



Crown  
Solicitor's  
Office

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# NSW Crown Solicitor's Office Annual Report

for the period ended 30 June 2017

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23 October 2017

The Hon Mark Speakman SC MP  
Attorney General  
Level 18, 52 Martin Place  
SYDNEY NSW 2000

Dear Attorney General,

I have pleasure in presenting to you the annual report of the Crown Solicitor's Office for the period 1 July 2016 to 30 June 2017.

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

Yours faithfully,

Lea Armstrong  
**Crown Solicitor**

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## 2. Crown Solicitor's message

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*Lea Armstrong, Crown Solicitor*

It's my pleasure to introduce the annual report of the Crown Solicitor's Office for the 2016-2017 financial year.

I have been privileged to serve in my second year as the NSW Crown Solicitor and guide the organisation through a period of major change and new opportunities.

Throughout 2016/17, the CSO continued to support NSW Government departments and agencies with quality legal advice and representation from a whole of government perspective. At the same time, we focused on developing our internal capability and transforming the organisation to better serve our clients.

In September 2016, we implemented a new Senior Executive structure and a re-configuration of some of the CSO's legal practice groups. The new structure enables a more strategic focus within the CSO to achieve enhanced delivery of legal services to the NSW Government, supported by a comprehensive workforce strategy and effective infrastructure.

In 2016/17, the CSO was instructed on 3,976 new legal matters, including a number of high-profile and significant matters. The inquest into the deaths arising from the Lindt Café siege, which concluded in May 2017, was one of the most complex inquests in the State's history, attracting intense media scrutiny. The CSO's work on this inquest demonstrated the strength of our commitment and contribution to serving the State.

The CSO continued to represent the interests of the State of NSW, from a whole of government perspective, in the Royal Commission into Institutional Responses to Child Sexual Abuse. The CSO has appeared on behalf of the State in 25 public hearings before the Royal Commission to date, and continues to engage with the Commission in relation to requests for information from various State agencies. The Royal Commission is due to release its final report on 15 December 2017.

In addition to our participation on major legal services panels, including the NSW Self Insurance Corporation's Treasury Managed Fund Legal Services Panel, the NSW Government Legal Services Panel and the NSW Health Medico-Legal Panel, the CSO successfully tendered for appointment to the Point to Point Transport Mini Legal Panel in October 2016.

We continued to deliver specialised introductory and advanced training sessions for clients on the *Government Information (Public Access) Act 2009*, assisting NSW Government agency clients to understand and meet their obligations under the Act. We also consistently attracted high attendance rates and positive client feedback for our ongoing monthly legal seminars.

The results of the CSO's 2016/17 annual client survey showed that 98% of clients rated our services as better than or equal to that of other law firms they use.

The CSO delivered a very strong financial performance in the 2016/17 financial year, achieving a net surplus of \$10.1M, which was \$7.7M more than the budgeted \$2.4M. Approximately \$5.2M of fees revenue was generated from significant and unbudgeted increased activity. The CSO will make a distribution payment of \$5.2M from the distributable operating surplus as approved by the Treasurer.

The CSO's strong financial position will support us in implementing key operational enhancements as part of our continuous improvement in efficient delivery of services.

In the 2016/17 reporting year, the CSO commenced a major Workplace Modernisation Program. This includes an upgrade to our fit out, the implementation of a new practice management system (Elite), the development of a contemporary storage and archiving strategy and an upgrade of the CSO IT Services. These changes will support the CSO in its delivery of high-quality legal services into the future.

My objective for 2017/18 is to ensure that the CSO continues to fulfil the NSW Government's need for a strong legal advisor committed to serving its departments and agencies, and the wider public interest.



Lea Armstrong  
**Crown Solicitor**

## Charter

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The CSO is an executive agency related to the Department of Justice (pursuant to Sch. 1 of the *Government Sector Employment Act 2013*), headed by the Crown Solicitor who is responsible to the Attorney General for the operations of the CSO.

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

- the State of New South Wales
- a person suing or being sued on behalf of the State of New South Wales
- a Minister of the Crown in his or her official capacity as such a Minister
- a body established by an Act or other law of New South Wales
- an officer or employee of the Public Service or any other service of the State of New South Wales or of a body established by an Act or other law of New South Wales
- a person holding office under an Act or other law of New South Wales 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.

"Core legal work", as defined in Premier's Memorandum 2016-04, must be referred to the Crown Solicitor, and is performed on a cost recovery basis.

The Crown Solicitor's legal fees and disbursements for core legal work are met from the Attorney General's Legal Fund (previously the Core Fund) comprising an appropriation administered by Department of Justice, unless some other source of funding is available, such as the Treasury Managed Fund ("TMF").

The CSO is considered a not-for-profit entity, as approximately 65% of its work is core legal work and is performed at cost recovery rates only.

The Crown Solicitor competes with the private sector for non-core legal work.

## Aims and objectives

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The Crown Solicitor provides legal services to the State Government of NSW and the other entities specified in s. 44 of the *Legal Profession Uniform Law Application Act 2014*.

The Crown Solicitor is the solicitor on record for the purpose of legal proceedings.

Through her Office, the Crown Solicitor is the largest provider of legal services to the NSW Government and its agencies, and the sole provider of legal services in all matters which are regarded as core legal work. The Crown Solicitor manages thousands of legal matters each year, many of which are long-running matters involving significant litigation.

Under the Premier's Memorandum 2016-04, the Crown Solicitor must be engaged by government agencies (subject to that Memorandum) to perform core legal work, being legal services in respect of a matter where:

- (a) the best interests of the NSW Government as a whole require a single source of authoritative legal advice and central management; or
- (b) it relates to the statutory or common law functions of the Attorney General.

The Crown Solicitor also competes with the private legal profession to perform non-core legal work for government agencies, accounting for approximately 35% of fees revenue. This work is priced in accordance with competitive neutrality principles and generates a surplus from which the CSO makes its financial distribution payment and funds its capital expenditure.

CSO officers understand the sensitivities that attend the functions of the NSW State Government, and work diligently to build positive working partnerships with clients. They use their unique knowledge to provide high quality legal advice and services, while maintaining integrity and professional independence.

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

As an executive agency related to the Department of Justice, the CSO's business initiatives are linked to Department's goals and directions in terms of the delivery of quality client services and responsiveness to the needs of the NSW Government and its agencies.

The CSO complies with all NSW Government directions and policies and endeavours to understand clients' objectives, challenges and how they operate.

The CSO exists to serve the public interest and endeavours to ensure that its legal services provide good value for money.

## Our values

We share common values with the rest of the NSW Public Service, as articulated in the Ethical Framework published by the Public Service Commissioner. These values are:

- integrity
- trust
- service
- accountability.

## Services provided by the CSO

A significant internal restructure at the CSO (from September 2016) resulted in the creation of four legal divisions and the re-configuration of some of the legal practice groups. As at the end of 2016/17, approximately 400 legal and support people were employed to deliver services across 11 specialist legal practice groups:

- **Constitutional & Administrative Law** — advised clients on all areas of State administrative law, and provided representation and advice on access to government information and privacy matters. Also advised and represented the State in relation to matters arising under the *Commonwealth Constitution*.
- **Child Protection** — provided litigation and advice services on all aspects of child protection law and practice and other areas of law relating to children.
- **Commercial Law** — undertook commercial (including taxation and revenue) litigation and managed matters relating to commercial transactions and agreements including asset divestments and long-term leasing, public finance and intellectual property.
- **Community Law** — provided advice and representation in a wide range of areas of law including charitable trusts, non-employment related discrimination, public interest immunity, guardianship and relator actions.
- **Criminal Law** — advised and represented clients in a range of courts and tribunals and provided advice and litigation services in matters including those relating to summary and regulatory prosecutions, applications for apprehended violence orders, sentencing, parole, contempt of court and high risk offender applications.
- **Employment Law & Industrial Relations** — delivered advice on employment and industrial law at Federal and State levels and acted for agencies in a wide range of employment issues including Work, Health & Safety prosecutions and dispute resolution whether by informal discussion, conciliation or mediation.
- **Government Law** — advised the executive government, Parliament and statutory office-holders on a range of significant matters, including those involving State constitutional law, electoral law, public finance, as well as on government reform and restructure projects.

- **Inquiries** — assisted and represented clients at inquests and all forms of inquiry in relation to matters involving investigatory processes, assisted the State Coroner in complex coronial inquests and represented interested parties and assisted in special commissions.
- **Property & Native Title Law** — provided representation in property-related matters and advice on property transactions and Crown land. Advised and represented clients on issues relating to native title and land claims.
- **Torts (Justice/Enforcement Agencies)** — undertook all aspects of the defence and settlement of civil claims, in particular, those involving law enforcement agencies and claims for intentional torts.
- **Torts (Service/Regulatory Agencies)** — undertook all aspects of the defence and settlement of civil claims involving other State agencies, including the conduct of litigation at first instance and at all stages of appeal.

The **Corporate Services** division provided administrative and business support to legal practice groups and clients. It comprises:

- Business Systems Support
- Finance and Support Services
- Information Services
- Marketing and Communications
- Human Resources.

In addition to legal services, the CSO provided a range of value-add services to its government clients.

## 5. Management and structure

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### New CSO Senior Executive structure

A new Senior Executive structure was rolled out on a staged implementation basis from 1 September 2016.

A key feature of the new structure was the creation of four new legal divisions within the CSO:

- Civil Law
- Commercial & Property Law
- Inquiries & Criminal Law
- Public Law, Employment & Child Protection.

In addition to the new divisional structure, some of the CSO's legal practice groups were re-configured to enhance delivery of legal services to clients over the long term.

### The CSO Executive

As at 30 June 2017, the CSO Executive comprised the Crown Solicitor, as head of the agency, four Assistant Crown Solicitors and the Practice Manager.

#### Crown Solicitor

Ms Lea Armstrong commenced her appointment to the role of Crown Solicitor on 13 July 2015.

#### Assistant Crown Solicitors

Assistant Crown Solicitors were appointed to lead the four new legal divisions, on a staged implementation basis:

- Mr John McDonnell, Assistant Crown Solicitor – Public Law, Employment & Child Protection division (commenced 1 September 2016)
- Ms Cate Follent, Assistant Crown Solicitor – Inquiries & Criminal Law division (commenced 1 September 2016). Ms Naomi Malhotra was temporarily assigned to this role from 1 June 2017 (and appointed to the role on 4 July 2017).
- Ms Rachel Quigley, Assistant Crown Solicitor – Civil Law division (commenced 5 September 2016).
- Mr James Lonsdale, Assistant Crown Solicitor – Commercial & Property Law division (commenced 26 September 2016).

## Practice Manager

Mr Tom Gilmartin commenced his role as Practice Manager on 5 December 2016. Ms Cheryl Drummy had been temporarily assigned to role from 27 June 2016 to 2 December 2016.

## CSO Executive as at 30 June 2017

### Lea Armstrong, Crown Solicitor, BA (Hons), LLB (Hons), LLM

Lea Armstrong was appointed Crown Solicitor in June 2015. Lea has over 25 years' experience in government and commercial law, gained in both the public and private sectors. She has extensive experience in leading and directing the provision of legal services to NSW Government agencies across a wide range of areas.

Prior to taking up her appointment as Crown Solicitor, Lea occupied the role of General Counsel at the NSW Treasury, providing legal advice to the Secretary and across that department on the leasing of electricity networks, financial management reform, and a range of significant commercial and structural reforms.

During a previous period of employment at the CSO, she worked in several executive legal roles, including as General Counsel with a focus on major commercial transactions and reform projects for NSW Government clients. She advised the State of NSW, for example, on bulk water reform, the long-term leasing of its major ports, the sale of State-owned electricity assets, national energy market reform, the corporatisation of the Forestry Commission and the long-term licensing of NSW Lotteries to the private sector.

Lea also has substantial experience in managing and delivering complex legislative projects, having worked extensively with key stakeholders (from both government and the private sector) and parliamentary counsel on innovative legislation at both the State and intergovernmental level.

### John McDonnell, Assistant Crown Solicitor, BA, LLB

A solicitor at the CSO since 1985, John is a specialist in all areas of public law. In 2001, he was appointed to head the CSO's Administrative Law practice group, and has expertise in representing NSW government agencies in relation to administrative law, statutory interpretation, FOI/GIPA and privacy.

Between 2014 and 2016, John was involved in supervising several challenges to the interpretation and validity of the Independent Commission Against Corruption's legislation (including the Duncan and Cunneen litigation). Since 2015, John has been advising the NSW Government on legal issues in relation to the amalgamation of local government areas, and acted for the State of NSW in the resulting legal challenges.

John is also highly experienced in constitutional law, and has appeared in Local, District, Land and Environment, Supreme and Federal Court matters. He has instructed Counsel and the Solicitor General in numerous High Court 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 (the State's power to bind the Commonwealth).

### **Cate Follent, Assistant Crown Solicitor, BA, LLB (Hons), LLM**

Admitted to practice in 1995, Cate led the CSO's Inquiries & Criminal Law division as Assistant Crown Solicitor, until her appointment as a Magistrate in June 2017. Before her appointment as Assistant Crown Solicitor, Cate led the Inquiries practice group (2009 to 2016) and was a senior solicitor in the Criminal Law practice group (2001 to 2008).

Cate's expertise spanned criminal law, the law regulating coronial inquests and other forms of investigation, and commissions of inquiry. Involved in several matters of significance to the State, she was the solicitor on record in the Special Commissions of Inquiry into Campbelltown and Camden Hospitals (2003/2004) and Acute Care Services in NSW Public Hospitals (2008), and the solicitor assisting Conduct Divisions of the Judicial Commission of NSW in investigations of complaints concerning judicial officers.

She assisted coroners and represented parties in highly sensitive inquests, including assisting the State Coroner in the joint inquests into the deaths of NSW passengers on Malaysia Airlines Flight MH17, which was shot down over Eastern Ukraine in 2014.

Before joining the CSO, Cate worked in private practice and at the Office of the NSW Director of Public Prosecutions, where she managed a trial practice comprising serious criminal matters, and appeared for the Director in a broad range of summary and indictable proceedings.

### **Naomi Malhotra, Assistant Crown Solicitor, BA, LLB (Hons)**

Prior to her temporary assignment and subsequent appointment to the role of Assistant Crown Solicitor of the Inquiries & Criminal Law division, Naomi served as Director of the CSO's Criminal Law practice group. Prior to her appointment as Director, she was a Special Counsel leading the CSO team representing the State of NSW in the Royal Commission into Institutional Responses to Child Sexual Abuse (2015/16), which involved coordinating a whole-of-government response and providing ongoing advice to numerous government agencies.

Naomi's earlier experience includes work in the CSO's Criminal Law practice group, where she acted for the prosecutor in regulatory prosecutions and provided complex advice in relation to a range of criminal law-related issues, including investigatory processes. She has also worked in the Inquiries practice group, assisting coroners and representing interested parties in complex coronial inquests, including matters concerning the adequacy of medical treatment and cold-case/suspected homicides.

In 2012/13, Naomi was a Senior Associate in the dispute resolution group at King & Wood Mallesons in Perth, where she ran large scale litigation and investigations.

She worked at the State Solicitor's Office, WA, for four years and was seconded to WA Police as in-house counsel (2006/07), where she appeared for the Commissioner of Police in coronial inquests, prosecutions, public interest immunity claims and civil proceedings, as well as completing a placement at the Office of the WA Director of Public Prosecutions.

### **Rachel Quigley, Assistant Crown Solicitor, LLB**

Rachel commenced as Assistant Crown Solicitor of the Civil Law division in September 2016. She has over 18 years' litigation experience specialising in the defence of professional negligence, public and product liability, insurance and superannuation, commercial dispute resolution, construction, and personal injury matters. Rachel has particular expertise in managing class actions and matters involving multiple stakeholders.

Rachel has defended claims against both the State and private corporations in sensitive matters, including suspected fraud. She appears regularly in the Supreme Court, District Court and Local Court, and appeared in the Federal Court of Australia in the defence of a multi-million AUD/USD claim.

Prior to joining the CSO, Rachel worked in the public sector at Queensland Crown Law, and was a partner at Gadens law firm. Her article, "Bank Fees Class Action: 'Forward Looking to the High Court'", is published in the *Law Society Journal*.

