

### Attorney General Mark Speakman SC MP

Talitha Fishburn, Caroline Dobraszczyk and Arthur Moses SC recently spoke with the Hon Mark Speakman SC MP who was appointed as attorney general of New South Wales in January 2017.



**Bar News:** The 'Strategic Plan' of the Department of Justice for 2015–19 refers to 'Court and Tribunal Modernisation' as being a key priority. What are some of the key aspects of this strategy, including for 2017?

**Attorney General:** The government's main focus for court and tribunal modernisation is not so much a matter of 'hardware', but cutting court delays, especially in the District Court. At the moment, a criminal matter in a District Court takes on average close to 350 days to come on for trial after committal. That's clearly unsatisfactory from a timing and resources perspective. The Productivity Commission has a target that no more than 10 per cent of matters should be more than 12 months old.

In addition, we're examining Law Reform Commission reports dealing with sentencing, parole (for instance, greater use of appropriate intensive correction orders) and the entry of appropriate early guilty pleas. I anticipate we'll determine our responses to these reports in the coming months. We hope that alleviation of court delays will be among the benefits from our responses to these reports.

**Bar News:** What do you see as some of the major areas for criminal justice law reform in the immediate future?

**Attorney General:** I don't contemplate any immediate widespread changes in substantive criminal law, for example, any widespread amendment or expansion on the definitions of certain offences.

However, as I mentioned, we're considering a range of procedural reforms for the criminal justice system. A stand out area of this procedural reform is to address the delays in the court system, in particular the prosecution of criminal matters in the District Courts.

One procedural reform we're examining is encouraging offenders to enter appropriate guilty pleas earlier, in order to help reduce

court backlogs. At the moment, approximately one third of guilty pleas are entered 'late', that is, after committal. Of these 'late' pleas, about two thirds occur on the day of trial. Around 63 per cent of the guilty pleas made are to charges that are different from the original charge.

In the Local Courts, approximately 98 per cent of matters are disposed of within the year. It is a far speedier jurisdiction than the District Court.

I don't anticipate further significant change to bail laws in New South Wales in the near future. The tightening of bail laws has contributed to significantly more people being held on remand. However, given community expectations that bail laws be tight in the interests of public safety, we're looking at addressing the consequent demands on our court and prison systems in ways other than by relaxing bail laws.

**Bar News:** You have referred to a 'funding cliff' in the decrease of funding available for community legal centres in New South Wales. What are your thoughts on this?

**Attorney General:** The Australian Government has announced funding cuts to community legal centres from 1 July 2017. In New South Wales, this amounts to a decrease of about \$2.9 million of funding per annum. We're imploring the federal government to reverse these cuts. Community legal centres are a fabulous resource and they do a great job for our community. They're a means of access to justice for our community. Also, from an economic perspective, they're a means of ultimately saving time and money by allowing people the opportunity to deal affordably with their disputes in a practical and professional manner upfront.

**Bar News:** Do you see a nexus between the reduction in the entry of early guilty pleas and the decrease in funding for community legal centres?

**Attorney General:** Yes. If there is a systemic reduction in access to legal representation in the criminal justice system, it follows that other things being equal there'll be a lower likelihood of pleas being entered early.

**Bar News:** Do you consider that the current level of legal aid funding in criminal and civil matters is adequate?

**Attorney General:** No, it's not enough. It's a serious issue. But governments have to budget competing priorities. From my perspective, the more we can spend on legal aid the better. Aside from any altruistic commitment to fairness and justice, which of course is valid in itself, there's a compelling business case for increasing legal aid funding in order to reduce other costs. Often with government deploying such a business case, with a quantified cost-benefit analysis, is the most persuasive way to

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achieve an outcome when competing with other prospective budget measures.

**Bar News:** There have been some recent judicial comments about the delays in the preparation and hearing of certain native title cases in which the State of New South Wales is involved as a party. Can you explain some of the options that you propose to address some of these delays?

**Attorney General:** It's on my list of things to do. I've already had some exposure to examples of some delay in the preparation of these cases in my previous role as the Environment Minister. Some of the cases involve claims which are more than a decade in duration. There's often a flurry of activity towards the end of the litigation. I'd like these matters to be dealt with as expeditiously as possible and we need to be on the front foot to achieve more timely outcomes.

**Bar News:** Do you have any plans for addressing the high rates of Aboriginal imprisonment in NSW?

**Attorney General:** This is a significant issue of concern and a priority. However, it's not only an issue for our courts and prison systems. It's a matter arising from systemic social disadvantage, which needs to be addressed holistically across various government departments.

**Bar News:** The rates of Aboriginal incarceration are alarmingly high, and higher than they were at the time of the Royal Commission into Aboriginal Deaths in Custody. Are there any specific laws being reviewed in order to avoid or minimise the high incidence of Aboriginal incarceration in our state?

**Attorney General:** Yes. An example is driver disqualification offences. There's a possibility of changing the way these offences are dealt with in order to reduce the high rates of Aboriginal incarceration.

We'll be reviewing a broad range of issues that tend to result in disproportionate Aboriginal incarceration. The primary issue is social disadvantage, which requires addressing with a whole of government approach.

**Bar News:** What are your thoughts on the Equitable Briefing Policy?

**Attorney General:** The government currently has an equitable briefing policy which dates back to 2008. I'm currently being briefed on the policy more recently promulgated by the Law Council of Australia. I'm closely reviewing this new policy. We intend to make a decision about it within the coming months. In the meantime, we're most certainly committed to our current equitable briefing policy.

**Bar News:** There have been comments made in the media

and elsewhere about the desirability of ethnic diversity being reflected in the composition of the judiciary. Is this government committed to increasing ethnic diversity on the bench and what are your views on this?

**Attorney General:** I'm committed to achieving greater diversity, both in ethnicity and in other respects such as gender. Many ethnic groups are still underrepresented in the legal profession and this is an area for reform. It's desirable that the composition of the judiciary broadly reflects the diversity of the population. I'll continue to make or recommend appointments on merit. My preferred way to increase diversity on the bench is to increase diversity in the profession as a whole, including from the point of entry for law graduates. This might be a gradual approach, but it should in time result in a widespread and effective increase in diversity.

**Bar News:** Do you have any comments about the structural changes in the Department of Justice and the restoration of the seniority of the role of attorney general?

**Attorney General:** The changes are more about perception than reality. The Department of Justice operates as a cluster of which I'm the head. My independence is not compromised. Nor did the previous structure compromise the independence of my predecessor. The advantage of having an integrated department is that justice issues can be addressed holistically. For example, issues like reoffending traverse several portfolios within the Department of Justice: it's more effective for an integrated department, rather than a collection of silos, to deal with issues like this.

**Bar News:** What do you want to achieve as attorney general?

**Attorney General:** I hope my term of office as attorney general will extend at least until the next election, if not beyond. However, one thing you can be certain of about any political career is that it will end and it's likely to end at the time of someone else's choosing. So I want to seize every opportunity I can and to do as much as I can within what will be the limited time available to me. My key priorities include reducing court delays, reducing rates of reoffending and reducing repeat domestic violence rates.