Foreword to Legal Opinions Volume 1: 1901-1914

This volume makes publicly available for the first time a collection of past opinions of Commonwealth Attorneys-General, and also some opinions of the Attorney-General's Department. The period covered is from the establishment of the Federal Commonwealth on 1 January 1901 to just before the outbreak of the First World War in August 1914.

The publication of these opinions is not a mere exercise in history or archival research, important though those matters be. Many of the opinions are of continuing legal relevance and value.

Of course, earlier opinions may be subsequently developed or modified, or even overruled. Also, they have to be read in the context of the whole developing legal system, including judicial decisions that may directly affect the rulings they contain. These are salutary and chastening thoughts for any Government legal adviser, but to bring them to mind in no way detracts from the vital role the Attorney-General, and the Solicitor-General and the Attorney-General's Department, perform in a Parliamentary democracy operating under the rule of law. It is their responsibility to act as the legal adviser to the Government and to Government Departments and agencies. The matters dealt with, to mention only a few, include questions of constitutional, international and administrative law, as well as all legal questions arising under Commonwealth legislation.

One cannot peruse the opinions without feeling a strong sense of history and nationhood. They throw light on the early years of the Australian nation—a critical and formative period in our legal and political development.

A report prepared early in 1903 by Robert Garran, the first Secretary to the Attorney-General's Department, at the request of the first Attorney-General, Alfred Deakin, had this to say on the role of the opinions:

The Federal relation involves a most intricate apportionment of constitutional powers and duties between the Commonwealth and State Governments; and in the administration of the Federal Departments, no less than in the drafting of legislative measures, questions of the utmost nicety and importance, of a kind which have never before had to be dealt with in the separate colonies, will continually arise ... A vast mass of American and Canadian authorities bear upon these questions, but the Constitution of the Commonwealth is so different, in principle and details, from the Constitution of the United States, or of the Dominion of Canada, that a code of interpretation for the Australian Constitution must inevitably arise. It is the province of the Attorney-General's Department to advise all the Departments on questions of this kind, and to lay down the lines of a sound and consistent interpretation of Federal rights, responsibilities, and duties.

In many ways, this role is as critical today as it was in those formative years. We today can understand, perhaps better than intervening generations of Australians, the sense of challenge and development that underlies these words.

I welcome the initiatives that have made this volume possible, and compliment the officers of my Department for the work they have done in bringing about its publication.

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Attorney-General of the Commonwealth of Australia