### **James Lonsdale, Assistant Crown Solicitor, LLB, LLM**

James joined the CSO in 2016 as the Assistant Crown Solicitor, Commercial & Property Law division. He has over 20 years' experience in government and private practice in a wide range of commercial law matters, with a particular focus on major procurement, construction, property and environmental planning work for government and quasi-government entities across Australia.

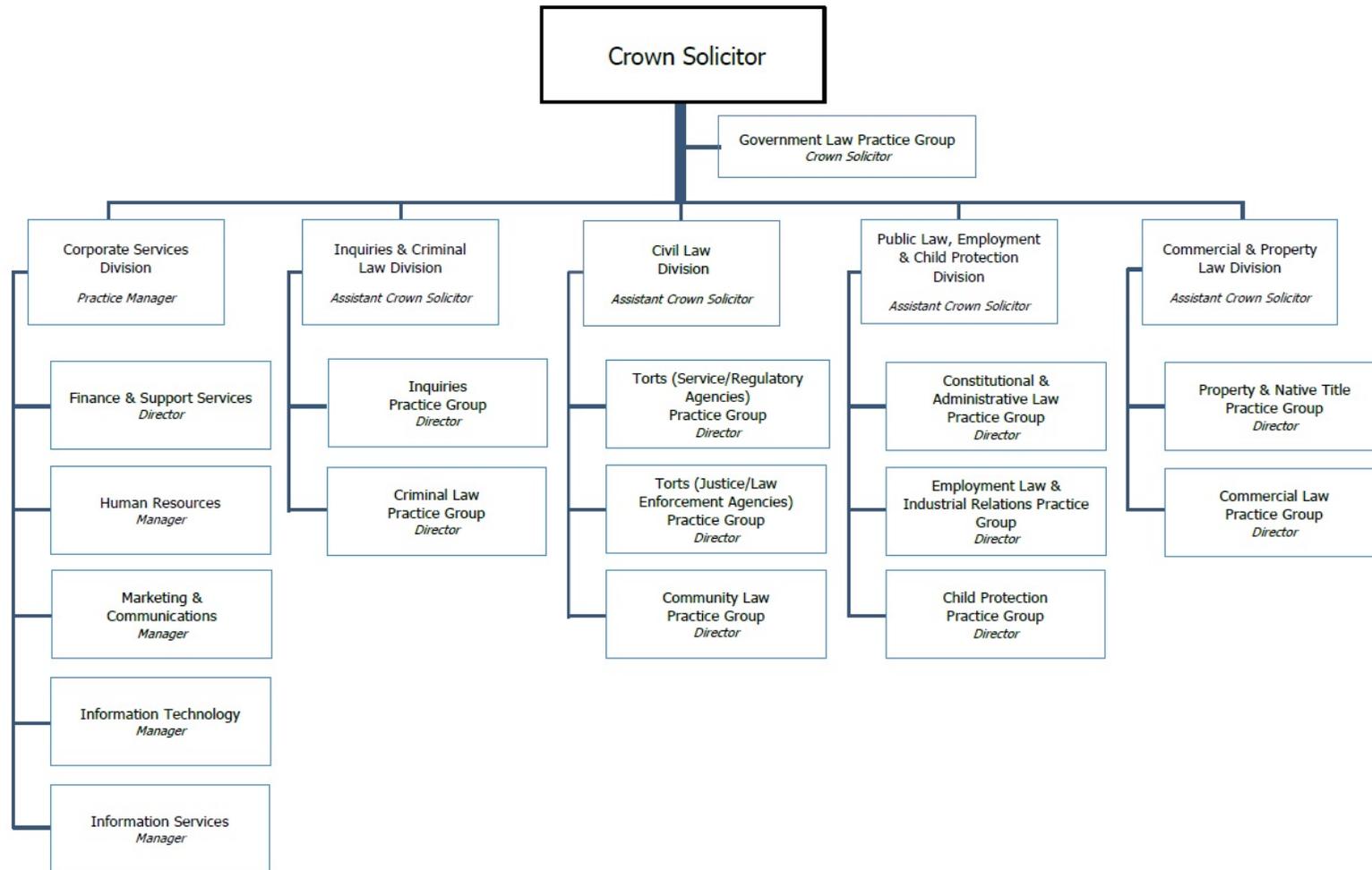
In addition to his expertise in supporting State agencies in commercial and property related matters, James has significant in-house experience, most recently in the NSW State owned electricity businesses, where his work included the disposal of electricity retail business interests, industrial relations litigation, construction of significant infrastructure projects, as well as major contractual disputes and litigation. Through his role as General Counsel and Company Secretary for Essential Energy, James gained substantial experience in matters relating to corporate governance and directors' duties. He worked in the public sector, with roles in the then NSW Attorney General's Department and the then Department of Industry, Planning and Natural Resources.

### **Tom Gilmartin, Practice Manager, FCCA, NDB**

As the CSO's Practice Manager, Tom leads the Corporate Services division, spanning risk management, human resources, learning and development, finance and support services, business systems support, information services, and marketing and communications. Prior to joining the CSO, Tom was the Chief Operating Officer at NSW Treasury, where he drove the highly successful move to agile working at 52 Martin Place, implemented new information communication technologies to support the new ways to work, and introduced a culture and workforce program and a new Human Capital management system.

Tom also had a career in the private sector as the Chief Financial Officer at law firm, Clayton Utz, where he managed the finance and administration departments and developed and implemented strategies to successfully deliver on the vision of the firm.

6. Organisation chart indicating functional responsibilities



## 7. Summary review of operations

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### Summary of significant matters

The following matters showcase the diversity of legal matters undertaken by legal officers on behalf of the Crown Solicitor during the reporting period.

#### *AQO v Minister for Finance and Services* [2016] NSWCA 248

The appellant complained under the *Privacy and Personal Information Protection Act 1998* ("PIIP Act") that a case study given in a media release issued by the Minister, although de-identified, contained unique details that could only apply to his claim under workers compensation legislation. The Minister refused to carry out an internal review of the conduct on the ground that he (the Minister) was not a "public sector agency" for the purpose of the PIIP Act (and was therefore not bound by the Information Protection Principles ("IPPs")).

The Tribunal at first instance held that the Minister was a public sector agency on the ground that an account was kept of the expenses incurred in the Minister's office, including expenses incurred in the course of exercising the Minister's functions, and that this was subject to audit by the Auditor-General (paragraph (d) of the definition of "public sector agency" in s. 3(1) of the PIIP Act). The Appeal Panel reversed this determination. The applicant appealed to the Court of Appeal.

By majority (Basten JA, Ward JA agreeing, McColl JA dissenting), the Court of Appeal upheld the original decision of the Tribunal, holding that paragraph (d) of the definition of "public sector agency" applied to the Minister. Basten JA concluded at [133] that: "The apparent purpose of paragraph (d) is to cover all persons or bodies who exercise public or governmental functions, a characterisation which is more precisely identified by reference to whether their accounts are audited by the Auditor-General."

The result of this judgment is that Ministers (as distinct from Ministers' offices, which have recently been included within paragraph (a1) of the definition of "public sector agency") are now "public sector agencies" for the purpose of the PIIP Act and are subject to all the IPPs. This is a significant result with potentially far-reaching consequences.

#### *New South Wales Aboriginal Land Council v Minister Administering the Crown Lands Act* [2016] HCA 50

The appellant made an Aboriginal land claim pursuant to s. 36 of the *Aboriginal Land Rights Act 1983* for two parcels of land at the Berrima Gaol site. The land claim was refused by the joint Crown Lands Ministers on the basis that the Ministers were satisfied that the land was not "claimable Crown lands" under s. 36(1). On appeal from the Court of Appeal, the appellant argued that: (1) the land could not have been lawfully occupied

by Corrective Services NSW (“CSNSW”) by simply holding it pending a decision of its future use; (2) CSNSW did not have statutory authority to use or occupy the land.

On 14 December 2016, a majority of the High Court rejected the appellant’s two grounds of appeal, finding that: (1), at the date of claim, the land was not deserted and had been the subject of continuous physical possession that, even if reduced to a minimum, was more than notional. The appellant’s argument that the acts used to evidence the lawful occupation of land must relate to the purpose for which it was dedicated was also rejected. Relevantly, the Court stated that the appellant’s argument created a further requirement for the test of use or occupation, necessitating the addition of words to s. 36(1)(a) such that claimable Crown lands under that provision are then lands not lawfully used or occupied for the purposes for which they are dedicated or reserved; (2) the claimed land did not fall within the definition of waste lands for the purpose of s. 2 of the *New South Wales Constitution Act 1855* such that the land required statutory authorisation to be lawfully occupied because, at the time of the claim by the appellant, the State of New South Wales was the registered proprietor of both land parcels and, upon acquisition of a fee simple, was entitled to occupy the claimed land without additional statutory permission.

The Court noted that the construction of s. 2 needs to be approached in its historical context and by reference to its purpose, and that the Crown in right of the State of New South Wales, which encompasses the executive government of the State, is able to occupy the claimed land without additional statutory permission, including through its agents, which include persons employed by CSNSW.

### *Moutia Elzahed & Ors v Commonwealth of Australia and State of NSW* [2016] NSWDC 327

The first plaintiff, her husband and her two children commenced proceedings against the defendants in the District Court of NSW seeking damages for false imprisonment and assault arising from the execution of a search warrant at their home by members of the Australian Federal Police and the NSW Police Force. The search warrant was executed as part of Operation Appleby, a joint counter-terrorism taskforce, which involved the simultaneous execution of numerous search warrants across the State.

During the course of the hearing, the first plaintiff was called to give evidence. She indicated to the Court that she refused to do so with her face uncovered. A religious Muslim, she wore a niqab, a veil worn by some Muslim women that covers the wearer’s face but not their eyes.

Balla DCJ, in the first decision of its kind in NSW, declined to allow the first plaintiff to give evidence with her face covered. Her Honour stated that her role was to ensure that there is a trial which is fair to all parties. This required her to balance the need to respect the first plaintiff’s religious beliefs on one hand against any impediment to her Honour’s ability to fully assess the reliability and credibility of the first plaintiff’s

evidence. Although the demeanour of a witness and the viewing of the witness' face are not the only way in which credibility may be assessed (and can in fact be misleading in some cases), her Honour considered that she should not be completely deprived of seeing the first plaintiff's face to assess her credibility. This was particularly important where, as in the present case, there was likely to be conflict in the evidence as to the events that occurred and her Honour would need to make a finding as to whose evidence was preferred. Her Honour's assessment of the weight to be given to the evidence of the first plaintiff would be part of resolving that conflict.

Following the judgment, the first plaintiff chose not to give evidence rather than uncover her face. On 15 December 2016, Balla DCJ dismissed the claims of all plaintiffs and entered judgments in favour of the defendants. [An application for leave to appeal to the Court of Appeal was granted on 28 September 2017].

### *Burns v Corbett; Gaynor v Burns* [2017] NSWCA 3 (3 February 2017)

Mr Burns, a resident of NSW, had made separate complaints to the Anti-Discrimination Board against Mr Gaynor (a resident of Queensland) and Ms Corbett (a resident of Victoria) in relation to comments they had made which he claimed vilified homosexuals contrary to s. 49ZT of the *Anti-Discrimination Act 1977*. On a question referred to the Court of Appeal, the issue was whether the NSW Civil and Administrative Tribunal ("NCAT") had jurisdiction to hear the complaints.

Section 75(iv) of the *Constitution* (Cth) provides that in the full High Court has original jurisdiction in matters "between residents of different States", the so-called diversity jurisdiction. Section 77(iii) of the *Constitution* provides that, with respect to any of the matters mentioned in ss. 75 and 76, the Parliament may make laws "investing any court of a State with federal jurisdiction." Section 39(2) of the *Judiciary Act 1903* (Cth) relevantly provides that "the several Courts of the States shall ... be invested with federal jurisdiction."

It was agreed by all parties that the NCAT is not "a court of the State" for the purposes of Chap. III of the *Constitution* and that, in hearing the complaint of homosexual vilification, NCAT would be exercising judicial, not administrative, power. The Commonwealth Attorney General argued that: there was an implied constitutional limitation on State legislative power, such that a State law purporting to confer judicial power in respect of matters identified in ss. 75 and 76 of the *Constitution* on a body which was not a "court of the State" would be invalid and, alternatively, that a State law which conferred jurisdiction in respect of matters identified in ss. 75 and 76 on a tribunal would be inconsistent with s. 39 of the *Judiciary Act* and inoperative by virtue of s. 109 of the *Constitution*.

The State argued that there are no textual or structural constitutional limitations on State power and that the text of s. 77 and s. 39 was limited to courts not tribunals and, accordingly, States retained legislative power in this regard.

The Court of Appeal rejected the Commonwealth's primary submission but held that NCAT did not have jurisdiction to hear matters between residents of different States on the second basis. The decision has important implications regarding the jurisdiction of NCAT, and other State tribunals or bodies exercising judicial power, in subject matters in ss. 75 and 76 of the *Constitution*. Special leave to appeal to the High Court was granted on 22 June 2017.

### *Rizeq v Western Australia* [2017] HCA 23 (21 June 2017)

The appellant, a NSW resident, was convicted by majority verdict in accordance with s. 114(2) of the *Criminal Procedure Act 2004* (WA) ("the CP Act") of an offence under s. 6(1)(a) of the *Misuse of Drugs Act 1981* (WA) ("the MD Act") involving drugs trafficked between NSW and WA. The appellant appealed that conviction on the basis that, because the matter was one between a State and a resident of another State, the matter was in "federal diversity jurisdiction" (s. 75(iv) of the *Constitution* (Cth)) and no State law could of its own force apply. Instead, State law only applied as Commonwealth law, by s. 79(1) of the *Judiciary Act 1903* (Cth), with the consequence that s. 80 of the *Constitution* applied and required that his trial, on what he argued became a Commonwealth indictable offence, had to be by a jury.

Although s. 79(1) of the *Judiciary Act* relevantly provides that the laws of each State, including the laws relating to procedure, evidence and the competency of witnesses shall, except as otherwise provided by the *Constitution* or the laws of the Commonwealth, be binding on all courts exercising federal jurisdiction in that State, previous High Court authority had suggested that, where, for any reason, the matter was in federal jurisdiction, even in a State court, no State law could apply of its own force. Instead, s. 79(1) picked up and applied all State laws as Commonwealth laws in those State courts.

In rejecting that construction of s. 79(1), the High Court unanimously held that, even where a State court was exercising federal jurisdiction, State law applied of its own force and retained its character as State law. The Court distinguished between State laws, which form the basis of the matter before the court and which were said to arise out of "independently existing substantive law" (as here), Commonwealth laws, which vest a State law with federal jurisdiction (such as s. 39(2) of the *Judiciary Act*) and which merely provide "authority" for such State courts to exercise federal jurisdiction, and State laws directed at how courts deal with a matter before them in federal jurisdiction, which needed to be applied as federal law by s. 79 (1).

As a result, s. 6 of the MD Act applied of its own force as it was not directed at courts, and s. 114(2) of the CP Act, which was directed at courts, did not apply of its own force but was applied as Commonwealth law by s. 79(1).

*LDF Enterprise Pty Ltd v The State of New South Wales* [2017] NSWCA 89 (3 May 2017)

LDF applied for an interlocutory injunction restraining the State and four officers of the Office of Environment and Heritage (“OEH”) from entering LDF’s land for the purpose of conducting an investigation pursuant to the power of entry contained in s. 196 of the *Protection of the Environment Operations Act 1997*, as picked up and applied by s. 156B of the *National Parks and Wildlife Act 1974*. LDF submitted that the State was under an obligation to afford it procedural fairness when exercising the statutory power in s. 196 and had failed to do so by refusing to provide particulars of the inspection, therefore depriving it of a right to be heard as to the course of the investigation and as to its right to exclude officers of the OEH from the property.

Adamson J, in refusing the application, accepted that it was arguable that the principles of procedural fairness did not regulate the exercise of the power but found that, in any event, LDF had been given ample opportunity to respond and a reasonable opportunity to be heard in respect of the proposed entry.

