

# AG — A TIME FOR HEALING AND MUTUAL RESPECT

Rebuilding a positive relationship between Government and the legal community is a key priority for newly appointed Attorney-General Dr Peter Toyne. In his first interview with *Balance* Dr Toyne discussed his role as first law officer of the Northern Territory and spoke of his Government's plans for legislative change and legal service provision in Labor's first term in office.

In comments welcomed by Law Society President Mr Ian Morris, Dr Toyne signalled a commitment to a relationship based on mutual respect and open, regular dialogue between the Government, the Law Society and legal community.

Dr Toyne also reiterated the ALP's commitment to repeal mandatory sentencing and to introduce Freedom of Information legislation.

"I think you could say there has been a very uneasy relationship between the previous two Attorney-Generals and the legal community," said Dr Toyne. "I see myself very much in a healing role in that I want to restore the traditional separation of powers arrangements that should exist between the parliament, politicians and the legal community as regards their respective roles in our community."

A critical objective the Attorney will pursue is the removal of political interference from Territory courts and legal community processes.

"Separation of powers requires mutual respect between the parliamentary system and the legal system. Our Government is intending to very carefully guard that boundary line and make sure we are not intruding where we shouldn't be. What I'd ask of the Society and the law community in general is to take the same sort of care," said Dr Toyne.

The Attorney-General will adopt a return to convention in the appointment of Queens Counsel as an early example of his Government's new approach.

"I have indicated to the Bar Association and Chief Justice that I will be following the convention in the appointment of Queens Counsel this current round. Beyond the current round I will revisit the protocols and working arrangements to make sure that political interference is out of the process regardless of who is in the role of Attorney-General," he said.

When asked if he has plans to follow the lead of NSW in abolishing the title Queens Counsel and replacing it with Senior Counsel, Dr Toyne said he would leave that decision to the legal community to make.

"I don't care about the name personally, as long as people know what those positions are there to do: to provide a senior level of skill. I can see a situation where both names are used along side each other. The Bar Association isn't fussed about which name is used, in fact they are quite happy to see both names used together. I think it is far more important to deal with the previous interference with the process of appointments and to worry about the name later."

In Labor's time in Opposition, and throughout their election campaign, a raft of promises were made regarding items of legislation to be either introduced or repealed if they won Government. Legislation soon due to be tabled includes the long awaited and much touted Freedom of Information bill.

"The Freedom of Information bill is already in the final stages of preparation and will be tabled in the October sittings as a discussion draft. I am very excited about it. It is a very wide ranging bill and will be a very strong FOI Act once it is in operation. I think people in the Territory are going to have the best protection in Australia," said Dr Toyne.

"The bill handles the issue of FOI itself, but it also embodies the protection of privacy of individuals and new arrangements for the use or non-use of information that has been gathered by

governments on databases so that it puts constraints on those for commercial purposes.

"Everyone is going to have a chance to look at the discussion draft and I'm sure we will get plenty of comments and fine tuning on the draft which I welcome. We are not intending to put the bill through till the February sittings. We will need to get the government agencies lead time to prepare their archiving arrangements and their record keeping so we can actually fulfil the provisions of the Act," he said.

"I would say there will be fully fledged FOI operating in the Territory certainly by the end of next year," said Dr Toyne.

Other controversial laws that have been the focus of public criticism and debate include the Public Order and Anti Social Conduct Act and mandatory life imprisonment for murder will be reviewed by the Government and possibly repealed.

"We will be looking very closely at the Public Order and Anti Social Conduct Act early next year. While we were still in Opposition we said that we are opposed to the public places area of that Act. We will probably take the course of repealing the entire Act and then replacing it to give police greater capacity to tackle houses that are involved in the manufacture and dealing of drugs. It would be more like drugs legislation rather than the broader sense of public anti social behaviour. That will probably be early next year," said Dr Toyne.

"We've got to review mandatory life imprisonment for murder because a lot of prisoners are coming up to, and beyond, their point at which the Act says some consideration can be given to parole. I think Cabinet has got to sit down and work through the issues with advice. We will certainly be coming up with a position on it," he said.

In an interview with the *Financial Review* (31/08/01) shortly after his appointment as Attorney-General Dr Toyne described the circumstances of

the people who come before the courts in the Territory as varying so much "it is almost like there are two different planets involved here". Dr Toyne has learnt this first hand from spending over a decade in remote communities in the Territory such as Yuendumu and Utopia. He argues that a wholistic approach is necessary to tackle law and order issues in remote communities, and is encouraged by the development of law and justice groups as a model for blending customary and western law.

