

MEDIA RELEASE

CRITICISM IN ELECTRONIC MONITORING ORDERS CASES FAILS TO TAKE ACCOUNT OF THE ROLE OF OUR JUDICIARY AND THE ATTORNEY GENERAL



NEW SOUTH WALES
BAR ASSOCIATION

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The Daily Telegraph today published a story in which a number of criticisms were made of the judiciary and the NSW Attorney General in relation to electronic monitoring orders.

Calls for an apology from the Attorney General in relation to the expiry of an electronic monitoring order of the Supreme Court as well as blame being attributed to the NSW Supreme Court regarding Graham Kay are misguided, the President of the New South Wales Bar Association Arthur Moses SC said today.

“Without going into the facts of this particular case, it is for the Courts to determine these matters. Extended Supervision Orders are made by the Supreme Court under Part 2 of the *Crimes (High Risk Offenders) Act 2006*. It is important to recognise that these orders are an additional protective measure for the community which operate in addition to parole. They do not relate to parole. The orders can only be granted once an individual offender’s parole period expires. Section 13 of that Act enables the variation of these orders on application from the Crown or the offender.” Mr Moses said.

“There will inevitably be situations where these kinds of orders are breached. The Court in each case can only make its orders on the basis of the evidence before it and neither the judiciary nor the Attorney-General can be held responsible for unforeseen circumstances resulting in the breach of these orders. The Attorney General informs me and I accept that his reported comments were not seeking to blame the Supreme Court in relation to the circumstances of this matter. Serious penalties are in place for the breach of Extended Supervision Orders. What is important is that there is an appropriate mechanism and funding in place to ensure detection of any breach of orders.” said Mr Moses.

“The Bar Association accepts that these are difficult matters and that these orders exist for the protection of the public. However, it is important to note that it is the courts that have the heavy responsibility to weigh the evidence in each case and make orders based on the circumstances of individual offenders. A standard term for the imposition of the orders would be inappropriate as it would undermine the independent role of the courts in making decisions on the basis of the facts and evidence before them and potentially undermine the validity of this important legislation. That would not be in the public interest and may in fact endanger the public” Mr Moses said.

Criticisms of the Attorney General and the judiciary in this case fail to recognise the difference between parole and extended supervision orders including the separate roles of the judiciary and the Executive in relation to such applications.” said Mr Moses.

MEDIA CONTACT: Alastair McConnachie 0420314462