LDF sought leave to appeal on the basis that, inter alia, the primary judge erred in failing to hold that there was a serious question to be tried that the power conferred by s. 196 is conditioned by an obligation to accord procedural fairness.

The Court held, on two alternative bases, that the exercise of power in this case was not conditioned by an obligation to accord procedural fairness. First, the Court held that the exercise of the power of entry in this case was not conditioned upon any common law obligation to provide LDF the opportunity to be heard. Leeming JA stated, “Generally, the obligation to accord procedural fairness is engaged only where there is a decision-making process which precedes the exercise of a power.” His Honour identified the powers of police officers to conduct investigations, carry out arrests and obtain search warrants as exercises of power which are not subject to a common law duty to provide an opportunity for the affected party to be heard. Secondly, Leeming JA considered the terms of s. 196 and the surrounding statutory provisions and concluded that the obligation to accord procedural fairness is displaced by the statutory provisions, noting that the abrogation of the right to procedural fairness does not require express statutory language.

*IR Secretary v Public Service Association and Professional Officers’ Association Amalgamated Union of New South Wales (No. 2)* [2017] NSWSC 430 (12 April 2017); *IR Secretary v Public Service Association and Professional Officers’ Association Amalgamated Union of New South Wales* [2017] NSWSC 71 (9 February 2017)

On 13 February 2017, in proceedings brought against the Public Service Association and Professional Officers’ Association Amalgamated Union of New South Wales (“the Association”) in the Supreme Court, Justice Fagan published written reasons for his decision on 9 February 2017 that the Association had contravened dispute orders made

by the Industrial Relations Commission (“the Commission”) under s. 137 of the *Industrial Relations Act 1996* (“IR Act”) on 2 February 2017.

Relevantly, his Honour found that the dispute orders made by Commissioner Newall on 2 February 2017 were within the power under s. 137 of the IR Act. However, Fagan J did not accept that s. 139(3)(f) (which empowers the Court to make “any other determination the Supreme Court considers would help in resolving the industrial dispute”) permits the Court to grant further injunctive relief.

As this was the first time that contravention proceedings had been brought in the Supreme Court, it was the first time that the Court imposed a penalty under s. 139(3) of the IR Act. The penalties imposed by the Commission under s. 139(3) had been quite low; the highest previous penalty for a contravention was \$17,500. In this case, his Honour imposed a penalty of \$84,000, comprised of: \$10,000 for the first day, 2 February 2017 (out of a maximum penalty of \$20,000); \$5,000 for 3-9 February, inclusive (out of a maximum penalty of \$10,000 per day); and, \$6,500 for 10-15 February 2017, inclusive (out of a maximum penalty of \$10,000 per day). In addition to imposing a substantial penalty, his Honour commented on the inadequacy of the maximum penalties prescribed by the legislation and rejected the Association’s submission that multi-day penalties were not available for ongoing encouragement to strike.

The matter is of note as it is the first time that contravention proceedings have been brought in the Supreme Court; prior to amendments to the IR Act on 8 December 2016, contravention proceedings were heard by the Commission in Court Session. Further, the judgment considered the power of the Commission to make dispute orders that prohibit the organising or encouraging of industrial action and whether the Supreme Court has power in contravention proceedings to make further injunctive orders. An appeal has been made to the Court of Appeal.

### ***Metricon QLD v Chief Commissioner of State Revenue (No. 2) [2017] NSWCA 11 (10 February 2017)***

The primary issue in this appeal was whether an “intangible use” (namely, “land banking”), as distinct from a physical use, is relevant for the purposes of s. 10AA of the *Land Tax Management Act 1956*.

In dismissing the appeal, Barrett JA (with whom Ward and Macfarlan JJA agreed) considered the leading High Court and appellate cases in other statutory contexts regarding the meaning of “use”, noting that caution should be taken when relying on cases in which “use” is employed in a different statutory context but accepting that “use”, in relation to land, has a core meaning concerned with examination of activities undertaken on the land in question.

Having regard to the statutory text of s. 10AA, his Honour observed that, as distinct from the majority of exempting provisions in s. 10 of the Act, s. 10AA is concerned

only with the use to which the land is put and not the identity or attributes of its owner. Each of the primary production activities listed in s. 10AA(3) involves deliberate physical acts in relation to the land. While the authorities support the notion that land may be used without physical activity, this presents a difficulty when trying to compare uses, as required when determining which is the dominant use of land, as there is no meaningful method of comparative quantification.

Accordingly, his Honour found that it is the physical concept of land that is relevant to the interpretation of s. 10AA(3), being use relevant to “the concrete physical mass” that is land. His Honour therefore found that the concept of “use” in s. 10AA is one of physical deployment of “the concrete physical mass” that is land in pursuance of a particular purpose of obtaining present benefit or advantage from it, which may also include the deliberate maintenance of a state of inactivity for a specific purpose. In this regard, his Honour considered that the view of White J at first instance, that use is not confined to physical use of the land, should not be accepted. In respect of “land banking”, this of itself is not a use of the land, as mere holding with intention to sell at a future point is not the source of a present benefit or advantage. In respect of the engagement of and expenditure on consultants, his Honour found that there was no deployment of the land in pursuance of a purpose obtaining present benefit and advantage.

*Free Serbian Orthodox Church Diocese for Australia and New Zealand Property Trust v Bishop Irinej Dobrijevic* [2017] NSWCA 28 (7 March 2017)

The proceedings in the Court below had involved the control of a monastery in Hall (in NSW) held on a religious purpose trust. Section 9 of the *Charitable Trusts Act 1993* (“CT Act”) provides that “The circumstances in which the original purposes of a charitable trust can be altered to allow the trust property or any part of it to be applied cy pres include circumstances in which the original purposes, wholly or in part, have since they were laid down ceased to provide a suitable and effective method of using the trust property, having regard to the spirit of the trust.”

The primary judge had found that, under s. 9, the original purposes of the trust had ceased to provide a suitable and effective method of using the trust property having regard to the spirit of the trust. The primary judge had also adopted an s. 9 scheme jointly proposed by the first respondent, Bishop Irinej, and the Attorney General, applying the property for the purposes of the Serbian Orthodox Church Australian and New Zealand Metropolitanate. The appellants’ case was that the primary judge had failed to properly identify the original purposes of the trust. This, however, was not a ground of appeal and was not an issue litigated before the primary judge.

The Court of Appeal refused leave to amend the notice of appeal as it would give rise to unfairness to the respondents and dismissed the appeal. With respect to s. 9 of the CT Act, the Court held, inter alia, that: the section must be read as a whole in the statutory context in which it appears and by reference to the objects that the legislation is

intended to secure; the requirements of s. 9 involve a threshold lower than the general law cy-près requirement of impossibility or impracticality; and the “spirit of the trust” is a broader conception than the original purposes of the trust.

With respect to the original purposes of the trust, the Court found that, where there is no written trust document, regard must be had, at the time of creation of the trust, to a wide range of documentary and oral evidence as to intentions at the time. A value judgment is required to ascertain the basic intention underlining the trust. The original purposes of the trust must be determined.

The proceedings below and on appeal are examples of the utility of having the Attorney General, in his role as protector of charities, actively involved in proceedings.

### **Inquest into the deaths arising from the Lindt Café siege**

The inquest into the deaths arising from the Lindt Café siege concluded on 24 May 2017, after nearly two and a half years of investigation and public hearings. The principal function of the inquest was to make findings of fact about the circumstances surrounding the deaths of hostages Tori Johnson and Katrina Dawson, and siege perpetrator Man Haron Monis. The inquest also examined the actions of police and other authorities, to assess whether the response to future terrorist acts could be improved. The inquest was one of the most complex in the State’s history and attracted significant media attention.

The Crown Solicitor appeared at the inquest in matters of public interest immunity for, among other parties, the Commissioner of the NSW Police Force. It was necessary to ensure that sensitive information regarding police equipment and methodology was afforded some level of protection to protect the identities of certain frontline police officers, in order to minimise any risk to their personal safety. A countervailing consideration was the need to ensure that the inquest was conducted as openly as possible. It is the balance between these competing interests which lies at the heart of the law of public interest immunity. To achieve this balance, the CSO reviewed tens of thousands of pages of documents and made carefully considered public interest immunity claims over discrete topics of information on a rolling basis throughout the inquest, often within particularly tight timeframes. The overwhelming majority of these claims was upheld by the State Coroner.

The inquest also effected new developments in the law of public interest immunity. The State Coroner upheld a claim made by the Crown Solicitor to protect the notes of a confidential debrief conducted by tactical police, concluding that it was in the public interest for such notes to be protected in order to foster a practice of continuous improvement within the NSW Police Force. The decision can be understood as identifying police debrief notes as a new class of document capable of protection on the grounds of public interest immunity.

## Summary of value-add services delivered to clients

Value-add	Details
<b>Monthly client reports</b>	Monthly reports provided clients with critical information to track active matters and help inform decision-making. Reports highlighted key indicators, including accrued costs for the period.
<b>Monthly CLE seminars and webinars</b>	CLE seminars addressed issues of current relevance to government departments and agencies. They helped clients make informed decisions about their matters and operations, reduce risk, and manage compliance with relevant legislation. Seminars were accessible in-person as well as via webinar, allowing clients in remote and rural regions, as well as those with around Sydney, to participate.
<b>Specialised Training – GIPA Act</b>	Full-day training sessions helped clients understand and meet their obligations under the <i>GIPA Act</i> , and appropriately manage disclosure of government information.
<b>Client training and education</b>	The CSO delivered tailored training and educational seminars to specific clients on key legal issues relevant to their organisations.
<b>Client newsletter</b>	Clients were kept abreast of the latest legal developments and significant cases with regular newsletters.

## Summary of significant business support projects and activities

During the 2016/17 financial year, several CSO business support initiatives were completed or significantly progressed. In response to the CSO's review of legal support services, we made important changes to the corporate services area to enhance service delivery and meet the changing needs of the CSO and its clients. Key changes included a restructure of human resources department and a drive for a more communications-focused marketing team.

The CSO increased investment in information technology, implementing MicroSearch (a highly regarded advice archive search tool), and upgrading the document management system to HPE Content Manager. We also committed to further IT investment over the next year.

The CSO is currently developing a records management strategy to reduce hard copy storage and improve the digitisation and capture of data appropriate-to-business needs. We started testing the new practice management system, Elite – once implemented, this will significantly streamline business systems. The project is on track to roll out in July 2018.

## Financial performance

The CSO achieved a net surplus for the year of \$10.1M, \$7.7M better than the budgeted \$2.4M and will make a distribution payment of \$5.2M from the distributable operating surplus as approved by the Treasurer.

This operational result was mainly attributable to another year of higher than expected workload; \$5.2M additional fees revenue was generated by significant and unbudgeted increased activity, including core legal work referred to the Crown Solicitor under the Premier's Memorandum 2016-04 *Government Core Legal Work Guidelines*, and historical child sexual abuse matters. The remaining \$2.5M better-than-budgeted result was attributable to \$1M in additional other revenue including extended release of resources to the NSW Coroner's Office and \$1.5M less than budgeted expenses.

## Quantitative measures

Measure	2016/17		2015/16
	Actual	Budget	Actual
Net surplus	\$10.1M	\$2.4M	\$10.0M
New matters	3,990	n/a	3,972
Employee productivity (solicitors' average daily billable hours)	5.1	5.0	5.3
% of clients rating the CSO's legal services as better than or equal to that of other law firms they use	98%*	85%	83%

\*Note that extent of improvement in this result may be distorted by reduced level of response rate (4.5% in June 2017 v 10% in 2016, population size 2,100).

The 2016/17 Annual Client Survey results again incorporated benchmark questions to assess our performance relative to our competitors. A total of 94 clients responded to this survey. The results for 2016/17 reflected the importance we place on client service. Ninety-eight per cent of clients rated our level of service as higher than or equal to other firms that they use, and 100% rated our management of matters as better than or equal to other firms that they use. Additionally, 206 clients responded to our two-monthly end of matter surveys during the reporting period, and 68.6% rated the quality of our legal work as "Excellent".

## Human resources

### Number of officers and employees by category

The figures provided below are estimates compiled from the Annual Workforce Profile, showing the current reporting period compared to the previous three years.

Occupation Classification (ANZSCO)	2016/17	2015/16	2014/15	2013/14
Managers	2	4	2	5
Professionals	208	186	183	187
Technicians and Trades Workers	2	2	3	2
Clerical and Administrative Workers	115	140	135	150

Note: These figures do not include agency staff numbers, which have increased over the reporting years from six in 2013/14 to 43 in 2016/17.

### Senior executives

#### Number of senior executives by band and gender 2016/17

Band	2016/17		Band	2015/16	
	Female	Male		Female	Male
<b>Band 4</b> (Secretary)	-	-	<b>Band 4</b> (Secretary)	-	-
<b>Band 3</b> Crown Solicitor (Agency Head equivalent)	1	0	<b>Band 3</b> Crown Solicitor (Agency Head equivalent)	1	0
<b>Band 2</b> Assistant Crown Solicitors & Practice Manager (Executive Director equivalent)	2	3	<b>Band 2</b> Deputy Crown Solicitor & Practice Manager (Executive Director equivalent)	0	2
<b>Band 1</b> Directors & Special Counsel	12	3	<b>Band 1</b> Assistant Crown Solicitors & Special Counsel	13	5
<b>Total</b>	<b>15</b>	<b>6</b>	<b>Total</b>	<b>14</b>	<b>7</b>
	<b>21</b>			<b>21</b>	

Note: Care should be taken when comparing current year figures to the 2015/16 reporting year – the CSO implemented a Senior Executive restructure and the composition of current bands is different.

## Average total remuneration package for senior executives 2016/17

Band	Range 2016/17	Average remuneration 2016/17	Band	Average remuneration 2015/16
<b>Band 4</b> (Secretary)	\$452,251- \$522,500	-	<b>Band 4</b> (Secretary)	-
<b>Band 3</b> Crown Solicitor (Agency Head equivalent)	\$320,901- \$452,250	\$396,113	<b>Band 3</b> Crown Solicitor (Agency Head equivalent)	\$370,000
<b>Band 2</b> Assistant Crown Solicitors & Practice Manager (Executive Director equivalent)	\$255,051- \$320,900	\$281,716	<b>Band 2</b> Deputy Crown Solicitor & Practice Manager (Executive Director equivalent)	\$233,976
<b>Band 1</b> Directors & Special Counsel	\$178,850- \$255,050	\$216,060	<b>Band 1</b> Assistant Crown Solicitors & Special Counsel	\$191,731

Note: Care should be taken when comparing current year figures to the 2015/16 reporting year – the CSO implemented a Senior Executive restructure and the composition of current bands is different.

## Percentage of total employee-related expenditure that relates to senior executives

The CSO's employee-related expenditure in 2016/17 associated with senior executives (both senior officers and senior executive service) was 8.5%, compared to 12.41% for the previous year. The lower expenditure is related to the staged implementation of a new Senior Executive structure that came into effect from September.

## Exceptional movements in wages, salaries or allowances

In 2016/17, there were no exceptional employee salary movements.

Employees of the CSO are covered by the Crown Employees (Public Sector – Salaries 2008) Award. The Award provided for a 2.5% per cent salary increase from the first full pay period on or after 1 July 2016.

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.

## **Industrial relations policies and practices**

In 2016/17, no new industrial relations policies or practices were required to be implemented at the CSO.

During the reporting period, the CSO regularly consulted and communicated with employees and their industrial representatives in relation to the changes arising from GSE Reforms and the CSO's review of legal support services.

## **Personnel policies and practices**

The CSO reviewed and tailored relevant policies to prepare for the implementation of an online system for performance planning and development – myPerformance, Managing to Improve Performance and Managing Unsatisfactory Performance.

During the reporting period, the CSO implemented a new HR structure, which impacted development of a program to review and develop HR policies; this program will commence in the new reporting period.

## 9. Work health and safety

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The CSO recognises the importance of maintaining the health and safety of our people. This is reflected in the continued implementation of the CSO Work Health and Safety (“WHS”) Management System Framework. WHS policies and procedures continue to be developed and/or reviewed as part of the Framework’s implementation.

