

Interview with Attorney General Brad Hazzard

On 18 June 2014 Arthur Moses SC and Kylie Day interviewed the recently appointed attorney general of New South Wales, at Parliament House.

In April 2014, the Honourable Brad Hazzard MP was appointed attorney general and minister for justice in the NSW Liberal and National Government. His portfolio includes the newly structured Department of Justice, Corrective Services NSW, Legal Aid Commission, Office of the Director of Public Prosecutions, Information and Privacy Commission, Judicial Commission, Solicitor General and Crown Advocate.

Brad was educated at Manly Boys High School, Roan School, London and Macquarie University, where he was awarded a Bachelor of Arts (Science) and a Diploma of Education. He began his professional life as a graduate science teacher at North Sydney Boys High School (1974 – 1975). He studied law at the University of NSW and was admitted as solicitor in 1977. He was a partner in a Manly law firm from 1981 to 1996. In 1984 he was awarded a Master of Laws from the University of Sydney. He practised as a solicitor and arbitrator and entered parliament in 1991 as the state member for Wakehurst, on Sydney's Northern Beaches. In the Fahey Liberal and National Government, he was chairman of the Staysafe Committee, leading campaigns for improved road safety. In opposition (1995-2011), he served continuously on the front bench in more than a dozen portfolios, including as shadow minister for corrective services and community services.

Before his appointment as attorney general in April 2014, Brad served as minister for planning and infrastructure, minister assisting the premier on infrastructure NSW and leader of the house from 2011 to 2014.

Bar News: Tell us a little about your background in the law. We understand that you were a solicitor and partner for 20 years or so.

Attorney General: I have held a practising certificate since 1977. My practice as a solicitor was very varied, but my passion was advocacy. I did a broad cross-section of work, everything from commercial practice, family law, criminal law, conveyancing, arbitration - the usual range of work that you would find in a solicitor's practice.

Bar News: Were you tempted to go to the bar?

Attorney General: Yes, I was. Politics came along before I actually made the decision. I had in mind that at some stage I would like to go to the bar because I enjoyed the advocacy so much.

Bar News: What didn't you enjoy about legal practice?

Attorney General: That's a harder question. There wasn't much about legal practice that I didn't enjoy. The only aspect that might have been a negative was the red tape of bureaucracy that goes into running a law practice, but the essence of legal practice I loved. I enjoy being the attorney general as I am able to work with barristers, solicitors and the judiciary. I have had a smile on my face since my appointment.

Bar News: How important do you regard the ability of an attorney general to communicate with the public on matters pertaining to law and order issues?

Attorney General: The capacity to communicate with the public to maintain confidence in the legal system is critical. It does not just apply to the attorney general. It applies to the members of the judiciary and, indeed, the broader legal



community. We all need to be in this. Sometimes the very foundations of the legal system come under attack from some quarters, and we need to have people who can advocate on behalf of the law and its necessity to our democratic system of government.

Bar News: You have been quoted as saying that there needs to be better communication from the judiciary on why sentences are imposed. How do you think that could be best achieved?

Attorney General: I think we, as lawyers, are trained to use the language of the law, which is often exclusionary of the public. Chief Justice Bathurst is doing an excellent job - through a series of forums, he has been reaching out to the community and media and trying to improve the general understanding of sentencing. I attended one forum (held for members of parliament and the media) and found it very useful. But there is always more to be done. I do not want to be so presumptuous as to suggest that there is a particular way to do it, but I will work with senior members of the judiciary to ascertain if there's any assistance I can offer in their current endeavours.

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Bar News: You have just returned from introducing the *Courts Legislation Amendment (Broadcasting Judgments) Bill 2014* into Parliament this morning. Is that a further step towards engaging the community and building confidence in the legal system?

Attorney General: Most people never see the inside of a courtroom, and so they tend to form their views from the media, including social media. This Bill is another very clear statement that we need to do more to make sure that the community understands what is actually happening in the courts across this state.

Bar News: What has been the biggest challenge for you, in the short time that you have been attorney general?

Attorney General: I think the greatest challenge that I have had, and will have, is not a daily issue but the ongoing task of building confidence in our legal system and ensuring that its inherent value is appreciated, and that the judges, solicitors, and barristers who make up the system, and the various law agencies who support it, actually get recognition for what they are doing.

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Bar News: When *Bar News* interviewed the Commonwealth attorney general last year, he said that '[f]or every Government there are one or more areas of black letter law reform that stand out'. Do you agree with that statement?

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Attorney General: I would have said that if you have a broad vision, which in my case is to rebuild confidence in the legal system, then of course there will be black letter law reform that will flow from that. But, in my personal view, black letter law reform is not the critical issue.

Bar News: Would you agree that an effective attorney general has to straddle both legal and political issues, and be a good politician as well as a good first law officer?

Attorney General: Yes. I think that to achieve what you need to achieve as a first law officer you have to be able to tread carefully across some political issues and pitfalls.

Bar News: No doubt your confidence would come from your very lengthy experience in the New South Wales Parliament, across a broad range of areas and portfolios.

Attorney General: I think it helps. I have to say that three years as the NSW minister for planning and infrastructure is like a baptism of fire. I am finding that being back in the milieu of the law is both comforting and challenging. I am really enjoying it.

Bar News: The new structure of your department has received some comment and criticism. How have you found it working in your present role? Does being the head of a department that encompasses both the former Attorney General's Department as well as policing and emergency services, impose on you a greater workload than previous attorneys general? How do you find that the structure works for you?

Attorney General: I made it very clear as soon as I accepted the job that I understood very well the role of the first Law Officer and I would not be compromised.

