

**RECEPTION TO MARK THE BICENTENARY OF THE APPOINTMENT
OF THE FIRST SOLICITOR-GENERAL OF TASMANIA
REMARKS BY
HER EXCELLENCY THE HONOURABLE BARBARA BAKER AC
GOVERNOR OF TASMANIA
GOVERNMENT HOUSE, MONDAY 28 APRIL 2025**

VICE-REGAL SALUTE

Good evening, everyone. I warmly welcome you all to Government House.

May I begin by acknowledging the Muwinina people upon whose land we gather. I acknowledge today's Tasmanian Aboriginal Community as ongoing custodians of country. I recognise their enduring culture and deep connection to land, sea, sky, and waters.

I am delighted to host this reception to mark the bicentenary of the appointment of the first Solicitor-General in Tasmania. This occasion presents an opportunity to reflect briefly on the history of the Office and to acknowledge our Tasmanian Solicitors-General.

The Office of Solicitor-General has existed in Tasmania since 1825. In our early Colonial times in Australia, consistent with the practice in the United Kingdom, the Offices of both the Attorney-General and the Solicitor-General were initially political in nature, often filled by members of Parliament. But this was not the case here in Tasmania with the first appointment of Alfred Stephen by Lieutenant-Governor Arthur on 9 May 1825. In July 1824, James Stephen, Alfred's brother, had written to his friend, Lieutenant-Governor Arthur, asking for his good offices towards Alfred. He wrote that Alfred "... has neither thought nor read deeply upon any subject...[is] generally well informed, though not profound in his own profession as a lawyer. I am afraid he is something of a spendthrift..."¹

¹ https://adb.anu.edu.au/biography/stephen-sir-alfred-1291_page1 accessed 16 April 25

Notwithstanding this unflattering introduction, Arthur, who doubted the loyalty of his Attorney-General, Gellibrand, availed himself of Alfred's timely arrival in Van Diemen's Land and duly appointed him S-G.² At the time, there was some controversy regarding Attorney-General Gellibrand and his "habit of drawing pleadings for and accepting fees from both sides."³

Alfred Stephen left the position in 1832, as the salary was insufficient to support his family without income from private practice, and perhaps due to his reputation as "something of a spendthrift".

Most of the other Solicitors-General appointed after 1833 were members of the Legislative Council.⁴ However, in 1863, the Office of S-G was formally made non-political and non-ministerial. Leigh Sealy, in his Solicitor-General Report for 2010–2011, noted that Tasmania was the first Australian colony to establish the Office of Solicitor-General as a non-political and non-ministerial office.⁵ That decision was made in response to the findings of a Royal Commission investigating government finances. As Michael O'Farrell noted in his S-G Report for 2016–2017, "perhaps unsurprisingly, this decision appears to have been based more on financial rather than prudential considerations."⁶

From 1863 the Office was the centre of the legal administration of government until the Attorney-General's Department was created in 1934, assuming responsibility for the administration of legislation. The Solicitor-General's Department then functioned as the Crown Law office, advising and assisting the Executive Council, Ministers, and agencies in legal matters. This position remained unchanged until, for the first time in 1983, the *Solicitor-General Act 1983* established the Office as an independent office under statute.⁷

Sarah Kay, in her Solicitor-General Report for 2021–2022, highlighted the importance of the role when she cited Professor Gabrielle Appleby, who wrote, "the role of Solicitor-General is *central* to the regulation of public power" and

² Ibid, page1.

³Ibid, page 1.

⁴ www.parliament.tas.gov.au/resources/about-parliament/historyindex/members/mlcs1825to1855

⁵ Solicitor-General Report For 2010-2011, page 3.

⁶ Solicitor-General Report for 2016-2017, page 2.

⁷ Ibid, page 3.

“[s]ubject only to a future contrary judicial ruling, the Office provides the final word on significant legal questions within the Executive”⁸

May I, on our behalf, recognise those who have held this Office. All have demonstrated their commitment to excellence, independence, and public service. They have advised on complex legal and constitutional matters, represented Tasmania’s interests in significant proceedings in the High Court, and ensured the observance of the rule of law by advice given to the governments they serve.⁹

In respect of the role of arguing the most significant cases in the High Court, I was provided with an anecdote regarding late Solicitor-General Bill Bale in a case, *Cole v Whitfield*¹⁰, that became part of the so-called “Section 92 Revolution”¹¹.

Mr Bale appeared before the High Court arguing about the compatibility of a Tasmanian fisheries regulation with the freedom of interstate trade guaranteed under section 92. The regulation prohibited taking or possessing crayfish of less than a prescribed minimum size. The matter involved the possession in Tasmania of crayfish imported from South Australia and intended for export. Mr Bale arrived in court with a Tupperware container, holding a crayfish – indistinguishable from a South Australian crayfish of similar size. Mr Bale attributed some weight, no pun intended, to the contribution of his crayfish exhibit to the success of the case, so much so that he returned to Canberra a year later with an abalone to support a Section 90 case. He won that case, too!¹²

On this bicentenary occasion, I acknowledge the contributions of the many Solicitors-General who have served our State with distinction. Each of the 27 office holders (as well as four acting in the office) has brought their unique

⁸ Solicitor-General Report 2021-2022 page 3 citing Gabrielle Appleby, *The Role of the Solicitor-General*, Hart Publishing 2016, pages 7 and 107.

⁹ Solicitor-General Report for 2020-2021 citing Hon Patrick Keane in the Foreword to *Public Sentinels: A Comparative Study of Australian Solicitors-General*, Gabrielle Appleby, Patrick Keyzer, and John Williams (Eds) Ashgate, 2014, page xi

¹⁰ [1988] HCA 18

¹¹ The Hon Stephen Gageler, The Section 92 Revolution, Chapter 1 in *Encounters with Constitutional Interpretation and Legal Education (2018)* James Stellios (ed) The Federation Press.

¹² Gageler, Hon Stephen, The Section 92 Revolution. *Encounters with Constitutional Interpretation and Legal Education (2018)*, Federation Press, pp 26-33

talents and dedication to the role. All have contributed to a proud legacy of leadership and integrity. Since the establishment of the Office of the Solicitor-General, in addition to Bill Bale, may I also acknowledge Leigh Sealy, Michael O'Farrell, and now Sarah Kay, our first female Solicitor-General. I also acknowledge Frank Neasey, who acted as Solicitor-General on two separate occasions.

As we celebrate this bicentenary, may we look forward to the future of this Office.

May I take this opportunity to express our gratitude to everyone who has contributed to the success and continuity of the Office of the Solicitor-General, including colleagues and support staff.

And now, please enjoy this historic bicentenary reception.

Thank you.