

On August 18 the ALP celebrated its first anniversary as government of the Northern Territory. Its historic win saw the end of 20 plus years of CLP rule. *Balance* asked the Attorney-General Peter Toyne and Shadow Attorney Peter Maley to reflect on the past year in Territory politics and justice issues.

Law reform a hallmark

By Hon Dr Peter Toyne, Attorney-General,
Minister for Justice and MLA for Stuart

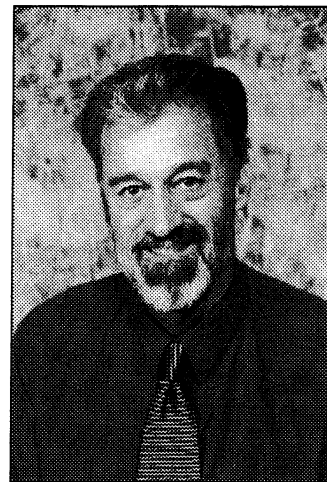
An extensive program of targeted law reform has been a hallmark of the first 12 months of the Territory's Labor Government.

As one of my first acts as Attorney-General, I was proud to put through the Bill which abolished mandatory sentencing. The removal of judicial sentencing discretion saw people locked up for extremely trivial offences, sometimes with distressing consequences. Judicial discretion is paramount in maintaining separation of powers and this doctrine is one I advocate and respect as Attorney-General.

Soon after we were elected, work started on reviewing provisions on unfitness to stand trial. The Mental Impairment and Unfitness to be Tried Bill passed in the May sittings and also reformed the law of insanity. The

Ebatarinja case in Central Australia highlighted the deficiencies in the law with Mr Ebatarinja allegedly committing several serious assaults after being found unfit to stand trial on a murder charge in 1995. Based on model provisions developed in the mid-nineties, the reforms were long overdue and bring the Territory into line with other jurisdictions around Australia.

The drugs legislative package also passed in the May sittings implements the first part of the Government's three point plan on drugs. New drug house legislation and reforms to criminal forfeiture legislation and witness protection provisions will complement



the introduction of drug courts, additional treatment and rehabilitation resources and drug prevention programs.

The Government also moved quickly to implement its commitment to freedom of information. A draft Information Bill led to extensive public consultation and information sessions.

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Lessons in politics

By Peter Maley, Shadow Attorney-General and
MLA for Goyder

For the 10 years prior to my election to parliament I was a practising lawyer in Darwin. I dealt with reality and complied with a client's instructions without fear or favour.

In the past 12 months I have discovered that in politics perception is just as important as reality and that the client base has grown enormously.

In fact they are no longer clients but voters - the ultimate master of any member of parliament.

Coming from a law career that deals with facts and laws, the actuality of politics is that "facts" has a somewhat looser definition and the laws are more akin to lore.

Entering parliament at the same time as a new government has meant much more conflict than one would expect in the legislative process.

Because we had a succession of CLP governments, we witnessed a gradual law-making process; but the new Labor Government has its own agenda which includes repealing laws that they opposed in the past.

The major issues in that respect have been the overturning of the mandatory sentencing regime and the *Public Order and Anti-Social Conduct Act* and their replacement with the drug house laws and changes to the *Sentencing Act*.

I argued in parliament that in many cases the law already existed to cover these matters and that's when I learnt another lesson about the differences



between politics and the law: laws are not necessarily made to benefit the commonwealth but often are more aimed at benefiting the public image of their proponents.

However, those controversial issues aside, much of the legislation that passes through the parliament enjoys genuine bipartisan support, so much

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cover story

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The Bill, which has now been introduced, has been amended in response to public comments and takes the best from a number of legislative schemes. Unique to Australia, it combines a freedom of information regime with provisions which protect personal privacy to ensure a coherent approach. This Bill will see Territorians finally have the right, enjoyed in all other jurisdictions for a number of years, to access government information.

The impact of the justice system on indigenous Territorians is another area I am working hard to address. The high number of indigenous people incarcerated in the Territory must be reduced and we will be looking at ways to involve indigenous knowledge and practices into the justice system.

The *Fines and Penalties Act* reformed fine enforcement procedures by ensuring imprisonment was a sanction

of last resort. The previous system impacted unfairly on many indigenous Territorians who were unable to pay fines and with many incarcerated for trivial default matters. Since the introduction of the Act in January fine default imprisonments have fallen from 294 in March 1999 to two in June 2002.

On the corrections side, Integrated Offender Management has been trialed and is showing positive results. It uses targeted programs for individual offenders from the pre-sentence stage right through to the pre-release process, to encourage rehabilitation, avoid re-offending, and assist reintegration into the community.

The year has brought considerable and welcome change, but there is still more to come for law reform in the Territory. I welcome approaches from the legal fraternity and open the doors to briefings on upcoming justice initiatives. ①

Some Future Martin Government Initiatives:

- New legislation to protect whistleblowers
- Drug Courts
- Community Justice Centres
- Juvenile Justice Act review
- Magistrates Act review
- Prisons (Correctional Services) Act review
- Release of comprehensive and accurate crime statistics
- Continuing work on strategies to reduce over-representation of indigenous people in the justice system, including signing the 1997 Communiqué from the Ministerial Summit on Indigenous Deaths in Custody

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so that many of the Bills brought in by the Government in their first 12 months were developed under the previous Government.

Before ending I should comment on the controversy I find myself embroiled in as I write this.

I have decided to retain my practising certificate in order to be able to offer my legal expertise in those very limited circumstances where I can at least proffer initial advice either to residents of my electorate or community groups etc.

It is not my intention to act in any way as a full time practising solicitor or seek personal recompense in any way, because my first duty is to be a member of parliament and represent the people of Goyder, but nothing precludes me from using my qualifications and experience to help Territorians when I can.

Unfortunately, the government via the Deputy Chief Minister seems determined to make political capital

out of this and stop me even to the extent of suggesting that a lawyer's advice to a client is interference with a police investigation.

Putting aside for the moment my personal involvement, I find it abhorrent that he requires police to report to him on contact between a lawyer and a client via the police.

I am also concerned that the Government seems to take the view that a lawyer is tainted by the clients he represents and the charges they face.

I believe this controversy has raised valid questions for our profession to address.

Finally let me say that as both Shadow Attorney and as a member of our profession, I would be happy to hear from any in the profession who feel there are issues that should be articulated in the Legislative Assembly.

I am always available – as I've learned a politician must be – on 89833477 or via email at electorate.goyder@nt.gov.au. ①

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