

MEDIA RELEASE

COVID-19 LAWS MUST BE REASONABLE, APPROPRIATE AND PROPORTIONATE, NOT UNDERMINE JUSTICE

24 March 2020



NEW SOUTH WALES
BAR ASSOCIATION

“Community health and safety at the present time must be paramount. In these unprecedented circumstances, it is necessary for the Government to take legislative action in the interests of protecting the health and safety of its citizens as best it can,” President of the New South Wales Bar Association, Tim Game SC, said today.

“The Association acknowledges the particular difficulties that the Government faces in legislating at this time.

“However there are two aspects of the COVID-19 Legislation Amendment (Emergency Measures) Bill 2020 that were amongst those that the Association opposed in the course of consultation and that remain of great concern, having regard to their impact on fundamental principles of the criminal justice system, and the administration of justice more generally,” Mr Game said.

The first relates to the proposed amendments relating to pre-recorded evidence in criminal trials.

“The pre-recording of evidence, for use in future trials which have not yet occurred, and are not presently in a position to run, is inconsistent with the fundamental concept of a criminal trial where evidence is led in support of a prosecution case, and is tested on that basis.

“There are no safeguards to ensure the integrity of the process by which evidence is taken remotely. In addition to the doubts we have as to the efficacy of such a process, evidence that is taken in such a vacuum, for use in subsequent trials, can only be done at the substantial risk of unfair outcomes,” said Mr Game.

“While this may be justifiable in relation to persons who are at significantly greater risk than others in the community from the virus, it is not otherwise justifiable.”

The second aspect concerns the broad regulation-making power that is proposed.

“We do not see that there is any present necessity for so broad a power, with the potential to overtake that which presently applies in the criminal justice system. We certainly consider that any power of such breadth should only be exercised with the sole consent of the Chief Justice of New South Wales following consultation, if he deems it necessary, with the relevant head of jurisdiction.

“While it is important at this time to find different ways of proceeding, the Association considers that can and should occur in a manner that also maintains public confidence in the administration of justice,” Mr Game said.

Media contact: Elizabeth Pearson, 0425 268 123 / epearson@nswbar.asn.au