"There is absolutely no point in having a specific activity aimed at something like petrol sniffing or alcohol abuse if you don't work on health, education, employment and the general functionality of the community: these things come about because of poverty, because of lack of activities in the remote communities; because of lack of coherent support. The dollar value of what goes out bush is not the main problem. The key thing is not so much the quantum of money but the effectiveness of the management and coordination of resources for the benefit of communities," said Dr Toyne.

"Tackling law and order issues in remote communities is a challenge. What I have seen, particularly at Alicurung and Lajamanu, is the emergence of law and justice groups to meet that challenge. I'm very excited by that as a structure for bringing both customary law and western law into some relationship locality by locality," he said.

"It would be very difficult to bring the authorities of customary law to bear in a generic way as it is very much a function of the senior people in the communities as to how they choose to express their customary law powers. The idea that's embodied in law and justice groups — of aligning the government inputs in the various forms, including the justice provisions, along with the authorities of the community — is definitely the most productive way to bring western law and customary into some harmony. The results speak for themselves: at Alicurung the levels of truancy from school, vandalism of houses and other buildings, violent crimes against community members have all dropped away dramatically because of the law and justice program. That model has benefits for all remote communities."

The Attorney's experience working in Aboriginal communities has strengthened his commitment to repealing mandatory sentencing legislation and his support for diversionary programs and the Aboriginal Interpreter Service.

Reinstating discretion in the courts is a clear priority of the new Labor Government, but details about exactly what new model will replace mandatory sentencing are still to be confirmed. Whatever the final outcome, Dr Toyne is eager to ensure there is no loss of the diversionary programs that were funded by the Commonwealth under the modification of mandatory sentencing arrangements.

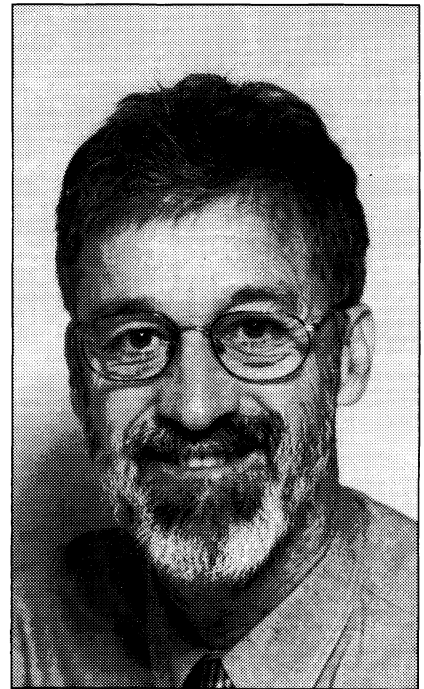
"We have sought assurances from John Howard's office that the \$20 million project will continue for the next three years. We are also looking at other things such as diversionary programs for substance abusers as additional ways which we can use that sort of structure," said Dr Toyne.

"We will also be urging the Federal government to maintain their funding for the Aboriginal Interpreter Service. We were delighted when the Service was finally established by the previous Government. I believe the service is an absolutely essential part of not only our offender support but our victim support doing court cases and other parts of the justice processes. It would be absolutely unconscionable to have the service dropped at the end of the current funding arrangement," he said.

The Attorney has indicated he will meet with the Chief Justice and other judges of the Supreme Court to discuss issues regarding the operation of the court. His government has no plans to replace the vacancy left by the departure of Justice Kearney in 2000.

"My understanding is that we should have six Supreme Court judges and we have got six Supreme Court judges. We can bring in temporary appointed judges to clear case loads if they are building up but I'm not aware of any problems at the moment with case loads or any long lag times. I think that is what would trigger a revision of the current provision of six judges," he said.

Interstate governments have recently given consideration to the



*Dr Peter Toyne, Attorney-General*

establishment of a judicial commission to deal with complaints against judges and magistrates. Dr Toyne has concerns about the costs involved in setting up a similar body in the Territory.

"I've got to wonder whether we could afford to have such a substantial body. Our Government is aware of the issue of dealing with complaints against judges and magistrates and we will try to give legislative clarity to the processes by which those complaints are dealt with and try to get arrangements where they can be dealt with in a timely and quick fashion," he said.

In his first three weeks in office Dr Toyne made time to meet Law Society representatives on three separate occasions. The Attorney has expressed an undertaking to consult the Law Society on legal matters and issues.

"I think the Law Society is a really key part of the legal community and I will draw a lot of my references from their opinions. I hope that I will always feel comfortable attending Law Society functions and I will seek regular contact with the Law Society of the day. I'll continue to consult the Law Society, get advice on decisions I'm making on operational matters and pass round legislation that effects the legal community. I look forward to that relationship."