A revised WHS Consultation, Cooperation and Coordination Procedure was implemented as part of the due diligence framework to ensure that all emerging WHS issues are effectively raised, addressed and that there is demonstrable evidence that consultation is occurring at all levels of the CSO.

### Health and well-being

The CSO continues to invest in and promote health and wellbeing programs and early intervention strategies aiming to promote working safely, maintaining a healthy lifestyle and increased awareness of mental health. Programs in 2016/17 included:

- A joint project with Department of Justice to roll out the Get Healthy at Work Program. Through the program, the CSO offered all employees free and confidential Brief Health Checks. About of 80 employees completed the checks, which were conducted by an approved provider. The CSO will use de-identified data to develop and roll out new, relevant health and wellbeing programs for employees.
- Mental health awareness training for employees, provided by leading mental health consultant and trainer, Robyn Bradey, who works through the Law Society of NSW. Training topics included: building employee resilience; mindfulness; managing psychological injury for managers; tough talk; dealing with change; successful leadership.
- Confidential on-site/off-site counselling service through an approved provider.
- Influenza vaccination made available to all employees.
- Yoga and pilates classes, and subsidised corporate seated massage.

## Work health and safety statistics

The CSO experienced no serious WHS issues in 2016/17. We continued to promote and support a strong WHS reporting culture, and recorded reports of only minor incidents. The distribution of these minor WHS incidents across categories was:

- workplace injuries – 21
- hazards – 3
- near miss and other incidences – 6
- illness – 12.

The CSO responded to six new workers' compensation claims in 2016/17. Two of these claims remain open for medical expenses only. Provisional liability for the remaining open claim (medical expenses and time lost) was approved, pending further investigation by the insurer to determine liability.

## Work health and safety risk management

The CSO continued to manage risk related to workplace ergonomics. We provided workstation assessments, recommended ergonomic equipment and, where needed, rehabilitation case management services to help manage complex workplace issues and injuries.

We drafted a WHS Risk Management Policy and Procedure that provides a structured process for identifying, assessing and managing WHS risks, aligned with the CSO's risk management methodology.

A Job Analysis Assessment Form was implemented for use by CSO employees who undertake site visits as part of their legal duties. The form allows employees to identify and improve their awareness of hazards existent in a non-CSO worksite. Completing the risk assessment enables prioritisation of those hazards that have the greatest potential to cause harm, enabling a greater focus on implementing controls to eliminate or mitigate the risks.

We continued to liaise with SafeWork NSW as needed to effectively respond to workplace hazards.

The CSO maintained a team of certified first aid officers and a first aid room, to help respond to workplace incidents.

# Crown Solicitor's Office

## Annual Financial Statements

*for the year ended 30 June 2017*

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## **Crown Solicitor's Office**

### **Financial Statements for the year ended 30 June 2017**

#### **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 *Public Finance and Audit Regulation 2015* and Financial Reporting Directions issued by the Treasurer.
- b) The financial statements exhibit a true and fair view of the financial position as at 30 June 2017 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.



Lea Armstrong  
**Crown Solicitor**  
18 September 2017

## 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 financial position as at 30 June 2017, the statement of comprehensive income, statement of changes in equity, statement of cash flows, for the year then ended, notes comprising a summary 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 2017, 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' (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.

### **Crown Solicitor's Responsibility 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 must assess the Crown Solicitor's ability to continue as a going concern except where the Crown Solicitor's operations will cease as a result of an administrative restructure. The assessment must disclose, as applicable, matters related to going concern and the appropriateness of using the going concern basis of accounting.

### **Auditor's Responsibility 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](http://www.auasb.gov.au/auditors_responsibilities/ar4.pdf). The description forms part of my auditor's report.

My opinion does not 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.



David Daniels  
Director, Financial Audit Services

20 September 2017  
SYDNEY

**Crown Solicitor's Office**  
**Financial Statements**

for the year ended 30 June 2017

Start of Audited Financial Statements

**Statement of Comprehensive Income**

	Notes	Actual 2017 \$'000	Budget 2017 \$'000	Actual 2016 \$'000
<b>Expenses excluding losses</b>				
Employee related expenses	2(a)	39,090	40,509	37,593
Other operating expenses	2(b)	11,254	10,892	10,103
Depreciation and amortisation	2(c)	624	955	706
Finance costs	2(d)	22	50	27
<b>Total expenses excluding losses</b>		<b>50,990</b>	<b>52,406</b>	<b>48,429</b>
<b>Revenue</b>				
Sale of goods and services	3(a)	59,665	54,435	55,883
Investment revenue	3(b)	559	361	460
Other revenue	3(c)	922	56	2,095
Acceptance by the Crown Entity of employee benefits	3(d)	164	-	-
<b>Total revenue</b>		<b>61,310</b>	<b>54,852</b>	<b>58,438</b>
<b>Operating Result</b>		<b>10,320</b>	<b>2,446</b>	<b>10,009</b>
<b>Gains/(losses) on disposal</b>	4	(210)	-	-
<b>Net result</b>		<b>10,110</b>	<b>2,446</b>	<b>10,009</b>
<b>Other comprehensive income</b>				
<i>Items that will not be reclassified to net result in subsequent periods</i>				
Superannuation actuarial gains/(losses)	23	11,143	-	(10,205)
<b>Total other comprehensive income</b>		<b>11,143</b>	<b>-</b>	<b>(10,205)</b>
<b>Total comprehensive income</b>		<b>21,253</b>	<b>2,446</b>	<b>(196)</b>

The accompanying notes form part of these financial statements.

## Statement of Financial Position

	Notes	Actual 2017 \$'000	Budget 2017 \$'000	Actual 2016 \$'000
<b>Assets</b>				
<b>Current assets</b>				
Cash and cash equivalents	7	32,016	20,486	26,544
Receivables	8	12,639	9,779	12,434
Other financial assets	9	8,395	7,003	8,904
Other	12	5,860	5,293	6,099
<b>Total current assets</b>		<b>58,910</b>	<b>42,561</b>	<b>53,981</b>
<b>Non-current assets</b>				
Property, plant and equipment	10			
- plant and equipment		840	1,081	786
- leasehold improvements		246	286	544
Total property, plant and equipment		1,086	1,367	1,330
Intangibles	11	699	4,647	443
Other	12	510	4,084	3,729
<b>Total non-current assets</b>		<b>2,295</b>	<b>10,098</b>	<b>5,502</b>
<b>Total assets</b>		<b>61,205</b>	<b>52,659</b>	<b>59,483</b>
<b>Liabilities</b>				
<b>Current liabilities</b>				
Payables	13	6,185	3,878	5,814
Provisions	14	15,070	11,339	15,734
<b>Total current liabilities</b>		<b>21,255</b>	<b>15,217</b>	<b>21,548</b>
<b>Non-current liabilities</b>				
Provisions	14	1,556	19,764	28,951
<b>Total non-current liabilities</b>		<b>1,556</b>	<b>19,764</b>	<b>28,951</b>
<b>Total liabilities</b>		<b>22,811</b>	<b>34,981</b>	<b>50,499</b>
<b>Net assets</b>		<b>38,394</b>	<b>17,678</b>	<b>8,984</b>
<b>Equity</b>				
Accumulated funds		38,394	17,678	8,984
<b>Total equity</b>		<b>38,394</b>	<b>17,678</b>	<b>8,984</b>

The accompanying notes form part of these financial statements.

## Statement of Changes in Equity

	Notes	Accumulated funds \$'000
<b>Balance at 1 July 2016</b>		<b>8,984</b>
<b>Net result for the year</b>		<b>10,110</b>
<b>Other comprehensive income:</b>		
Superannuation actuarial gain/(loss)		11,143
<b>Total other comprehensive income</b>		<b>11,143</b>
<b>Total comprehensive income for the year</b>		<b>21,253</b>
<b>Transactions with owners in their capacity as owners</b>		
Distribution payable to Crown Entity	5	(5,200)
Increase/(decrease) in net assets from equity transfers	15	13,357
<b>Balance at 30 June 2017</b>		<b>38,394</b>

		Accumulated funds \$'000
<b>Balance at 1 July 2015</b>		<b>14,615</b>
<b>Net result for the year</b>		<b>10,009</b>
<b>Other comprehensive income:</b>		
Superannuation actuarial gain/(loss)		(10,205)
<b>Total other comprehensive income</b>		<b>(10,205)</b>
<b>Total comprehensive income for the year</b>		<b>(196)</b>
<b>Transactions with owners in their capacity as owners</b>		
Distribution payable to Crown Entity	5	(5,435)
<b>Balance at 30 June 2016</b>		<b>8,984</b>

The accompanying notes form part of these financial statements.

## Statement of Cash Flows

		Actual 2017 \$'000	Budget 2017 \$'000	Actual 2016 \$'000
	Notes			
<b>Cash flows from operating activities</b>				
<b>Payments</b>				
Employee related		(38,652)	(40,702)	(37,898)
Other		(14,983)	(11,005)	(12,049)
<b>Total payments</b>		<b>(53,635)</b>	<b>(51,707)</b>	<b>(49,947)</b>
<b>Receipts</b>				
Legal Fees from clients		60,025	54,481	51,174
Interest received		508	294	381
Transfers to the Crown Entity		-	(1,712)	-
Other		4,768	491	5,712
<b>Total receipts</b>		<b>65,301</b>	<b>53,554</b>	<b>57,267</b>
<b>Net cash flows from operating activities</b>	19	<b>11,666</b>	<b>1,847</b>	<b>7,320</b>
<b>Cash flows from investing activities</b>				
Purchases of plant and equipment		(254)	(665)	(463)
Purchases of intangible assets		(505)	(4,500)	(84)
<b>Net cash flows from investing activities</b>		<b>(759)</b>	<b>(5,165)</b>	<b>(547)</b>
<b>Cash flows from financing activities</b>				
Financial distribution to the Crown Entity	5	(5,435)	(3,724)	(1,387)
<b>Net cash flows from financing activities</b>		<b>(5,435)</b>	<b>(3,724)</b>	<b>(1,387)</b>
<b>Net increase / (decrease) in cash and cash equivalents</b>		<b>5,472</b>	<b>(7,042)</b>	<b>5,386</b>
Opening cash and cash equivalents		26,544	27,528	21,158
<b>Closing cash and cash equivalents</b>	7	<b>32,016</b>	<b>20,486</b>	<b>26,544</b>

The accompanying notes form part of these financial statements.

## **1. SUMMARY 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 2017 have been authorised for issue by the Crown Solicitor, after recommendation by the Audit and Risk Committee, on 15 September 2017.

### **(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* and *Public Finance and Audit Regulation 2015*; and
- Financial Reporting Directions mandated by the Treasurer.

Plant and equipment are measured at fair value. Other financial statements 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 with the exception of the detailed actuarial reports on superannuation provided by Pillar Administration which are reported in single Australian dollars (refer note 23).

### **(c) Statement of Compliance**

The financial statements and notes comply with Australian Accounting Standards, which include Australian Accounting Interpretations.

### **(d) 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.

### **(e) 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.

**1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)**

**(e) Accounting for the Goods and Services Tax (GST) (cont.)**

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.

**(f) Income recognition**

Income is measured at the fair value of the consideration or contribution received or receivable. Comments regarding the accounting policies for the recognition of income are discussed below.

**(i) Rendering of services**

Revenue from the provision of legal services is recognised when time is recorded on matters, as the amounts of revenue can be reliably measured and it is probable that economic benefits will flow to the CSO.

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.

**(ii) Investment revenue**

Interest revenue is recognised using the effective interest method. The effective interest rate is the rate that exactly discounts the estimated future cash receipts over the expected life of the financial instrument or a shorter period, where appropriate, to the net carrying amount of the financial asset.

**(iii) Other revenue**

Other revenue comprises monies received from outside entities not categorised in the revenue headings mentioned above. The revenue is recognised when the fee in respect of services provided is received or receivable and when the amount of revenue for the service performed can be reliably measured and it is probable that economic benefits will flow to the CSO.

**(g) Plant and Equipment**

**(i) Acquisition of plant and equipment**

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.

**1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)**

**(g) Plant and Equipment (cont.)**

**(ii) 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.

**(iii) 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.

**(iv) Maintenance**

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

**(v) Depreciation of plant and equipment**

Depreciation is provided for on a straight-line basis for all depreciable assets 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.

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

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

**1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)**

**(g) Plant and Equipment (cont.)**

**(vi) Revaluation of 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*.

Plant and equipment is measured at the highest and best use by market participants that is physically possible, legally permissible and financially feasible. The highest and best use must be available at a period that is not remote and take into account the characteristics of the asset being measured, including any socio-political restrictions imposed by government. In most cases, after taking into account these considerations, the highest and best use is the existing use.

Non-specialised assets with short useful lives 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. All of the CSO's plant and equipment at 30<sup>th</sup> June 2017 are non-specialised assets with short useful lives.

**(vii) Impairment of 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. As 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. Specifically, impairment is unlikely for not-for-profit entities given that AASB136 modifies the recoverable amount test for non-cash generating assets of not-for-profit entities to the higher of fair value less costs of disposal and depreciated replacement cost, where depreciated replacement cost is also fair value.

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.

**(h) Leases**

A distinction is made between finance leases, which effectively transfer from the lessor to the lessee substantially all the risks and rewards incidental to ownership of the leased assets, and operating leases under which the lessor does not transfer substantially all the risks and rewards.

Operating lease payments are recognised as an expense in the periods in which they are incurred.

There are no finance lease arrangements.

## **1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)**

### **(i) Intangible assets**

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.

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 for an intangible asset is 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.

### **(j) Financial Instruments**

A financial instrument is any contract that gives rise to a financial asset of one entity and a financial liability or equity instrument of another entity.

Financial assets and financial liabilities are initially measured at fair value. Transaction costs that are directly attributable to the acquisition or issue of financial assets and financial liabilities (other than financial assets and financial liabilities at fair value through profit or loss) are added to or deducted from the fair value of the financial assets or financial liabilities, as appropriate, on initial recognition. Transaction costs directly attributable to the acquisition of financial assets or financial liabilities at fair value through profit or loss are recognised immediately in net result.

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.

#### **(i) Financial assets**

- **Loans and receivables**

Trade receivables, loans and other receivables that have fixed or determinable payments that are not quoted in an active market are classified as loans and receivables. Loans and receivables are measured 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.

Short-term receivables with no stated interest rate are measured at the original invoice amount unless the effect of discounting is material.

- **Other financial assets**

Work in progress (WIP) represents staff time measured at the rate directly chargeable to the client and which remains unbilled as at balance date.

WIP is assessed for impairment annually and is not carried at an amount in excess of its assessed recoverable amount.

**1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)**

**(j) Financial Instruments (cont.)**

**(i) Financial assets (cont.)**

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.

• **Impairment of financial assets**

All financial assets, except those at fair value through profit and loss, are subject to an annual review for impairment. Financial assets are considered to be impaired when there is objective evidence that, as a result of one or more events that occurred after the initial recognition of the financial asset, the estimated future cash flows have been affected.

For certain categories of financial assets, such as trade receivables, the CSO first assesses whether impairment exists individually for financial assets that are individually significant, or collectively for financial assets that are not individually significant. Assets are assessed for impairment on a collective basis if they were assessed not to be impaired individually.

For financial assets carried at amortised cost, the amount of the allowance is the difference between the asset's carrying amount and the present value of estimated future cash flows, discounted at the original effective interest rate. The amount of the impairment loss is recognised in the net result for the year.

Any reversals of impairment losses are reversed through the net result for the year, where there is objective evidence. Reversals of impairment losses of financial assets carried at amortised cost cannot result in a carrying amount that exceeds what the carrying amount would have been had there not been an impairment loss.

**(ii) Financial Liabilities**

• **Payables**

These amounts represent liabilities for goods and services provided to the CSO and other amounts. Payables are recognised initially at fair value. Subsequent measurement is at amortised cost using the effective interest method. Short-term payables with no stated interest rate are measured at the original invoice amount where the effect of discounting is immaterial.

**(iii) Derecognition of financial assets and financial liabilities**

A financial asset is derecognised when the contractual rights to the cash flows from the financial assets expire; or if the CSO transfers the financial asset:

- where substantially all the risks and rewards have been transferred; or
- where the CSO has not transferred substantially all the risks and rewards, if the CSO has not retained control.