How has it played out since I became attorney general? Very well, actually. Technically, my role has been reorganised so I am now the Senior Minister of the cluster which includes attorney general, Police and Emergency Services and Corrective Services. However, I don't see that as being a particular plus or minus because Stuart Ayres is the minister for police. He is a very good professional colleague and friend and we have a good working relationship. That is critical because when we say that we need to build confidence in our legal system, lawyers tend to look at it from the perspective of just the court system. I am looking at it from a broader perspective and saying that we need to build confidence across a number of agencies.

Bar News: One of the controversial issues in your predecessor's time was mandatory sentencing. What is your view on mandatory sentencing?

Attorney General: Any lawyer would be concerned about removing judicial discretion. As a starting principle, that is from where I come. However, I am also comfortable that there is, on occasion, the need for a government to make a very clear statement about where that government sees a problem to lie, with a view to making a significant cultural change. That is the case with the 'one punch' laws, but overall, my view is that judicial discretion is critical.

Bar News: What do you think the best method is for consultation in relation to judicial appointments?

Attorney General: The current system that operates in New South Wales is sensible. It varies slightly as between the Supreme Court, the District Court and the Local Court. The panel that operates in the District Court seems to be working well, as does the advertising of positions in the Local Court and the panel there that makes recommendations to the attorney general. I am certainly not going to be leaping in to making any decisions that would be contrary to the wise counsel that comes from the profession and the judiciary.

Bar News: One issue that the Bar Association is looking at currently is the issue of direct briefing. Many corporations are realising that their inhouse counsel can brief barristers directly, and that this can be an effective way of reducing costs in appropriate cases. Is direct briefing of the bar something that government departments could or should use more to contain their legal costs?

Attorney General: Anything that sensibly reduces the government's legal costs should be looked at. I would want to consider it in more detail and discuss it further with the legal profession, before I made any decision about it.

Bar News: From time to time, concerns have been voiced that an increasing number of unrepresented litigants leads to increases in the time and cost of litigation generally (including for other parties and the court). Do you have any thoughts on where the answer might lie?

Attorney General: I think you need the wisdom of Solomon. Anyone who has conducted a hearing, with an unrepresented litigant would know the challenge of trying to make sure that they are fairly dealt with, but also that everybody else is fairly dealt with.

Bar News: The Productivity Commission is currently looking at potential reforms to the legal system. The NSW Bar Association

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made a submission to the effect that a cost benefit analysis should be undertaken to see whether the reduction in legal aid funding for civil cases actually leads to more unrepresented litigants and hence increases costs (by increasing the time in court and the costs of opposing parties). What do you think about that?

Attorney General: In a perfect world, people should be legally represented (if they choose to be) when they come into the court system. If they don't have the money to engage a lawyer, then theoretically the system should find some way to do it. Practically, that would require almost a bottomless pit and that is where my political skills may be tested. The public purpose fund has, in my view, opportunities for very good cost benefit outcomes through, for example, community legal centres. They are critical to providing opportunities for access to justice across New South Wales, and if we can find a new source of funding for them then that would be very significant. That is one of my priorities. I am exploring further opportunities for funding at the moment, but I would welcome any input from the legal profession.

Bar News: The Productivity Commission is also looking at the issue of making justice accessible to people who are sometimes called the 'unfunded middle' or 'missing middle'. They are the ones who do not qualify for legal aid, but are not wealthy enough to fund litigation. The commission has floated suggestions such as properly regulated litigation funding and contingency fees in some matters, to facilitate legal representation being more affordable and accessible, coupled with regulation to avoid abuse. If the commission made recommendations along the lines of those suggestions, what would you do?

Attorney General: I would look at anything the Productivity Commission recommends, but I would certainly want to explore further, with experts on those matters, whether such initiatives are likely to be effective.

Bar News: Do you get time to read for pleasure and, if so, what have you been reading?

Attorney General: I recently read *The Book Thief*, which I really enjoyed. Now, I am getting into fiction by the Australian author, Matt Reilly. Beside my bed are *The Tournament, Ice Station and Hell Island*.

Bar News: What did you think of the opening to *The Book Thief*? [Ed, spoiler alert below]

Personally, I feel very strongly opposed to any change to section 18C. I can see no justification for anybody to do the kinds of things that it prohibits.

Attorney General: It took a little while for me to wake up to the fact that it was ‘Death’ speaking. I was taking a judicial and considered approach, and did not want to draw any conclusions until all the evidence was in. Some years ago I visited Germany, including places that are settings in the book. It’s a great book.

Bar News: The Australian Government wants to repeal parts of the *Racial Discrimination Act 1975* (Cth), including section 18C, which currently makes it illegal to publicly offend, insult, humiliate or intimidate a person or group of people. The plan to repeal section 18C has been widely criticised. The previous premier, Barry O’Farrell, was opposed to the amendments. Does the new Premier maintain that opposition?

Attorney General: It is always a challenge when the Australian Government puts a policy position with which a state government, of whatever political persuasion, cannot agree.

Whilst I respect my federal colleagues, on this particular issue, no, the New South Wales Government does not agree. I have made that point on a number of occasions. Personally, I feel very strongly opposed to any change to section 18C. I can see no justification for anybody to do the kinds of things that it prohibits.

Bar News: The Bar Association is currently preparing a response to the Law Council of Australia’s ‘National Attrition and Re-engagement Study (NARS) Report’, which looked at the attrition of women from the legal profession in Australia. Do you have any particular thoughts on that topic?

Attorney General: It was obvious to me at the 2014 Bench and Bar dinner that there is a significant cohort of women now coming to the bar. It is critical for the bar to investigate and address the issues surrounding the attrition and retention of its female members. I think it is a critical issue for the legal profession generally, and probably for any profession in modern times. I will be very interested in the response of the Bar Association to the NARS Report, and in its efforts on the issue more generally. I would be happy to continue the discussion and assist in any way that I can.



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