

A rather busy first 100 days

By Attorney General Greg Smith SC

In the first 16 days of the 55th Parliament of New South Wales, the government introduced 23 pieces of legislation.

Seven were from the portfolio of Attorney General and Justice. They ranged from a revamp of directors duties to shield laws for journalists and steps aimed at combating the menace of graffiti.

My office was also called to scrutinise other pieces of legislation and provide advice on others. We ordered a major review of the Bail Act, expanded one of the more successful diversionary programmes in the justice system – work development orders – and started convincing people that the success or failure of the justice system should not be judged purely on how many people are locked up by the state.

Then there was the task of finding new people for arguably the two most important roles in the administration of justice in New South Wales – the director of public prosecutions and the chief justice. The government settled on two members of the bar - Crown Advocate Lloyd Babb to be DPP; and the then president, Tom Bathurst QC.

So, it's been a rather busy first 100 days.

When I was last invited to write for Bar News, it was from Opposition. The headline – 'Hard line for dangerous criminals, but what about the rest?' – accurately reflected my concerns about the NSW justice system.

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More people were being sent to prison for low to medium criminality, which might have satisfied the headline writers but did little for what were already the worst recidivism rates in the country.

It would surprise no-one that I enjoy being in government far more than opposition. Rather than complaining things should be done, you can ensure things get done.



Attorney-General Greg Smith (centre) attends the government's first cabinet meeting at Parliament House, Sydney, Monday, April 4, 2011. (AAP Image/Dean Lewins)

I would like to focus on the review of the Bail Act and Work Development Orders.

The importance of the Bail Act review was underlined by the fact the premier joined me for the announcement. It will be carried out by the former Supreme Court judge Hal Sperling QC - a member of the Law reform Commission.

The Act had been amended 17 times since it was introduced 33 years ago and has become a jumble of words that are difficult to read and understand.

A change in 2007, which allowed only one bail application unless there was a 'change in circumstances', had a dramatic effect on juveniles. In 2006, there were 3623 minors admitted to remand, but in 2008 this figure jumped to 5082.

Another change in 2009 made it slightly easier to make another bail application but contained no special provision for juveniles. Currently, only 20 per cent of those on remand end up with a sentence of detention.

Quite frankly, the Bail Act has moved away from the spirit and intent of the original legislation. This was to ensure attendance at a hearing or trial, to stop defendants from committing further offences and to prevent interference with witnesses.

While protection of the public is an important factor,

merely being charged should not mean that you end up in jail. We were getting away from a fundamental tenet of the law – the presumption of innocence.

Mr Sperling must report by November, and it is to be hoped the new legislation will be in place before the end of the year.

For a program that might be perceived in some quarters as ‘soft on crime’, the expanded regime of Work Development Orders also received very good reviews.

WDOs began as a pilot under the previous government and give the very disadvantaged a chance to clear their fines by engaging in unpaid work or educational programmes.

It now involves more than 220 organisations and health professionals, such as Mission Australia, Anglicare, the Matthew Talbot Hostel, Schizophrenia Fellowship and Youth Off The Streets.

At April 30, more than 700 people had been issued with WDOs and reduced \$294,000 worth of their fine debt. A further \$1,933,755 worth of fine debt is now under management through WDOs. The most pleasing statistic was that more than 80 per cent of participants had no further fines or penalties referred for enforcement.

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The trial was open to the homeless, people with a mental illness, people with an intellectual or cognitive impairment and people experiencing acute financial hardship. It will now be accessible to people with serious addictions to alcohol, illicit drugs and other volatile substances.

Drug and alcohol abuse is often closely linked to criminal behaviour and helping people overcome their addictions can only have major benefits to the community.



AG Smith SC speaks on behalf of the bar at the swearing-in of Chief Justice Bathurst. Photo: Supreme Court of NSW.

In the Spring session of parliament, the pace will not slacken. I expect the government will be able to make some important announcements regarding those with mental illnesses – a major challenge for our justice system. Everything possible should be done to directing people with mental health problems out of the criminal justice system.

I look forward to keeping you informed about the government’s plans and would welcome your feedback at office@smith.minister.nsw.gov.au

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