Where the CSO has neither transferred nor retained substantially all the risks and rewards or transferred control, the asset is 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. A financial liability is derecognised when the obligation specified in the contract is discharged or cancelled or expires.

**1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)**

**(j) Financial Instruments (cont.)**

**(iv) 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.

**(k) Employee benefits**

**(i) 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 entity 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.

**(ii) 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 not assumed by the Crown

Prior to 31 December 2016, actuarial gains and losses were recognised immediately in other comprehensive income in the year in which they occurred.

Superannuation was actuarially assessed prior to each reporting date and measured at the present value of the estimated future payments. The amount recognised was the net total of the present value of the defined benefit obligation at the reporting date, minus the fair value at the date of any plan assets out of which the obligation was to be settled directly.

**1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)**

**(k) Employee benefits (cont.)**

**(ii) Long Service Leave and Superannuation (cont.)**

The actuarial assessment of superannuation used the Projected Unit Credit Method and reflected estimated future salary increases and the benefits set out in the terms of the plan. The liabilities were discounted using the market yield rate on government bonds of similar maturity to those obligations. Actuarial assumptions were unbiased and mutually compatible and financial assumptions based on market experience for the period over which the obligations are to be settled.

All remeasurements arising from defined benefit plans were recognised in other comprehensive income in the year in which they occur.

CSO's net defined benefit superannuation liabilities were transferred to the Crown on 31 December 2016. The transfer was accounted for as an equity transfer. Refer note 1(m)(ii).

Superannuation assumed by the Crown

From 1 January 2017 onwards, the CSO accounts for additional defined benefit superannuation amounts assumed by the Crown as a 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.

**(iii) 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.

**(l) 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 entity 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.

A provision for the restoration costs of leasehold improvement assets is recognised. The provision is discounted at 1.59% 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.

**(m) Equity and reserves**

**(i) Accumulated Funds**

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

**1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)**

**(m) Equity and reserves (cont.)**

**(ii) Equity Transfers**

The transfer of net assets between entities as a result of an administrative restructure, transfers of programs / functions and parts thereof between NSW public sector entities and 'equity appropriations' are designated or required by Australian Accounting Standards to be treated as contributions by owners and recognised as an adjustment to 'Accumulated Funds'. This treatment is consistent with AASB 1004 *Contributions* and Australian Interpretation 1038 *Contributions by Owners Made to Wholly-Owned Public Sector Entities*.

Transfers arising from an administrative restructure involving not-for-profit and for-profit government entities are recognised at the amount at which the assets and liabilities were recognised by the transferor immediately prior to the restructure. Subject to below, in most instances this will approximate fair value.

All other equity transfers are recognised at fair value, except for intangibles. Where an intangible has been recognised at (amortised) cost by the transferor because there is no active market, the CSO recognises the asset at the transferor's carrying amount. Where the transferor is prohibited from recognising internally generated intangibles, the CSO does not recognise that asset.

**(n) Trust Funds**

The Crown Solicitor operates a Trust Account in accordance with clause 14 of the *Legal Profession Uniform Law Application Regulation 2015*. As the CSO only performs 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.

**(o) Fair Value Measurement and Hierarchy**

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 and non-financial assets and liabilities that are valued at fair value using valuation techniques. Refer note 21 for further disclosures regarding fair value measurements of financial assets.

**(p) Budgeted amounts**

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 are not reflected in the budgeted amounts. Major variances between the original budgeted amounts and the actual amounts disclosed in the primary financial statements are explained in note 18.

**(q) 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.

## **1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)**

### **(r) Financial Distributions**

It is NSW Treasury Policy that Government businesses are to recognise dividends or financial distributions in the year to which they relate, even though payment may not occur until the following year. 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 adjustment for Defined Benefits superannuation liability and before any other adjustments for material non-cash items. The Treasurer approves the distribution to be paid based on consideration of the Crown Solicitor's recommended distribution prior to 30 June.

### **(s) Changes in accounting policy, including new or revised Australian Accounting Standards**

#### **(i) Effective for the first time in 2016-17**

The accounting policies applied in 2016-17 are consistent with those of the previous financial year. In 2016-17, AASB 2015-6 Amendments to Australian Accounting Standards – Extending Related Party Disclosures to Not-for-Profit Public Sector Entities was applied for the first time. From 1 July 2016, CSO have disclosed information about related parties in the financial statements including key management personnel compensation, the nature of related party relationships, and the amount and nature of transactions, outstanding balances and commitments. The disclosures are included in Note 22.

#### **(ii) Issued but not yet effective**

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

The following new Australian Accounting Standards have not been applied and are not yet effective, as per NSW Treasury Circular TC 17-04:

- AASB 9 *Financial Instruments*
- AASB 15, AASB 2014-5, AASB 2015-8 and 2016-3 regarding *Revenue from Contracts with Customers*
- AASB 16 *Leases*
- AASB 1058 *Income of Not-for-profit Entities*
- AASB 2016-2 *Amendments to Australian Accounting Standards – Disclosure Initiative: Amendments to AASB 107*
- AASB 2016-7 *Amendments to Australian Accounting Standards – Deferral of AASB 15 for Not-for-Profit Entities*
- AASB 2016-8 *Amendments to Australian Accounting Standards – Australian Implementation Guidance for Not-for-Profit Entities*
- AASB 2017-1 *Amendments to Australian Accounting Standards – Transfer of investment Property, Annual Improvements 2014-2016 Cycle and Other Amendments*
- AASB 2017-2 *Amendments to Australian Accounting Standards – Further Annual Improvements 2014-2016 Cycle*

The impact of the new standards and interpretations on issue but not effective has been assessed and other than AASB 16 leases, the impact is considered to be insignificant.

AASB 16 is applicable to annual reporting periods beginning on or after 1 January 2019. For leases where the CSO is the lessee, AASB 16 will require the CSO to recognise assets and liabilities on the statement of financial position where the lease term is for more than 12 months unless the underlying asset is of low value. There will be no impact on the total amount of cash flows reported.

**1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)**

**(t) Change in accounting estimate – Lease make good provision**

During the previous financial year, the CSO received new information in the form of legal advice regarding the calculation of the accommodation lease make good provision. Consequently the CSO adjusted the value of the lease make good provision in the year ended 30 June 2016 in line with this new information. The effect of this change in estimate was to make the following adjustments:

Lease make good provision (as at 30 June 2016)	Reduced by \$987,000 to \$944,000
Written down value of lease improvement asset (as at 30 June 2016)	Reduced from \$128,000 to \$67,000
Other revenue (for the period 2015/16)	Increased by \$925,000 to \$2,095,000

**Crown Solicitor's Office**  
**Notes to and forming part of the financial statements**  
*for the year ended 30 June 2017*

**2. EXPENSES EXCLUDING LOSSES**

**(a) Employee related expenses**

	<b>2017</b>	<b>2016</b>
	<b>\$'000</b>	<b>\$'000</b>
Salaries and wages (including recreation leave)	32,996	31,512
Superannuation - defined benefit plans*	619	675
Superannuation - defined contribution plans	2,595	2,685
Long service leave	679	689
Workers' compensation insurance	111	147
Payroll tax and fringe benefit tax	2,089	1,883
Redundancy payments	1	2
	<b>39,090</b>	<b>37,593</b>

\* \$464,000 in 2017 relates to expenses incurred prior to transfer of the net liability to the Crown Entity on 31 December 2016.

\$23,000 of employee related costs (2016: Nil) have been capitalised in particular fixed asset accounts, and therefore excluded from the above.

**(b) Other operating expenses**

Auditor's remuneration		
- audit of the financial statements	61	60
- audit of the Trust Account	10	9
Operating Lease Rental Expense – minimum lease payments	4,114	4,267
Consultants	94	109
Contractors	2,103	1,136
Electricity	141	153
Fees for services rendered	1,302	1,293
Fees - other	830	662
Insurance	73	70
Printing	243	240
Publications and Subscriptions	497	506
Repairs and routine maintenance*	991	790
Stores & Stationery	200	214
Other operating expenses	595	594
	<b>11,254</b>	<b>10,103</b>

*\* Reconciliation - Total maintenance*

Maintenance expense - contracted labour and other (non-employee related) as above	991	790
Employee related maintenance expense included in Note 2(a)	-	-
Total maintenance expenses included in Note 2(a) and Note 2(b)	<b>991</b>	<b>790</b>

**Crown Solicitor's Office**  
**Notes to and forming part of the financial statements**  
*for the year ended 30 June 2017*

**2. EXPENSES EXCLUDING LOSSES (cont.)**

**(c) Depreciation and amortisation**

	2017 \$'000	2016 \$'000
<b>Depreciation:</b>		
Plant and equipment	200	214
Leasehold Improvements	298	332
Total depreciation	<u>498</u>	<u>546</u>
<b>Amortisation:</b>		
Intangibles	126	160
Total amortisation	<u>126</u>	<u>160</u>
Total depreciation and amortisation	<u>624</u>	<u>706</u>

**(d) Finance costs**

	2017 \$'000	2016 \$'000
Unwinding of discount rate for the make good of premises	22	27
	<u>22</u>	<u>27</u>

**3. REVENUE**

**(a) Sale of goods and services**

	2017 \$'000	2016 \$'000
Rendering of services – legal fees	59,665	55,883
	<u>59,665</u>	<u>55,883</u>

**(b) Investment revenue**

Interest revenue	559	460
	<u>559</u>	<u>460</u>

**(c) Other revenue**

Other services provided	922	1,170
Lease make good provision adjustment*	-	925
	<u>922</u>	<u>2,095</u>

\*Refer note 1(t).

**Crown Solicitor's Office**  
**Notes to and forming part of the financial statements**  
*for the year ended 30 June 2017*

**3. REVENUE (cont.)**

**(d) Acceptance by the Crown Entity of employee benefits and other liabilities**

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

	<b>2017</b>	<b>2016</b>
	<b>\$'000</b>	<b>\$'000</b>
Superannuation – defined benefit*	164	-
	<u>164</u>	<u>-</u>

\* Expense assumed by the Crown Entity from 1 January 2017. Refer note 1(k)(ii).

**4. GAINS/(LOSSES) ON DISPOSAL**

	<b>2017</b>	<b>2016</b>
	<b>\$'000</b>	<b>\$'000</b>
Intangible Assets	(210)	-
	<u>(210)</u>	<u>-</u>

**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 adjustment for Defined Benefits Superannuation liability and before any other 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 TPP14-04 *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 \$5,200,000 (2016:\$5,435,000) has been recognised this year in accordance with the Treasurer's approval.

**6. SERVICE GROUPS OF THE ENTITY**

The CSO operates as a single service group. The Crown Solicitor's Office service group covers the provision of legal services to the NSW Government. The Crown Solicitor must be engaged by government agencies to perform tied legal services described in Premier's Memorandum 2016-04 (replaced M1995-39). The Crown Solicitor's Office also competes with the private legal profession for non-core (general) legal work.

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

**7. CASH AND CASH EQUIVALENTS**

	<b>2017</b>	<b>2016</b>
	<b>\$'000</b>	<b>\$'000</b>
Cash at bank and on hand	32,016	26,544
	<u>32,016</u>	<u>26,544</u>

## 7. CASH AND CASH EQUIVALENTS (cont.)

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 are the same in both the Statement of Financial Position and Statement of Cash Flows.

Refer note 21 for details regarding credit risk, liquidity risk and market risk arising from financial instruments.

## 8. RECEIVABLES

	<b>2017</b>	<b>2016</b>
	<b>\$'000</b>	<b>\$'000</b>
<b>Current receivables</b>		
Sale of goods and services	11,851	11,708
Less: Allowance for Impairment	-	-
Prepayments	304	316
Interest receivable	288	237
GST recoverable from the Australian Taxation Office	165	148
Long Service Leave recoverable	31	25
	<b>12,639</b>	<b>12,434</b>

### Movements in the allowance for impairment

Balance at 1 July 2016	-	-
Amounts written off during the year	-	-
Increase/(decrease) in allowance recognised in profit or loss	-	-
<b>Balance at 30 June 2017</b>	<b>-</b>	<b>-</b>

Details regarding credit risk of trade debtors that are neither past due nor impaired are disclosed in note 21.

## 9. OTHER FINANCIAL ASSETS

	<b>2017</b>	<b>2016</b>
	<b>\$'000</b>	<b>\$'000</b>
Work in Progress	7,346	7,635
Recoverable Disbursements	1,049	1,269
	<b>8,395</b>	<b>8,904</b>

Refer to note 21 for further information regarding credit risk and market risk arising from financial instruments.

**Crown Solicitor's Office**  
**Notes to and forming part of the financial statements**  
*for the year ended 30 June 2017*

**10. PLANT AND EQUIPMENT**

	Plant and equipment \$'000	Leasehold Improvements \$'000	Total \$'000
<b>At 1 July 2016 - fair value</b>			
Gross carrying amount	1,326	1,276	2,602
Accumulated depreciation and impairment	(540)	(732)	(1,272)
Net carrying amount	<b>786</b>	<b>544</b>	<b>1,330</b>
<b>At 30 June 2017- fair value</b>			
Gross carrying amount	1,508	1,276	2,784
Accumulated depreciation and impairment	(668)	(1,030)	(1,698)
Net carrying amount	<b>840</b>	<b>246</b>	<b>1,086</b>

**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
<b>Year ended 30 June 2017</b>			
Net carrying amount at start of year	786	544	1,330
Additions	254	-	254
Disposals	-	-	-
Depreciation expense	(200)	(298)	(498)
Net carrying amount at end of year	<b>840</b>	<b>246</b>	<b>1,086</b>

	Plant and equipment \$'000	Leasehold Improvements \$'000	Total \$'000
<b>At 1 July 2015 - fair value</b>			
Gross carrying amount	898	1,418	2,316
Accumulated depreciation and impairment	(360)	(481)	(841)
Net carrying amount	<b>538</b>	<b>937</b>	<b>1,475</b>
<b>At 30 June 2016- fair value</b>			
Gross carrying amount	1,326	1,276	2,602
Accumulated depreciation and impairment	(540)	(732)	(1,272)
Net carrying amount	<b>786</b>	<b>544</b>	<b>1,330</b>

**Crown Solicitor's Office**  
**Notes to and forming part of the financial statements**  
*for the year ended 30 June 2017*

**10. PLANT AND EQUIPMENT (cont.)**

**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
<b>Year ended 30 June 2016</b>			
Net carrying amount at start of year	538	937	1,475
Additions	462	-	462
Disposals	-	-	-
Depreciation expense	(214)	(332)	(546)
Accounting estimate adjustment – make good provision	-	(61)	(61)
Net carrying amount at end of year	<b>786</b>	<b>544</b>	<b>1,330</b>

**11. INTANGIBLES**

	Software \$'000	Total \$'000
<b>At 1 July 2016</b>		
Cost (gross carrying amount)	1,343	1,343
Accumulated amortisation and impairment	(900)	(900)
Net carrying amount	<b>443</b>	<b>443</b>
<b>At 30 June 2017</b>		
Cost (gross carrying amount)	1,455	1,455
Accumulated amortisation and impairment	(756)	(756)
Net carrying amount	<b>699</b>	<b>699</b>

**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
<b>Year ended 30 June 2017</b>		
Net carrying amount at start of year	443	443
Additions*	592	592
Disposals	(210)	(210)
Amortisation (recognised in "depreciation and amortisation")	(126)	(126)
Net carrying amount at end of year	<b>699</b>	<b>699</b>

\*Additions of \$592,000 include \$243,000 held in Work in Progress for a new Practice Management system.

