultant expenditure in 2019-20 was \$14,600, comprising two engagements.

There were no engagements costing \$50,000 or more.

5. RISK MANAGEMENT & INSURANCE

The CSO has full workers' compensation, property, liability and miscellaneous insurance cover provided by the Treasury Managed Fund (TMF), covering the office's major insurance risks: security of the CSO's employees, property and other assets, and the risk of work-related injuries that may result in workers' compensation insurance claims.

The TMF is a government-wide self-insurance scheme managed by icare's Insurance for NSW on behalf of the NSW Treasury. It provides a systematic and coordinated approach to the practice of risk management. Under this scheme, benchmarking was introduced to gauge risk management performance with insurance premiums determined by a combination of benchmarks and the CSO's claims experience.

A comprehensive insurance program covers workers' compensation, public liability, motor vehicle, property and miscellaneous liability.

On behalf of icare, QBE Insurance provided workers' compensation and Gallagher Bassett provided General lines of insurance claims management service for CSO during the 2019-20 financial year.

The CSO monitors its claims experience on an ongoing basis, with a focus on occupational health and safety and claims management, with the aim of reducing the number and value of workers' compensation insurance claims.

Risk management policies and procedures are also continually being reviewed to enhance the CSO's risk management profile, thereby reducing future premiums.

Internal Audit and Risk Management Attestation Statement for the 2019-2020 Financial Year for the Crown Solicitor's Office

I, Karen Smith am of the opinion that the Crown Solicitor's Office has internal audit and risk management processes in operation that are, excluding the exceptions or transitional arrangements described below, compliant with the eight (8) core requirements set out in the *Internal Audit and Risk Management Policy for the NSW Public Sector*, specifically:

Core Requirements	For each requirement, please specify whether compliant, non-compliant, or in transition
-------------------	---

Risk Management Framework

1.1	The agency head is ultimately responsible and accountable for risk management in the agency	Compliant
1.2	A risk management framework that is appropriate to the agency has been established and maintained and the framework is consistent with AS/NZS ISO 31000:2009	Compliant

Internal Audit Function

2.1	An internal audit function has been established and maintained	Compliant
2.2	The operation of the internal audit function is consistent with the International Standards for the Professional Practice of Internal Auditing	Compliant
2.3	The agency has an Internal Audit Charter that is consistent with the content of the 'model charter'	Compliant

Audit and Risk Committee

3.1	An independent and Audit and Risk Committee with appropriate expertise has been established	Compliant
3.2	The Audit and Risk Committee is an advisory committee providing assistance to the agency head on the agency's governance processes, risk management and control frameworks, and its external accountability obligations	Compliant
3.3	The Audit and Risk Committee has a Charter that is consistent with the content of the 'model charter'	Compliant

Membership

The current chair and members of the Audit and Risk Committee are:

- Independent Chair, Carolyn Burlew, 1 August 2019 to 31 July 2022
- Independent Member 1, Christine Feldmanis, 1 August 2019 to 31 July 2022
- Independent Member 2, Denise Aldous, 1 August 2019 to 31 July 2022
- Independent Member 3, Abby Bloom, 1 August 2019 to 31 July 2022
- Independent Member 4, John Hunter, 25 October 2019 to 24 October 2022
- Independent Member, Ralph Kelly, 1 August 2019 to 15 September 2019



Karen Smith
Crown Solicitor

6. CYBER SECURITY POLICY ATTESTATION



**Crown
Solicitor's
Office**

20 August 2020

Cyber Security Annual Attestation Statement for the 2019-2020 Financial Year for Crown Solicitor's Office

I, Karen Smith, NSW Crown Solicitor, am of the opinion that Department of Communities and Justice (formerly Department of Justice), Information Technology Services (our shared service provider) had an Information Security Management System in place during the 2019-2020 financial year that is consistent with the Mandatory Requirements set out in the NSW Cyber Security Policy.

For the purpose of compliance with the NSW Cyber Security Policy, the Crown Solicitor's Office has relied on the attestation by the Department of Communities and Justice, Information Technology Services and certification of their department's ISMS against the ISO270001 standard.

Governance is in place to manage the cyber security maturity and initiatives of the Crown Solicitor's Office.

The controls in place to mitigate identified risks to the digital information and digital information systems of Crown Solicitor's Office are reasonable.

The Crown Solicitor's Office is continuing to work with Department of Communities and Justice to review and refine the agency's governance and cyber security response posture.

Yours faithfully

A handwritten signature in black ink that reads "Karen Smith".

Karen Smith
Crown Solicitor

7. PROMOTION

In the 2019-20 financial year, there were no overseas visits by CSO officers or employees.

8. CONSUMER RESPONSE

There were no complaints received during the reporting year.

The CSO's procedure for handling complaints is publicly available on the CSO website, which outlines to whom feedback and complaints should be made, how a complaint will be dealt with, and what outcomes can be expected. The page also provides information about privacy and confidentiality protections and includes links to alternative complaint-handling agencies. A record is kept of all complaints received.

See <http://www.cso.nsw.gov.au/Pages/feedback-and-complaints.aspx>.

9. GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT

The CSO is declared not to be a separate agency, but is taken to be part of, and included in, the Department of Communities and Justice under clause 13 of Schedule 3 to the *Government Information (Public Access) Regulation 2018*, made pursuant to clause 6 of Schedule 4 to the *Government Information (Public Access) Act 2009* (GIPA Act). Accordingly, the CSO does not exercise functions in relation to GIPA Act applications – these are dealt with by the Department of Communities and Justice. The CSO has no subsidiary agencies.

10. PRIVACY & PERSONAL INFORMATION

The CSO received three requests for privacy internal reviews under the *Privacy and Personal Information Protection Act 1998* (PPIP Act) during the 2019-20 financial year. All three were determined within the statutory period permitted for internal reviews.

The CSO is a separate agency for the purposes of the PPIP Act. No agencies have been prescribed by regulation for the purposes of s. 4B(1)(a) of the Act.

In compliance with the provisions of the PPIP Act, the CSO has a Privacy Management Plan.

11. PUBLIC INTEREST DISCLOSURES

There were no public interest disclosures to the CSO in the 2019-20 reporting period.

The CSO has a public interest disclosure (PID) policy in place. The policy, and an internal disclosures form, is made available to all staff via the intranet.

12. LEGAL CHANGE

Significant judicial decisions and legislative changes affecting clients of the CSO are outlined in the body of this report.

13. REPORT PRODUCTION COSTS & ACCESS

No costs, other than existing salaries, were incurred in the production of this report.

A copy of this report is made available to the public on the CSO website or upon request to csomarketing@cso.nsw.gov.au.



Crown
Solicitor's
Office