In last Friday's article authored by Alister Henskens SC MP", the State member for Ku-ring-gai in the Legislative Assembly, *"To avoid embarrassment, the Bar should consult over complex matters"*, a number of statements were made which were wrong.

First, it was stated that "when the NSW Bar takes a public position on something, it is usually the view only of nameless employees within the organisation approved by the President."

The truth is that most public positions on matters of concern to the Bar are based on the assessment made by one or more committees of the Bar Association which are tasked with assessing particular proposals.

The committees are comprised of members of the bar which include acknowledged leaders of the profession. Nearly all assessments are approved by the Executive of the Bar Association, courtesy of the President, Senior Vice President, Junior Vice President, Treasurer and Secretary. It is by no means uncommon for profound issues to be considered by the full Bar Council.

That to me is the context in which the Association's announcement of 13 April 2016 regarding the Crimes (Serious Crime Prevention Orders) Bill 2016 should be understood.

Secondly, Mr Henskens asserts that the Bill is "modelled on the law of Britain". This is a claim not made by the Minister for Police, the Hon Troy Grant MP, who stated in the Second Reading Speech that the bill "adopted some aspects of the United Kingdom's serious crime order provisions in the Serious Crime Act 2007 - United Kingdom – adapted to suit the New South Wales legislative framework."

A number of critical aspects of the New South Wales Bill find no correspondence in the UK legislation including most notably:

i. the possibility of an order in the absence of a conviction, where there has been an acquittal; and
ii. the permissible use of hearsay evidence to found the making of an order.

It is noteworthy that no criticism of the accuracy of the characteristics of the bill identified by the Bar Association is made by Mr Henskens. The bill obviously confers unprecedented powers for the interference with citizens' rights.

The complaint made was that no reference was made to the UK legislation. That was neither necessary nor relevant. We were addressing the position in Australia and particularly New South Wales. In the United Kingdom the position is substantially governed by the Human Rights Act 1989 and thus any order made would have to pay due regard to the European Convention on Human Rights. No such constraint applies to the New South Wales legislation.

Mr Henskens also urges the Bar to consult with Government on "complex matters". The Association wrote to the Premier, Deputy Premier and the Attorney General on 13 April setting out our concerns regarding the legislation. No response has been received.

The legislation was introduced in the Legislative Assembly on 22 March without any form of consultation with the Association or other legal profession bodies.

The Association remains ready, willing and able to discuss its concerns about the Bill with the NSW Government.

Noel Hutley SC
President
New South Wales Bar Association