	Software \$'000	Total \$'000
<b>At 1 July 2015</b>		
Cost (gross carrying amount)	1,259	1,259
Accumulated amortisation and impairment	(740)	(740)
Net carrying amount	<b>519</b>	<b>519</b>

## 11. INTANGIBLE ASSETS (cont.)

	<b>Software</b>	<b>Total</b>
	<b>\$'000</b>	<b>\$'000</b>
<b>At 30 June 2016</b>		
Cost (gross carrying amount)	1,343	1,343
Accumulated amortisation and impairment	(900)	(900)
Net carrying amount	<u>443</u>	<u>443</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:

	<b>Software</b>	<b>Total</b>
	<b>\$'000</b>	<b>\$'000</b>
<b>Year ended 30 June 2016</b>		
Net carrying amount at start of year	519	519
Additions	84	84
Amortisation (recognised in "depreciation and amortisation")	(160)	(160)
Net carrying amount at the end of year	<u>443</u>	<u>443</u>

## 12. CURRENT/NON-CURRENT ASSETS – OTHER

	<b>2017</b>	<b>2016</b>
	<b>\$'000</b>	<b>\$'000</b>
Crown Acceptance of long service leave liability - current	5,860	6,099
Crown Acceptance of long service leave liability – non-current	510	530
Defined Benefits superannuation – Prepaid contributions – non-current (notes 1(k)(ii), 15 and 23)	-	3,199
	<u>6,370</u>	<u>9,828</u>

## 13. PAYABLES

	<b>2017</b>	<b>2016</b>
	<b>\$'000</b>	<b>\$'000</b>
Accrued salaries, wages and on-costs	172	10
Creditors	4,583	5,205
Accrued payables	1,430	599
	<u>6,185</u>	<u>5,814</u>

Details regarding liquidity risk, including a maturity analysis of the above payables, are disclosed in note 21.

**14. CURRENT/NON-CURRENT PROVISIONS**

	<b>2017</b>	<b>2016</b>
	<b>\$'000</b>	<b>\$'000</b>
<b>Current</b>		
<b>Employee benefits and related on-costs</b>		
Annual leave	2,721	2,665
Long service leave	5,860	6,099
Related Oncost	1,289	1,535
	<b>9,870</b>	<b>10,299</b>
<b>Other provisions</b>		
Distribution to the Crown Entity	5,200	5,435
	<b>5,200</b>	<b>5,435</b>
<b>Total current provisions</b>	<b>15,070</b>	<b>15,734</b>
<b>Non-Current</b>		
<b>Employee benefits and related on-costs</b>		
Long Service Leave	510	530
Long Service Leave - Related Oncost	80	82
Superannuation (notes 1(k)(ii) ,15 and 23)	-	27,395
	<b>590</b>	<b>28,007</b>
<b>Other provisions</b>		
Make good	966	944
	<b>966</b>	<b>944</b>
<b>Total non-current provisions</b>	<b>1,556</b>	<b>28,951</b>
<b>Aggregate employee benefits and related on-costs</b>		
Provisions - current	9,870	10,299
Provisions - non-current	590	28,007
Accrued salaries, wages and on-costs (note 13)	172	10
	<b>10,632</b>	<b>38,316</b>

**a) Annual Leave**

The liability at 30 June 2017 was \$2,721,000 (2016: \$2,665,000). This is based on leave entitlements at 30<sup>th</sup> June using remuneration rates to be payable post 30 June.

Of this liability, the value expected to be taken within 12 months is \$2,233,000(2016: \$2,328,000) and \$488,000 (2016: \$337,000) after 12 months. This calculation is based on the current levels of annual leave taken by staff and the minimum required to be taken to achieve the target of 30 days by June 2018.

**b) Long Service Leave**

The total liability at 30<sup>th</sup> June 2017 was \$6,370,000 (2016: \$6,629,000) which is shown as current \$5,860,000 (2016: \$6,099,000) and non-current \$510,000 (2016: \$530,000). This liability comprises:

	<b>2017</b>	<b>2016</b>
	<b>\$'000</b>	<b>\$'000</b>
Short term – expected to be settled within 12 months	800	729
Long term – not expected to be settled within 12 months	5,570	5,900
	<b>6,370</b>	<b>6,629</b>

**Crown Solicitor's Office**  
**Notes to and forming part of the financial statements**  
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**14. CURRENT/NON-CURRENT PROVISIONS (cont.)**

The CSO contributed \$692,000(2016:\$712,000) 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 \$802,000 (2016:\$612,000).

**c) Make good**

Make good provision represents 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.

**d) Distribution Payable to the Crown Entity**

A provision for financial distribution to the Crown Entity of \$5,200,000 (2016:\$5,435,000) is made based on the Treasurer's approval dated 22 June 2017 of the Crown Solicitor's recommendation for the 2016-2017 financial year (refer note 5).

**Movements in provisions (other than employee benefits)**

	<b>Distribution</b>	
	<b>Payments</b>	<b>Make good</b>
<b>2017</b>	<b>\$'000</b>	<b>\$'000</b>
Carrying amount at the beginning of financial year	5,435	944
Additional provisions recognised	5,200	-
Amounts used	(5,435)	-
Unwinding/change in the discount rate	-	22
<b>Net carrying amount at end of the year</b>	<b>5,200</b>	<b>966</b>

**15. INCREASE/DECREASE IN NET ASSETS FROM EQUITY TRANSFERS**

	<b>2017</b>	<b>2016</b>
	<b>\$'000</b>	<b>\$'000</b>
Acceptance of defined benefit superannuation by the Crown Entity	13,357	-
	<b>13,357</b>	<b>-</b>

On 31 December 2016, the Crown Entity accepted the liability for the State defined benefit superannuation schemes that previously resided with the CSO (refer note 23).

**16. COMMITMENTS FOR EXPENDITURE**

**(a) Capital Commitments**

	<b>2017</b>	<b>2016</b>
	<b>\$'000</b>	<b>\$'000</b>
Aggregate capital expenditure for the acquisition of a new Practice Management System contracted for at balance date and not yet provided for:		
Not later than one year	1,505	-
Later than one year and not later than five years	-	-
Later than five years	-	-
<b>Total (including GST)</b>	<b>1,505</b>	<b>-</b>

**16. COMMITMENTS FOR EXPENDITURE (cont.)**

	2017 \$'000	2016 \$'000
<b>(b) Operating Lease Commitments</b>		
Future minimum rentals payable under non-cancellable operating lease as at 30 June are:		
Not later than one year	3,682	4,717
Later than one year and not later than five years	-	3,838
Later than five years	-	-
<b>Total (including GST)</b>	<b>3,682</b>	<b>8,555</b>

These operating lease commitments relate to leases currently held in relation to the occupancy of office premises. These leases expire 14 April 2018.

Total Commitments for capital expenditure and operating lease include input tax credits of \$472,000 (2016:\$778,000) that are expected to be recoverable from the Australian Taxation Office.

**17. CONTINGENT LIABILITIES AND CONTINGENT ASSETS**

The CSO has no contingent liabilities or contingent assets at 30 June 2017. There were no contingent liabilities or contingent assets at 30 June 2016.

**18. BUDGET REVIEW**

**Net result for the year**

The net surplus for the year of \$10,110,000 is \$7,664,000 greater than budget of \$2,446,000.

Revenue of \$61,310,000 is \$6,458,000 greater than budget of \$54,852,000. \$5,230,000 of this variance arises from legal services revenue attributable to significant and unbudgeted increased activity for the year including core legal work referred to the Crown Solicitor under the Premier's Memorandum *2016-04 Government Core Legal Work Guidelines* and historical child sexual abuse matters. Other Revenue variance of \$866,000 is attributable to unbudgeted extended release of CSO staff to the NSW State Coroner's Office. \$164,000 unbudgeted revenue for Crown Acceptance of Defined Benefit Superannuation arises from the transfer of the net liability to the Crown Entity from 1 January 2017 (refer note 1(k)(ii)).

Employee related expenditure of \$39,090,000 is \$1,419,000 less than budget of \$40,509,000 but is offset by agency staff expenditure (contractor expense) of \$2,103,000 that is \$1,655,000 greater than budget. Overall, employee related expenditure and agency staff expense is \$236,000 greater than budget. This variance is attributable to a higher number of staff than budgeted aligned with workload and revenue.

Other operating costs of \$11,254,000 is \$362,000 greater than budget of \$10,892,000; \$1,655,000 higher in agency staff offsetting under-expenditure in other overhead items of \$1,293,000. The variance of \$1,293,000 includes savings in rent of \$456,000 and under-expenditure in staff training of \$310,000.

Depreciation of \$624,000 is \$331,000 less than budget of \$955,000 due to delay in planned capital expenditure.

Finance costs of \$22,000 represent the unwinding of the discount rate on the make good provision in respect of leased premises. This is \$28,000 less than the budget as a result of the adjustment to the make good provision in 2015-16.

## 18. BUDGET REVIEW (cont.)

### Assets and liabilities

Total assets of \$61,205,000 are \$8,546,000 greater than budget of \$52,659,000; \$16,349,000 higher in current assets offset by \$7,803,000 lower in non-current assets. Cash is \$11,530,000 greater than budget arising from above-budget operational result for the year combined with a delay in capital expenditure. Receivables and other financial assets (Work in Progress and unbilled disbursements) of \$21,034,000 are \$4,252,000 greater than budget as a result of the higher than budgeted activity for the year. Non-current assets of \$2,295,000 are \$7,803,000 less than budget; \$3,579,000 arising from the transfer of a defined benefits superannuation asset to the Crown Entity on 31 December 2016 and \$4,224,000 arising mainly from a delay in planned capital expenditure.

Total liabilities of \$22,811,000 are \$12,170,000 less than budget of \$34,981,000; \$6,038,000 higher in current liabilities mainly arising from the increased provision for distribution payment of \$3,488,000 and increased payables of \$2,307,000; and \$18,208,000 lower in non-current liabilities mainly arising from the transfer of the defined benefits superannuation liability to the Crown Entity on 31 December 2016.

### Cash flows

Cash increased by \$5,472,000 compared to budgeted reduction of \$7,042,000 mainly due to a combination of better than budgeted operational performance combined with \$4,406,000 less than budgeted capital expenditure. This was offset by \$1,711,000 higher than budgeted distribution payment relating to the 2015-16 financial year.

## 19. RECONCILIATION OF OPERATING CASH FLOWS TO NET RESULT

	2017 \$'000	2016 \$'000
Net cash inflow from operating activities	11,666	7,320
Depreciation and amortisation	(624)	(706)
Net capital movements	(24,500)	10,205
Decrease/(increase) in provisions	27,824	(10,666)
Increase/(decrease) in prepayments and other assets	(3,675)	5,369
Decrease/(increase) in payables	(371)	(1,513)
Net gain/(loss) on disposal of assets	(210)	-
<b>Net result</b>	<b>10,110</b>	<b>10,009</b>

## 20. TRUST FUNDS

The Crown Solicitor receives money in trust for clients usually pending settlement of clients' transactions. These monies are excluded from the financial statements, as the CSO cannot use them for the achievement of its objectives. Interest earned on funds held in the Crown Solicitor's trust account is retained by NSW Treasury.

	2017 \$'000	2016 \$'000
Cash balance at the beginning of the financial year	19,376	22,319
Add: Receipts	50,609	16,191
Less: Expenditure	62,515	19,134
<b>Cash balance at the end of the financial year</b>	<b>7,470</b>	<b>19,376</b>

**Crown Solicitor's Office**  
**Notes to and forming part of the financial statements**  
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**21. 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 Audit and Risk Committee on a regular basis.

**(a) Financial instrument categories**

<b>Financial Assets</b>	<b>Note</b>	<b>Category</b>	<b>2017 \$'000 Carrying Amount</b>	<b>2016 \$'000 Carrying Amount</b>
Class:				
Cash and cash equivalents	7	N/A	32,016	26,544
Receivables <sup>1</sup>	8	Loans and receivables (at amortised cost)	12,170	11,970
Other financial assets	9	Receivables (at amortised cost)	8,395	8,904
			<b>52,581</b>	<b>47,418</b>
<b>Financial Liabilities</b>				
		<b>Category</b>	<b>2017 \$'000 Carrying Amount</b>	<b>2016 \$'000 Carrying Amount</b>
Class:				
Payables <sup>2</sup>	13	Financial liabilities measured at amortised cost	6,168	5,789
			<b>6,168</b>	<b>5,789</b>

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).

**(b) Credit risk**

Credit risk arises when there is the possibility of the CSO's debtors defaulting 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 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.

**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.

**21. FINANCIAL INSTRUMENTS (cont.)**

**(b) Credit Risk (cont.)**

**Receivables – trade debtors**

All trade debtors are recognised as amounts receivable at balance date. Collectability of trade debtors is reviewed on an ongoing basis. Debts, which are known to be uncollectable are written off, only after all avenues of debt collection have been exhausted. An allowance for impairment is raised when there is objective evidence that the CSO will not be able to collect all amounts due. This evidence includes past experience, current and expected changes in economic conditions and debtor credit ratings. No interest is earned on trade debtors. Payment terms are between 14 and 30 days.

The CSO's debtors are primarily other NSW government entities and credit risk is assessed as very low.

	<b>2017</b>	<b>2016</b>
	<b>\$'000</b>	<b>\$'000</b>
Neither past due nor impaired	4,961	6,131
Past due but not impaired		
< 3 months overdue	301	380
3 months – 6 months overdue	15	16
> 6 months overdue	-	-
	<b>5,277</b>	<b>6,527</b>
Impaired		
< 3 months overdue	-	-
3 months – 6 months overdue	-	-
> 6 months overdue	-	-
	<b>5,277</b>	<b>6,527</b>
<b>Total receivables – gross of allowance for impairment</b>	<b>5,277</b>	<b>6,527</b>

**Notes:** The ageing analysis excludes statutory receivables, as these are not within the scope of AASB 7. Therefore the 'total' will not reconcile to the receivables total in Note 8.

**(c) 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.

**Crown Solicitor's Office**  
**Notes to and forming part of the financial statements**  
*for the year ended 30 June 2017*

**21. FINANCIAL INSTRUMENTS (cont.)**

**(c) Liquidity risk (cont.)**

During the current year and prior year, there were no defaults of loans payable. 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.

The 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. For payments to other suppliers, the payment of simple interest is at the discretion of the Crown Solicitor. Interest incurred this year was \$2,091.91(2016:\$1,149.46) and the rate of interest applied during the year was an average of 9.83% (2016:10.20%).

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**

	\$'000							
	Weighted average effective interest rate	Nominal Amount	Interest Rate Exposure			Maturity Dates		
			Fixed Interest Rate	Variable Interest Rate	Non- interest bearing	< 1 year	1 -5 years	> 5 years
<b>2017</b>								
Payables	-	6,168	-	-	6,168	6,168	-	-
	-	<b>6,168</b>	-	-	<b>6,168</b>	<b>6,168</b>	-	-
<b>2016</b>								
Payables	-	5,789	-	-	5,789	5,789	-	-
	-	<b>5,789</b>	-	-	<b>5,789</b>	<b>5,789</b>	-	-

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.

**(d) 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.

**Interest rate risk**

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 +/- 0.4 per cent, 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 CSO's exposure to interest rate risk is set out below.

**Crown Solicitor's Office**  
**Notes to and forming part of the financial statements**  
*for the year ended 30 June 2017*

**21. FINANCIAL INSTRUMENTS (cont.)**

(d) **Market risk (cont.)**  
**Interest rate risk (cont.)**

	Carrying amount	\$'000			
		Impact of 0.4% Increase		Impact of 0.4% decrease	
		Profit	Equity	Profit	Equity
<b>2017</b>					
<i>Financial assets</i>					
Cash and cash equivalents	32,016	128	128	(128)	(128)
Receivables	12,170	-	-	-	-
Other financial assets	8,395	-	-	-	-
<i>Financial liabilities</i>					
Payables	6,168	-	-	-	-
		Impact of 1.0% Increase		Impact of 1.0% decrease	
		Profit	Equity	Profit	Equity
<b>2016</b>					
<i>Financial assets</i>					
Cash and cash equivalents	26,544	265	265	(265)	(265)
Receivables	11,970	-	-	-	-
Other financial assets	8,904	-	-	-	-
<i>Financial liabilities</i>					
Payables	5,789	-	-	-	-

(e) **Fair Value measurement**

Financial instruments are generally recognised at cost. All of the CSO's cash is held within the Treasury Banking System and is recognised at cost. The amortised cost of financial instruments recognised in the statement of financial position approximates the fair value, because of the short term nature of the financial instruments.

