



New South Wales
Council for
Civil Liberties

NSW Council for Civil Liberties Inc.

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The Hon. Mike Baird MP

Premier NSW

Level 40 Governor Macquarie Tower

1 Farrer Place

SYDNEY NSW 2000

By email: diary@premier.nsw.gov.au

Dear Premier

ADMINISTRATIVE CHANGES AFFECTING THE ATTORNEY GENERAL JUSTICE AND POLICE MINISTRIES

The NSW Council for Civil Liberties (NSWCCL) would like to congratulate you on your appointment as Premier of NSW. We look forward to a fruitful and open relationship with you and your Ministers.

We are writing in relation to recently announced changes to the Departments of the Attorney General and Justice and Police and Emergency Services and the relationship between the Attorney General and the Minister for Police and Emergency Services.

The problem

These changes created a Police and Justice Cluster with the Police and Emergency Services Minister as the senior coordinating Minister. It named the coordinating department in that cluster as the Department of Police and Justice.

These administrative changes have radical implications. They subordinate the Attorney General to the Minister for Police and Emergency Services, thereby compromising the independence of the Attorney General and Minister for Justice and the agencies in his portfolio (including the judiciary) and giving the Police Minister inappropriate and adversely perceived influence over the administration of justice in NSW.

There was an immediate outpouring of concern from our members, former attorneys general, current and former members of the judiciary and senior public servants, the Law Society of NSW, the NSW Bar Association, community legal centres, solicitors, barristers and members of the public. Their concerns were accurately reflected in the Sydney Morning Herald headline of 25 April 2014: 'Fears Hazzard will be under thumb of the Police Minister'.

NSWCCL was profoundly concerned by this subordination of the Attorney General's role to that of another Minister - and especially the Minister responsible for Police.

The position of the Attorney General and Minister for Justice is pivotal to the administration of justice and the rule of law in a democracy. The position must be independent and, in the interest of public confidence in the administration of justice and the rule of law, must be clearly seen to be independent. This was perceived as not intended to be the case under the changed arrangements.

Alleviation of the problem

NSWCCL shared the widespread relief when further ministerial changes brought about by the unexpected resignation of Police Minister Michael Gallacher apparently led to a reversal of this status and the elevation of the Attorney General to the senior role of co-ordinating minister within the cluster.

However neither the cluster nor the department have been renamed to reflect this reversal of status. Furthermore, there is no guarantee that this is not a temporary measure that might be altered again.

There was no detailed explanation for the initial decision to subordinate the Attorney General to the Police Minister- beyond a general indication of increased efficiency resulting from the clusters. We are left to presume that the intention was either to privilege the Police Minister and therefore the views of the police agencies over the Attorney General and justice agencies as a matter of policy - or that the decision was driven by personnel matters unrelated to policy or principle.

Nor has there been any statement of principle in relation to this most recent reversal of status between the Attorney General and the Police Minister.

NSWCCL is concerned that the re-elevation of the Attorney General may be only an *ad hoc* response to matters which are entirely unrelated to principle and may be reversed with any future changes in ministerial personnel.

While the previously separate portfolios remain within one cluster, NSWCCL is seeking confirmation from you that the Attorney General's role as the senior coordinating minister is a permanent policy decision and not dependent on the individual appointed to either the Police Ministry or the Attorney General's position.

NSWCCL considers it inappropriate for the cluster or the single department to be titled 'Police and Justice'. This title conveys the immediate impression that the police control the courts and the administration of justice in NSW. You can appreciate the concerns and confusion felt by defendants and their relatives and by other members of the public when they receive correspondence and notices from the courts headed "Department of Police and Justice", as we understand is now occurring. It is entirely inappropriate that a communication from a court registry should carry the implication that it is made with the authority of the police and it is all the more concerning that judicial officers should be under the administration of a department with priority for policing.

While the single cluster and departmental structure continues, we urge you to change both the cluster and the department name to 'Attorney General, Justice and Police'.

While these changes would in the short term alleviate an inappropriate and embarrassing situation for the Government and the Attorney General as the first law officer of NSW and go part-way to maintaining public confidence in the independence of the Attorney General and the administration of justice, they do not address the real problem created by the structure.

Restore separate administrative arrangements

NSWCCL considers the amalgamation of the Attorney General, Justice and Police Ministers, functions and agencies into a single cluster and a single department to be totally inappropriate - regardless of nomenclature and relative status of ministers.

Our opposition has nothing to do with disparaging the important role of the Minister for Police and Emergency Services or the NSW Police Force. They also obviously play a critical role in the maintenance of law and order, community safety and the rule of law in NSW.

Neither the Police Minister nor the Attorney General should be subordinate to the other – nor perceived to be so.

Historically it is clear that the Attorney General and Police Ministers and agencies establish policy on many issues- but they also, from time to time, take different positions on important matters. In a democracy, robust debate between the Attorney General and Police portfolios on matters of policy is to be expected.

It is the strong view of the NSWCCL that what is required is the restoration of separate ministerial and administrative arrangements for the important portfolios/clusters of Attorney General and Justice on the one hand and Police and Emergency Services on the other. Strong collaborative arrangements can and have been incorporated into these arrangements without compromising the independence or subordinating the role of either.

NSWCCL would welcome the opportunity to discuss these matters further with you and the Ministers concerned.

As this is a matter of considerable concern amongst our members this is an open letter and will be placed on the NSWCCL website. Copies will be sent to the Attorney General and the Police Minister as well as to the Leader of the Opposition and the Shadow Attorney General.

Yours sincerely



Dr Lesley Lynch
Secretary
NSW Council for Civil Liberties
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cc. Attorney General and Minister for Justice Brad Hazzard
Minister for Police and Emergency Services Stuart Ayres
Leader of the Opposition John Robertson
Shadow Attorney General and Justice Minister Paul Lynch