

News Release

Alister Henskens' attack on Noel Hutley S.C., President of the New South Wales Bar Association, (Australian, April 22) is a cynical attempt to direct attention away from the Crimes (Serious Crimes Protection Orders) Bill 2016.

The real issue is whether the Bill seriously undermines the rule of law in New South Wales and if so, whether its enactment is essential for our security.

But nowhere in his attack does Mr. Henskens address that issue or the substance of the submission by the Bar Association. As an aspiring "champion" of the views of the State Liberal Party, he has a lot to learn, particularly that you cannot fool the public by the following personal attacks and irrelevancies; he risks being seen as a "charlatan" not as a "champion".

First, Mr. Henskens in effect accuses Mr. Hutley of misleading the public by failing to mention the Bill's precedent in the United Kingdom. But the statement by Mr. Hutley was correct, the Bill represents an unprecedented attack on the rule of law in New South Wales. The public would understand that the word "unprecedented" means without any precedent in New South Wales. Further looking past the word "unprecedented" to the substance of the Bill it is a serious encroachment on the rule of law in New South Wales, and this is not lessened by the fact that a similar encroachment occurs elsewhere.

Second, Mr. Henskens says that the comments made by Mr. Hutley were "political", and as the head of the Bar Association, a professional association of barristers, he should not make "political" comments. Without accepting the accuracy of the assumption, the comments did not favour one side or the other of politics; they were part of a very detailed submission on the Bill by an organisation well qualified to comment.

Last, Mr. Henskens accuses Mr. Hutley of failing to telephone him to hear his views on the Bill. Apparently, this discussion would have led Mr. Hutley to change the submission and present what Mr. Henskens regards as a "balanced, full and considered picture". Without questioning the arrogance of Mr Henskens nor the assumption that Mr. Hutley was unaware of the United Kingdom position (which was clearly stated in the Explanatory Memorandum to the Bill) this is an

extraordinary criticism coming from an aspiring “champion” of the political party that introduced the Bill without first consulting any professional organisation or law reform agency.

When these distractions are put aside, we are left with a Bill which seriously undermines the rule of law in New South Wales. For example if the Bill becomes law, a person may be acquitted of an offence but be subject to a court order “controlling” him. Such an order is capable of being made on the balance of probabilities that it would protect the public by disrupting the person in future criminal activities. If the person breaches the order he is liable to imprisonment for up to five years.

The onus is on those who prepared the Bill to justify it. The starting point, but by no means the concluding point, is whether the relevant provisions in the United Kingdom have caught “generals” of organised crime and, if so, whether they would have been caught the by the existing law.

Despite the huffing and puffing of Mr. Henkens, the Bill should not be passed unless, and until, it is shown to be necessary and that the existing provisions of the law are ineffective. In the meantime Mr. Henskens should spend his time addressing the Bar Association’s submission on the Bill, rather than attacking the messenger.

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