**22. RELATED PARTY DISCLOSURES**

The CSO's key management personnel compensation are as follows:

	2017 \$'000
Short-term employee benefits:	
Salaries	404
Other monetary allowances	20
Non-monetary benefits	-
Other long-term employee benefits	12
Post-employment benefits	-
Termination benefits	-
Total remuneration	436

There were no transactions entered into during the year with key management personnel, their close family members and controlled or jointly controlled entities thereof.

## **22. RELATED PARTY DISCLOSURES (cont.)**

During the year, the CSO entered into transactions with other entities that are controlled by the NSW Government. These transactions in aggregate are a significant portion of the entity's rendering of services and receiving of services.

The CSO provides legal services to the NSW Government and its agencies. \$40,229,000 of the CSO's fee for service revenue and \$899,000 of other 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 Justice (DoJ). 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 DoJ in the areas of payroll, information and technology systems support and library services. The CSO incurred \$1,302,000 in fees to DoJ for these services in 2016-17.

The CSO resides in leased premises and makes payments for rent and outgoings due under the lease to Property NSW. These amounts totalled \$4,114,000 in 2016-17.

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
- Employer contributions paid to Defined Benefit Superannuation funds in relation to CSO employees prior to transfer of the net liability to the Crown Entity on 31 December 2016
- 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

## 23. DEFINED BENEFIT SUPERANNUATION

The following extract has been prepared by the Scheme actuary to reflect the position as at 31 December 2016 being the date of transfer of the responsibility to the Crown Entity. The CSO has used the valuation of as at 31 December 2016 for the transfer of the net liability and to recognise the actuarial gain up to that date.

### 31 December 2016 Superannuation Position Basis – AASB 119

	<b>SASS</b>	<b>SANCS</b>	<b>SSS</b>	<b>Total</b>
	<b>31 Dec</b>	<b>31 Dec</b>	<b>31 Dec</b>	<b>31 Dec</b>
	<b>2016</b>	<b>2016</b>	<b>2016</b>	<b>2016</b>
<b>Member Numbers</b>				
Contributors	16	20	4	
Deferred benefits	0	0	0	
Pensioners	0	0	41	
Pensions fully commuted	0	0	1	
<b>Superannuation Position for AASB 119</b>				
<b>purposes</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Accrued liability (Note 1)	7,038,435	1,052,822	59,475,720	67,566,977
Estimated reserve account balance	(8,868,975)	(3,093,720)	(42,247,215)	(54,209,910)
	(1,830,540)	(2,040,898)	17,228,505	13,357,067
1. Deficit/(surplus)				
2. Future Service Liability (Note 2)	950,130	331,672	392,192	1,673,994
3. Surplus in excess of recovery available from schemes (-1.-2. and subject to a minimum of zero)	0	0	0	0
4. Net (asset)/liability to be recognised in statement of financial position (1.+3.)	(1,830,540)	(2,040,898)	17,228,505	13,357,067

#### Note 1:

The accrued liability includes a contribution tax provision. This is calculated based on grossing up the deficit/(surplus) less the allowance for past service expenses and insurable death and disability liabilities at a contribution tax rate of 15%.

#### Note 2:

The Future Service Liability (FSL) does not have to be recognised by an employer. It is only used to determine if an asset ceiling limit should be imposed (AASB 119 para 64). Under AASB 119, any prepaid superannuation asset recognised cannot exceed the present value of any economic benefits that may be available in the form of refunds from the plan or reductions in future contributions to the plan. Where the "surplus in excess of recovery" is zero, no asset ceiling limit is imposed. (Note: this also includes a contribution tax provision).

### AASB 119 – Disclosure items 31 December 2016

#### *Nature of the benefits provided by the fund – Para 139(a)(i)*

The Pooled Fund holds in trust the investments of the closed NSW public sector superannuation schemes:

- State Authorities Superannuation Scheme (SASS)
- State Superannuation Scheme (SSS)
- Police Superannuation Scheme (PSS)
- State Authorities Non-contributory Superannuation Scheme (SANCS).

These schemes are all defined benefit schemes – at least a component of the final benefit is derived from a multiple of member salary and years of membership. Members receive lump sum or pension benefits on retirement, death, disablement and withdrawal. All the Schemes are closed to new members.

## **23. DEFINED BENEFIT SUPERANNUATION (cont.)**

### ***Description of the regulatory framework - Para 139(a)(ii)***

The schemes in the Pooled Fund are established and governed by the following NSW legislation: Superannuation Act 1916, State Authorities Superannuation Act 1987, Police Regulation (Superannuation) Act 1906, State Authorities Non-Contributory Superannuation Act 1987, and their associated regulations.

The schemes in the Pooled Fund are exempt public sector superannuation schemes under the Commonwealth Superannuation Industry (Supervision) Act 1993 (SIS). The SIS Legislation treats exempt public sector superannuation funds as complying funds for concessional taxation and superannuation guarantee purposes.

Under a Heads of Government agreement, the New South Wales Government undertakes to ensure that the Pooled Fund will conform the principles of the Commonwealth's retirement incomes policy relating to preservation, vesting and reporting to members and that members' benefits are adequately protected.

The New South Wales Government prudentially monitors and audits the Pooled Fund and the Trustee Board activities in a manner consistent with the prudential controls of the SIS legislation. These provisions are in addition to other legislative obligations on the Trustee Board and internal processes that monitor the Trustee Board's adherence to the principles of the Commonwealth's retirement incomes policy.

An actuarial investigation of the Pooled Fund is performed every three years. The last actuarial investigation was performed as at 30 June 2015. The next actuarial investigation will be performed at 30 June 2018.

### ***Description of other entities' responsibilities for the governance of the fund - Para 139(a)(iii)***

The Fund's Trustee is responsible for the governance of the Fund. The Trustee has a legal obligation to act solely in the best interests of fund beneficiaries. The Trustee has the following roles:

- \* Administration of the fund and payment to the beneficiaries from fund assets when required in accordance with the fund rules;
- \* Management and investment of the fund assets; and
- \* Compliance with other applicable regulations.

### ***Description of risks - Para 139(b)***

There are a number of risks to which the Fund exposes the Employer. The more significant risks relating to the defined benefits are:

- Investment risk - The risk that investment returns will be lower than assumed and the Employer will need to increase contributions to offset this shortfall.
- Longevity risk – The risk that pensioners live longer than assumed, increasing future pensions.
- Pension indexation risk – The risk that pensions will increase at a rate greater than assumed, increasing future pensions.
- Salary growth risk - The risk that wages or salaries (on which future benefit amounts for active members will be based) will rise more rapidly than assumed, increasing defined benefit amounts and thereby requiring additional employer contributions.
- Legislative risk - The risk is that legislative changes could be made which increase the cost of providing the defined benefits.

The defined benefit fund assets are invested with independent fund managers and have a diversified asset mix. The Fund has no significant concentration of investment risk or liquidity risk.

**Crown Solicitor's Office**  
**Notes to and forming part of the financial statements**  
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**23. DEFINED BENEFIT SUPERANNUATION (cont.)**

*Description of significant events - Para 139(c)*

There were no fund amendments, curtailments or settlements during the period.

**Reconciliation of the Net Defined Benefit Liability/(Asset) - Para 140(a)**

	<b>SASS</b>	<b>SANCS</b>	<b>SSS</b>	<b>Total</b>
	<b>30 June 2016</b>	<b>30 June 2016</b>	<b>30 June 2016</b>	<b>30 June 2016</b>
	<b>to 31 December</b>	<b>to 31 December</b>	<b>to 31 December</b>	<b>to 31 December</b>
	<b>2016</b>	<b>2016</b>	<b>2016</b>	<b>2016</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b>Net Defined Benefit Liability/(Asset) at start of period</b>	<b>(1,348,757)</b>	<b>(1,850,663)</b>	<b>27,395,188</b>	<b>24,195,767</b>
Current service cost	131,795	27,944	60,475	220,214
Net Interest on the net defined benefit liability/(asset)	(14,493)	(18,540)	272,149	239,116
Past service cost	0	0	0	0
(Gains)/losses arising from settlements	0	0	0	0
Actual return on Fund assets less Interest income	(339,825)	(114,178)	(1,571,304)	(2,025,307)
Actuarial (gains)/losses arising from changes in demographic assumptions	0	0	0	0
Actuarial (gains)/losses arising from changes in financial assumptions	(232,704)	(66,786)	(7,742,252)	(8,041,743)
Actuarial (gains)/losses arising from liability experience	74,578	3,261	(1,153,910)	(1,076,072)
Adjustment for effect of asset ceiling	0	0	0	0
Employer contributions	(101,135)	(21,935)	(31,840)	(154,909)
Effects of transfers in/out due to business combinations and disposals	0	0	0	0
<b>Net Defined Benefit Liability/(Asset) at end of period</b>	<b>(1,830,540)</b>	<b>(2,040,898)</b>	<b>17,228,505</b>	<b>13,357,067</b>

**Reconciliation of the Fair Value of Fund Assets – Para 140(a)(i)**

	<b>SASS</b>	<b>SANCS</b>	<b>SSS</b>	<b>Total</b>
	<b>30 June 2016</b>	<b>30 June 2016</b>	<b>30 June 2016</b>	<b>30 June 2016</b>
	<b>to 31 December</b>	<b>to 31 December</b>	<b>to 31 December</b>	<b>to 31 December</b>
	<b>2016</b>	<b>2016</b>	<b>2016</b>	<b>2016</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b>Fair value of Fund assets at beginning of the period</b>	<b>8,314,223</b>	<b>2,930,887</b>	<b>41,101,481</b>	<b>52,346,591</b>
Interest income	81,195	28,359	399,617	509,171
Actual return on Fund assets less Interest income	339,825	114,178	1,571,304	2,025,307
Employer contributions	101,135	21,935	31,840	154,909
Contributions by participants	49,643	0	25,261	74,904
Benefits paid	0	0	(1,096,508)	(1,096,508)
Taxes, premiums & expenses paid	(17,046)	(1,639)	214,221	195,536
Transfers in	0	0	0	0
Contributions to accumulation section	0	0	0	0
Settlements	0	0	0	0
Exchange rate changes	0	0	0	0
<b>Fair value of Fund assets at end of the period</b>	<b>8,868,975</b>	<b>3,093,720</b>	<b>42,247,215</b>	<b>54,209,910</b>

**Crown Solicitor's Office**  
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**23. DEFINED BENEFIT SUPERANNUATION (cont.)**

**Reconciliation of the Defined Benefit Obligation – Para 140(a)(ii)**

	<b>SASS</b>	<b>SANCS</b>	<b>SSS</b>	<b>Total</b>
	<b>30 June 2016</b>	<b>30 June 2016</b>	<b>30 June 2016</b>	<b>30 June 2016</b>
	<b>to 31 December</b>	<b>to 31 December</b>	<b>to 31 December</b>	<b>to 31 December</b>
	<b>2016</b>	<b>2016</b>	<b>2016</b>	<b>2016</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b><i>Present value of defined benefit obligations at beginning of the period</i></b>	<b>6,965,466</b>	<b>1,080,224</b>	<b>68,496,669</b>	<b>76,542,358</b>
Current service cost	131,795	27,944	60,475	220,214
Interest cost	66,702	9,819	671,766	748,287
Contributions by participants	49,643	0	25,261	74,904
Actuarial (gains)/losses arising from changes in demographic assumptions	0	0	0	0
Actuarial (gains)/losses arising from changes in financial assumptions	(232,704)	(66,786)	(7,742,252)	(8,041,743)
Actuarial (gains)/losses arising from liability experience	74,578	3,261	(1,153,910)	(1,076,072)
Benefits paid	0	0	(1,096,508)	(1,096,508)
Taxes, premiums & expenses paid	(17,046)	(1,639)	214,221	195,536
Transfers in/out due to business combinations and disposals	0	0	0	0
Contributions to accumulation section	0	0	0	0
Past service cost	0	0	0	0
Settlements	0	0	0	0
Exchange rate changes	0	0	0	0
<b><i>Present value of defined benefit obligations at end of the period</i></b>	<b>7,038,435</b>	<b>1,052,822</b>	<b>59,475,720</b>	<b>67,566,977</b>

**Reconciliation of the effect of the Asset Ceiling - Para 140(a)(iii)**

	<b>SASS</b>	<b>SANCS</b>	<b>SSS</b>	<b>Total</b>
	<b>30 June 2016</b>	<b>30 June 2016</b>	<b>30 June 2016</b>	<b>30 June 2016</b>
	<b>to 31 December</b>	<b>to 31 December</b>	<b>to 31 December</b>	<b>to 31 December</b>
	<b>2016</b>	<b>2016</b>	<b>2016</b>	<b>2016</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b><i>Adjustment for effect of asset ceiling at beginning of the period</i></b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Interest on the effect of asset ceiling	0	0	0	0
Change in the effect of asset ceiling	0	0	0	0
<b><i>Adjustment for effect of asset ceiling at end of the period</i></b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

The adjustment for the effect of asset ceiling has been determined based on the maximum economic benefit available to the entity in the form of reductions in future employer contributions.

**Crown Solicitor's Office**  
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**23. DEFINED BENEFIT SUPERANNUATION (cont.)**

**Significant Actuarial Assumptions at the Reporting Date - Para 144**

As at	31 December 2016
Discount rate	2.78% pa
Salary increase rate (excluding promotional increases)	2.50% 2016/2017 to 2018/2019; 3.50% 2019/2020 and 2020/2021; 3.00% pa 2021/2022 to 2025/2026; 3.50% pa thereafter
Rate of CPI increase	1.75% 2016/2017; 2.25% 2017/2018; 2.50% pa thereafter
Pensioner mortality	The pensioner mortality assumptions are as per the 2015 Actuarial Investigation of the Pooled Fund. These assumptions are disclosed in the actuarial investigation report available from the trustee's website. The report shows the pension mortality rates for each age.

**Surplus/deficit**

The following is a summary of the 31 December 2016 financial position of the Fund calculated in accordance with AAS 25 "Financial Reporting by Superannuation Plans":

	SASS 31 December 2016 \$	SANCS 31 December 2016 \$	SSS 31 December 2016 \$	Total 31 December 2016 \$
Accrued benefits*	6,614,682	1,159,111	32,981,944	40,755,737
Net market value of Fund assets	(8,868,975)	(3,093,720)	(42,247,215)	(54,209,910)
<b>Net (surplus)/deficit</b>	<b>(2,254,293)</b>	<b>(1,934,609)</b>	<b>(9,265,271)</b>	<b>(13,454,173)</b>

\*There is no allowance for a contribution tax provision within the Accrued Benefits figure for AAS 25. Allowance for contributions tax is made when setting the contribution rates.

