

# MEDIA RELEASE

## SERIOUS CONTROL ORDERS BILL AN UNPRECEDENTED ATTACK ON FUNDAMENTAL FREEDOMS

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The NSW Government's *Crimes (Serious Crime Prevention Orders) Bill 2016*, which is scheduled for Parliamentary debate in early May, constitutes an unprecedented attack on individual freedoms and the rule of law, the President of the New South Wales Bar Association, Noel Hutley SC, said today.

The Bill provides an open-ended scheme for the making of serious crime prevention orders which potentially endangers the liberties of tens of thousands of NSW citizens. The potential for unwarranted interference in individuals' liberties and their day to day lives is extreme.

'The Bill creates broad new powers which can be used to interfere in the liberty and privacy of persons, and to restrict their freedom of movement, expression, communication, and assembly. The powers are not subject to necessary legal constraints or appropriate and adequate judicial oversight, and in many cases basic rules of evidence are circumvented' Mr Hutley said.

The proposed Serious Crime Prevention Orders would apply for a period of up to five years in an extraordinarily wide range of circumstances, including where a person 18 years or older:

- has been convicted at any time of one of many different offences carrying a maximum penalty of more than five years imprisonment (most of the offences in the *Crimes Act 1900* (NSW) would fall in this category, including offences such as theft, housebreaking, minor firearms offences, damage to property and dishonestly damaging property with a view to making a gain);
- has committed other offences such as possession of a cannabis plant, tax or revenue evasion, illegal gambling and certain firearm offences;
- has 'facilitated' serious crime-related activity (this provision is cast so widely so that it would apply to a father lending the family car to his son whilst unaware that the son intended to use the car to commit 'a serious criminal offence').

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‘The Government has not provided any justification as to why such powers should be conferred on police and prosecution authorities and in a manner which is so contradictory to long settled principles concerning the adjudication of criminal guilt by a fair trial. The Bill applies to a wide range of individuals and circumstances well beyond the range of public safety activities’ Mr Hutley said.

‘The proposed system for the issuing of serious crime prevention orders is contrary to the administration of criminal justice through the trial process, and their exercise is capable of contravening rights preserved in the International Covenant on Civil and Political Rights. There are also serious questions regarding the constitutionality of the legislation’ said Mr Hutley.

The New South Wales Bar Association is also deeply concerned at the manner in which a Bill with such profound implications was introduced in Parliament, without any prior consultation with legal professional bodies, law reform agencies or civil liberties organisations, a process which has traditionally been handled by the Attorney General.

‘The current ‘cluster’ arrangements within Government have provided the Minister for Police, the Senior Justice Portfolio Minister, with unprecedented power in determining legal policy without the historical checks and balances’ Mr Hutley said.

The Bar Association has prepared a detailed submission on the Bill for the consideration of the Government, Opposition and Cross-Bench, which can be found on the Bar Association’s website at:

**[www.nswbar.asn.au/docs/webdocs/SCPO\\_13042016.pdf](http://www.nswbar.asn.au/docs/webdocs/SCPO_13042016.pdf)**

The New South Wales Bar Association urges all members of Parliament to vote against the Bill, which constitutes an extraordinary and unprecedented attack upon individual freedoms and the rule of law.

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