**Contribution recommendations**

Recommended contribution rates for the entity are:

	SASS multiple of member contributions	SANCS % member salary	SSS multiple of member contributions
	1.9	2.5%	1.5

**Crown Solicitor's Office**  
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**23. DEFINED BENEFIT SUPERANNUATION (cont.)**

**Economic assumptions**

The economic assumptions adopted for the 30 June 2016 AAS25 *Financial Reporting by Superannuation Plans*:

**Weighted-Average Assumptions**

Expected rate of return on Fund assets backing current pension liabilities	7.4% pa
Expected rate of return on Fund assets backing other liabilities	6.4% pa
Expected salary increase rate (excluding promotional salary increases)	2.7% to 30 June 2019 then 3.2% pa thereafter
Expected rate of CPI increase	2.2% pa

**Profit and Loss Impact**

	<b>SASS</b> 30 June 2016 to 31 December 2016 \$	<b>SANCS</b> 30 June 2016 to 31 December 2016 \$	<b>SSS</b> 30 June 2016 to 31 December 2016 \$	<b>Total</b> 30 June 2016 to 31 December 2016 \$
Current service cost	131,795	27,944	60,475	220,214
Net interest	(14,493)	(18,540)	272,149	239,116
Past service cost	0	0	0	0
(Gains)/Loss on settlement	0	0	0	0
<b>Defined benefit cost</b>	<b>117,303</b>	<b>9,404</b>	<b>332,624</b>	<b>459,330</b>

**Other Comprehensive Income**

	<b>SASS</b> 30 June 2016 to 31 December 2016 \$	<b>SANCS</b> 30 June 2016 to 31 December 2016 \$	<b>SSS</b> 30 June 2016 to 31 December 2016 \$	<b>Total</b> 30 June 2016 to 31 December 2016 \$
Actuarial (gains) losses on liabilities	(158,126)	(63,525)	(8,896,163)	(9,117,814)
Actual return on Fund assets less Interest income	(339,825)	(114,178)	(1,571,304)	(2,025,307)
Change in the effect of asset ceiling	0	0	0	0
<b>Total remeasurement in Other Comprehensive Income</b>	<b>(497,951)</b>	<b>(177,704)</b>	<b>(10,467,467)</b>	<b>(11,143,121)</b>

**24. 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, or disclosure in, these financial statements.

**End of audited financial statements.**

## 11. Appendices

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- Appendix 1 Accounts payment performance
- Appendix 2 Consultants
- Appendix 3 Consumer response
- Appendix 4 Credit card certification
- Appendix 5 Digital information security policy attestation
- Appendix 6 Disability action plan
- Appendix 7 Diversity and multicultural outcomes
- Appendix 8 *Government Information (Public Access) Act 2009*
- Appendix 9 Insurance activities
- Appendix 10 Internal audit and risk management policy attestation
- Appendix 11 Legal change
- Appendix 12 Other – cost to produce report and access
- Appendix 13 Overseas visits by employees and officers
- Appendix 14 *Privacy and Personal Information Protection Act 1998*
- Appendix 15 Public Interest Disclosures
- Appendix 16 Sustainability

## Appendix 1: Accounts payment performance

### Accounts paid within each quarter (excl Department of Justice)

Measure	Sept 16	Dec 16	Mar 16	Jun 17
<b>All suppliers</b>				
No of accounts due for payment	3,047	2,563	2,128	2,887
No of accounts paid on time	2,926	2,434	1,943	2,612
Actual % of accounts paid on time (based on no. of accounts)	96	95	91	90
Dollar amount of accounts due for payment (\$'000)	13,666	13,936	12,929	13,438
Dollar amount of accounts paid on time (\$'000)	13,289	12,564	12,467	12,507
Actual % of accounts paid on time (based on \$)	97	90	96	93
No of payments for interest on overdue accounts	5	6	5	16
Interest paid on overdue accounts	220.27	629.35	279.98	962.31
<b>Small Business Suppliers</b>				
No of accounts due for payment	513	520	390	573
No of accounts paid on time	488	506	367	532
Actual % of accounts paid on time (based on no of accounts)	95	97	94	93
Dollar amount of accounts due for payment (\$'000)	2,333	2,496	1,801	2,621
Dollar amount of accounts paid on time (\$'000)	2,248	2,420	1,740	2,499
Actual % of accounts paid on time (based on \$)	96	97	97	95
No of payments for interest on overdue accounts	5	6	5	16
Interest paid on overdue accounts	220.27	629.35	279.98	962.31

### Aged analysis at the end of each quarter: year ending 30 June 2017

Quarter	Current (i.e. within due date) \$'000	Less than 30 days overdue \$'000	Between 30 and 60 days overdue \$'000	Between 60 and 90 days overdue \$'000	More than 90 days overdue \$'000
<b>All suppliers</b>					
September	3,093	2,830	3,158	5,196	-
December	4,642	2,807	3,067	3,094	11,184
March	3,387	3,043	2,565	10,606	-
June	4,583	-	-	-	-

Note: These balances represent amounts owing to Department of Justice for CSO Payroll and other costs provided under a shared services arrangement. Payment to the Department of Justice was delayed pending receipt of supporting reconciliations. All other creditors are paid in the month that the invoice is received/approved for payment. There were no amounts for small business suppliers.

## Payment of mandatory interest to small business suppliers

The CSO paid interest during the year to declared small business suppliers as advised above. The main reasons for payment delay are misplacement of invoices and/or invoices lost in the post.

## Initiatives to improve payment performance

The CSO continues to support satisfactory payment performance through:

- rollout of Purchasing Cards where appropriate to ensure prompt payment of small value invoices
- use of electronic funds transfer as the preferred method of paying creditors other than by Purchasing Card
- payment of major suppliers by way of consolidated invoicing
- reminding CSO employees of the payment performance requirements and advising all new employees as part of their induction.

The project currently underway to replace the existing Practice Management System will incorporate centralised receipt of supplier invoices and use of electronic workflow for approval of invoices from 1 July 2018. This initiative is expected to deliver the most significant improvement.

## 11.2 Appendix 2: Consultants

Total consultant expenditure in 2016/17 was \$93,870 plus GST.

### Consultant expenditure over \$50,000

Company name	Nature of services	Description	Amount
Julian Midwinter & Associates	Management services	Legal Support Review	\$60,000

### Consultant expenditure under \$50,000

Consultancy category	Amount	Number
Management Services	\$33,870	2

## Appendix 3: Consumer response

The CSO regularly surveys clients through its annual client survey and its bi-monthly end of matter surveys. Feedback and suggestions from clients are followed up with clients and CSO employees, and inform our client service strategies.

The CSO has a formal procedure for handling complaints (from clients or any other person), and this procedure is made known to all CSO employees via the CSO Procedures Manual and the CSO Intranet, and to clients and interested members of the public via the CSO website. A record is kept of all complaints.

There were no significant complaints in this reporting period.

11.4 Appendix 4: Credit card certification

**Credit Card Certification for the year ended 30 June 2017**

As required by with Treasurer's Direction 205.01, I certify that the use of purchasing cards within the Crown Solicitor's Office during the 2016-17 financial year has been in accordance with Premier's Memoranda and Treasurer's Directions.



Lea Armstrong  
**Crown Solicitor**

Date: 31/8/2017

## Appendix 5: Digital information security policy attestation statement

**19 October 2017**

ICT Board  
c/o ICT Policy  
Department of Finance & Services  
2-24 Rawson Place  
SYDNEY NSW 2000

### **Digital Information Security Annual Attestation Statement for the 2016-2017 Financial Year for NSW Crown Solicitor's Office**

I, Lea Armstrong, NSW Crown Solicitor, am of the opinion that Department of Justice, Information Technology Services (our shared service provider) had an Information Security Management System in place during the 2016-2017 financial year that is consistent with the Core Requirements set out in the *NSW Government Digital Information Security Policy*.

The controls in place to mitigate identified risks to the digital information and digital information systems of NSW Crown Solicitor's Office are adequate with the exception of formal disaster recovery plans which are in the process of achieving full compliance following the completion of implementation of full build and testing of the Disaster Recovery environment in the GovDC.

The NSW Crown Solicitor's Office is in the process of implementing systems which will integrate with existing Electronic Document & Records Management System, email system and Microsoft Office for compliance with the NSW Government Information Classification Labelling and Handling Guidelines, and will continue to incorporate these changes into business processes.

There is no agency under the control of the NSW Crown Solicitor's Office which is required to develop an independent ISMS pursuant to the *NSW Government Digital Information Security Policy*.

For purpose of compliance with the *NSW Government Digital Information Security Policy*, the NSW Crown Solicitor's Office has relied on the attestation by the Department of Justice, Information Technology Services that they have maintained certified compliance with AS/NZS ISO/IEC *Information technology - Security techniques - Information security management systems - Requirements* by an Accredited Third Party during the 2016- 2017 financial year.

Yours faithfully



Lea Armstrong  
**Crown Solicitor**

## Appendix 6: Disability inclusion action plan

The CSO is a silver member of the Australian Network on Disability (AND), which allows us to work in partnership with AND, obtain advice on the implementation of accessibility and inclusion, access AND's weekly news bulletin, factsheets and reports, and attend roundtable networking opportunities.

The framework and program schedule for the CSO Disability Inclusion Plan (replacing Disability Action Plans pursuant to the *Disability Inclusion Act 2014*) is currently in development.

The CSO continued to apply the Reasonable Adjustment policy office-wide, and monitor and support managers to ensure that effective reasonable adjustments were implemented and maintained for five cases, three of which were long-term cases.

We maintained a comprehensive training program addressing mental health awareness in the workplace for managers and employees. Robyn Bradey, mental health consultant engaged by the CSO through the NSW Law Society, delivered a range of training sessions, to educate employees on areas including:

- building employee resilience
- managing psychological injury for managers
- change management training
- successful leadership
- Why Zebras Don't Get Ulcers – stress management
- Tough Talk: How to have difficult conversations.

Further support is provided to managers through approved rehabilitation provider, Actevate, who assisted with complex rehabilitation case management and the provision of workplace functional and ergonomic assessments. Actevate also helped with developing sustainable workplace support plans so that managers could effectively implement reasonable adjustments and empower employees to take ownership of their health and/or recovery.

## Appendix 7: Diversity and multicultural outcomes

The CSO continued to be a member of the Department of Justice Equity and Diversity Alliance, and actively promoted:

- an e-learning module developed by members of the Alliance – Valuing Diversity
- flexible working arrangements
- reasonable adjustments in the workplace
- career development opportunities through office-wide expressions of interest.

During the reporting period, CSO celebrated its diverse community through participation in:

- Harmony Day: the CSO held an organisation-wide lunch to support Harmony Day. CSO employees contributed varied and international dishes highlighting the diversity of cultures that make up the CSO.
- National Reconciliation Week: we held a morning tea, featuring speaker, Mr Jason Ardler, General Manager, Aboriginal Affairs, who shared his insights into the reconciliation journey and the work of his agency amongst NSW indigenous communities.

The CSO's diversity framework, under development, will support and deliver on our workforce diversity strategy. Key areas of focus are:

- Indigenous Australians
- cultural and linguistic diversity
- multi-generational workforce
- disability and accessibility.

## Statistical Information on EEO target groups

**Table 1. Trends in the representation of EEO groups (1)**

EEO Group	Benchmark or target	% of Total Employees					
		2012	2013	2014*	2015	2016	2017
Women	50%	N/A	N/A	73.1%	73.8%	73.6%	<b>73.3%</b>
Aboriginal people & Torres Strait Islanders	2.6% (3)	N/A	N/A	1.6%	1.4%	1.1%	<b>0.6%</b>
People whose first language was not English	19%	N/A	N/A	15.2%	15.4%	13.5%	<b>16.6%</b>
People with a disability	N/A (4)	N/A	N/A	2.9%	3.4%	2.63%	<b>2.1%</b>
People with a disability requiring work-related adjustment (5)	1.1% (2011) 1.3% (2012) 1.5% (2013) 1.5% (2015)	N/A	N/A	2.4%	1.1%	1.6%	<b>0.3%</b>

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

Note 2: The NSW Public Sector Aboriginal Employment Strategy 2014 – 17 introduced an aspirational target of 1.8% by 2021 for each of the sector's salary bands. If the aspirational target of 1.8% is achieved in salary bands not currently at or above 1.8%, the cumulative representation of Aboriginal employees in the sector is expected to reach 3.3%.

Note 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.

Note 4: 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 or for People with a Disability Requiring Work-Related Adjustment.

**Table 2. Trends in the distribution of EEO groups <sup>(6)</sup>**

EEO Group	Distribution Index <sup>(2)</sup>						
	Benchmark or target	2012	2013	2014*	2015	2016	2017
Women	100	N/A	N/A	91	92	96	<b>101</b>
Aboriginal people & Torres Strait Islanders	100	N/A	N/A	N/A	N/A	N/A	<b>N/A</b>
People whose first language was not English	100	N/A	N/A	93	86	90	<b>87</b>
People with a disability	100	N/A	N/A	N/A	N/A	N/A	<b>N/A</b>
People with a disability requiring work-related adjustment	100	N/A	N/A	N/A	N/A	N/A	<b>N/A</b>

NOTE: Information for the above tables is provided by the Workforce Information Unit, NSW Public Service Commission.

\*Information only available from 2014 onwards – the CSO was part of the Department of Justice prior to February 2014.

<sup>(1)</sup> Based on employee numbers as at 30 June

<sup>(2)</sup> Excludes casual employees

<sup>(3)</sup> Minimum target by 2016

<sup>(4)</sup> Percent employment levels are reported but a benchmark level has not been set

<sup>(5)</sup> Minimum annual incremental target

<sup>(6)</sup> 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.

## Appendix 8: *Government Information (Public Access) Act 2009*

Under clause 12 of Schedule 3 to the *Government Information (Public Access) Regulation 2009*, made pursuant to clause 6 of Schedule 4 to the *Government Information (Public Access) Act 2009*, the CSO is declared not to be a separate agency but is taken to be part of and included in the Department of Justice. Accordingly, the CSO does not exercise functions in relation to GIPA applications – these are dealt with by the Department of Justice.

### Total number of access applications received during the year

Not applicable.

### Total number of access applications refused, wholly or in part, because of conclusive presumption against disclosure

Not applicable.

### Statistical information

Not applicable.

### Subsidiary agencies

The CSO has no subsidiary agencies.

## Appendix 9: Insurance activities and risk management

Major insurance risks for the CSO are the security of its employees, property and other assets, and the risk of work-related injuries, which may result in workers' compensation insurance claims. Accordingly, the CSO has full workers' compensation, property, liability and miscellaneous insurance cover provided by the Treasury Managed Fund (TMF). The TMF is a government-wide self-insurance scheme that 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.

QBE Insurance manages the CSO's workers' compensation insurance and GIO General Ltd manages the CSO's other insurances. To reduce the number and value of workers' compensation insurance claims, the CSO monitors its claims experience on an ongoing basis, with a focus on occupational health and safety and claims management.

Risk management policies and procedures are also continually being reviewed, with the aim of enhancing the CSO's risk management profile, thereby reducing future premiums.

## Appendix 10: Internal audit and risk management policy attestation

### Internal Audit and Risk Management Attestation Statement for the 2016-2017 Financial Year for the Crown Solicitor's Office

I, Lea Armstrong 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
<b>Risk Management Framework</b>	
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
<b>Internal Audit Function</b>	
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
<b>Audit and Risk Committee</b>	
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

#### Exceptions or Transitional Arrangements

Nil.

#### Membership

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

- Chair, Carolyn Burlew, October 2015 – October 2020
- Independent Member 1, David Antaw, November 2015 – November 2018
- Independent Member 2, Leah Fricke, November 2015 – November 2018
- Independent Member 3, Ralph Kelly, November 2015 – November 2018
- Independent Member 4, John Pearson, March 2016 – March 2019

Lea Armstrong  
Crown Solicitor

*Lea Armstrong*  
28/9/2017

## 11.11 Appendix 11: Legal change

None.

## 11.12 Appendix 12: Other – costs to produce report and access

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

This report may be requested on CD-ROM by contacting: [csomarketing@csso.nsw.gov.au](mailto:csomarketing@csso.nsw.gov.au)

This report can be accessed at the CSO's website — [www.csso.nsw.gov.au](http://www.csso.nsw.gov.au) — under the Policy and Tabled Documents section.

11.13 **Appendix 13: Promotion – overseas visits by employees and officers**

There were no overseas visits by CSO employees during the reporting period.

11.14 **Appendix 14: *Privacy and Personal Information Protection Act 1998***

The CSO is a separate agency for the purposes of the *Privacy and Personal Information Protection Act 1998* ("PIIP Act") (no agencies have been prescribed by regulation for the purposes of s. 4B(1)(a) of the PIIP Act).

The CSO has dealt with 2 privacy internal review applications in compliance with the PIIP Act and has, in both matters, decided not to take any further action (s.53(7)(a)).

## 11.15 Appendix 15: Public Interest Disclosures

There were no Public Interest Disclosures (“PID”) to the CSO in the reporting period.

The CSO has a PID Policy in place. The policy is emailed to all employees, is included in the Staff Manual, and published on both the CSO’s intranet and public website.

## Appendix 16: Sustainability

The CSO is committed to developing and maintaining sustainable practices in its workplace.

In 2016/17, the CSO participated in the Government Resource Efficiency Policy Reporting Working group, which led to development work on the user portal, Centralised Analysis System for Performance of Energy and Resources, CASPER.

The CSO's Sustainability Committee identifies and promotes sustainability targets, and publishes its sustainability credentials and achievements on its intranet and public website.

Sustainability targets are built into the CSO's Business Plan.

The CSO has been part of the NSW Office of Environment and Heritage Sustainability Advantage program since 2011, and a Bronze Partner in the Sustainability Advantage program since 2014.