

Contemporary Comment

Serious Crime Prevention Orders

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Abstract

Successive reforms in New South Wales ('NSW') have established far-reaching powers to curtail the liberties of those who were once convicted of various serious sexual and violent offences. Now, these powers have been significantly expanded, with the Executive Government asserting the ability to control the free movement, speech, association and work of NSW citizens and businesses via Serious Crime Prevention Orders ('SCPOs') under the *Crimes (Serious Crime Prevention Orders) Act 2016* (NSW). This Comment surveys substantive and procedural aspects of SCPOs. We situate the orders as part of a continuing expansion of administrative detention and supervision regimes of a hybrid, quasi-criminal nature. We question whether the powers go too far by increasing the State's powers to surveil and control a person's or business's activities under the justification of preventing crime. We also canvass the possibility that SCPOs will operate in a punitive (not merely preventative) manner.

Keywords: Serious Crime Prevention Orders – preventive detention – risk-based jurisprudence – New South Wales – administrative detention

Introduction

[T]he assumption today is that there is no such thing as an ex-offender — only offenders who have been caught before and will strike again (Garland 2002:180).

The *Crimes (Serious Crime Prevention Orders) Act 2016* (NSW) ('the Act') represents a watershed extension of state power in New South Wales ('NSW'). The 'tough new powers' (New South Wales 2016:8034) contained in the Act mirror powers in the United Kingdom ('UK') in the *Serious Crimes Act 2007* (UK) ('the UK Act') and significantly extend the existing regime of post-custodial and serious crime powers held by the executive. Simply put, the Act enables the NSW District or Supreme Courts to order 'such prohibitions, restrictions, requirements and other provisions as the court considers appropriate for the purpose of

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protecting the public by preventing, restricting or disrupting involvement by the person in serious crime related activities' (s 6(1)).

Like serious crime prevention orders ('SCPOs') in the UK, the Australian orders consist of two stages. The first is a civil power, allowing for application to the NSW District or Supreme Courts to impose *any* conditions considered appropriate (limited by statutory safeguards) for a term of up to five years (ss 5 and 7). As explained below, these orders may consist of positive requirements, such as an obligation to report to a police station, or negative 'prohibitions' or 'restrictions' (s 6(1)), for instance, a prohibition on travelling beyond a certain location. The second attaches a criminal offence to failing to comply with the order, carrying a maximum penalty of five years' imprisonment (s 8). For example, if a person is subject to an SCPO preventing her from travelling outside Australia for a five-year period, and then travels outside of Australia within that period of time, she will be liable to a maximum of five years' imprisonment under s 8.

Passed in under two weeks, the Crimes (Serious Crime Preventions Orders) Bill 2016 ('the Bill') received stinging criticism from the legal community. The NSW Bar Association labelled the Bill 'draconian' (NSW Bar Association 2016:6) and accused the NSW Government of hurriedly introducing its 'unprecedented' (NSW Bar Association 2016:2) provisions without consulting key stakeholders. The rapid passage of the Bill allowed the Government to evade legislative scrutiny processes and, according to the Bar Association, introduced laws that interfere with the liberty of private persons in NSW in an extraordinarily broad way 'not subject to any substantial legal constraints or appropriate judicial oversight' (NSW Bar Association 2016:2[a]). The SCPO regime pushes well beyond the existing boundaries of an already controversial apparatus of post-custodial preventive detention and supervision powers. The State can now impose extraordinary restrictions upon the activities of people who may never have served a custodial sentence and may never have been found guilty of, nor been charged with, a crime. In short, the Act extends the preventive control regime to *any* person in NSW believed to have been 'involved' or 'engaged' in serious crime-related activity.

Serious Crime Prevention Orders are an example of what Ian Dennis has termed 'civil preventative orders': 'civil legal orders, backed by coercive sanctions for breach of the order, which are directed to identified individuals relating to their future behaviour' (Dennis 2012:169). These forward-looking orders regulate behaviour to prevent harm that a person is considered to be at risk of perpetrating (Dennis 2012:169). They are thus 'hybrid' in nature (Tulich 2012); although applied for by the executive and made by a civil court (applying the civil standard of proof), the court's orders create a criminal offence targeted at the person subject to the order. This means conduct that by itself would not constitute a crime, nor cause (or be likely to cause) any identifiable harm, could be subject to up to five years' imprisonment. In this regard, SCPOs circumvent traditional protections and procedural safeguards of the criminal justice system (Wade 2007:241).

This comment surveys the SCPO regime, identifying procedural and substantive concerns. We review amendments that were proposed but not adopted in the final text of the Act. Following this, we contextualise the orders and suggest possible applications of the SCPO regime, drawing on the UK experience of almost identical powers contained in the UK Act. There we find that SCPOs can restrict individuals' activities 'to a very significant degree' (Crown Prosecuting Service 2015). Further, the UK orders have been publicised in a way that intrudes extensively on 'defendants'' and third parties' privacy. Finally, we engage with three key concerns with this extension of administrative powers: the low standard of proof required

to make an SCPO; the unfettered scope of such orders; and the failure to take heed of judicial criticism of other administrative preventive detention and control powers in NSW.

Which agencies can apply for the orders? Which courts may make them?

The Commissioner of NSW Police, the NSW Director of Public Prosecutions ('DPP') or the NSW Crime Commission ('NSWCC') may make an application for an SCPO. Defeated amendments proposed by the Opposition Labor Party had attempted to restrict eligible applicants to the DPP alone (NSW Legislative Council 2016).

A further defeated amendment proposed that only the Supreme Court of NSW be empowered to make an SCPO. If accepted, this would have harmonised SCPO powers with those relating to serious sex and violent offenders (*Crimes (High Risk Offenders) Act 2006* (NSW) ss 5C(1), 5D(1)) and criminal assets restraint and forfeiture provisions in the *Criminal Assets Recovery Act 1990* (NSW) ('CAR Act'). By contrast, the Act allows for either the District or Supreme Courts to make an SCPO. While the District Court can only make an order in respect of a person who has been convicted, the Supreme Court's power extends to persons who have 'engaged' in serious crime-related activity but who have not been convicted, nor acquitted, of a serious criminal offence (s 3(1)) in respect of such activity. This is similar to the position in the UK, where the Crown Court can only make an order post-conviction (*Serious Crime Act 2007* (UK) s 19), while the High Court can also make a 'stand-alone' order where satisfied that a person has been involved in serious crime-related activity (*Serious Crime Act 2007* (UK) s 2). As discussed below, UK prosecutorial guidelines dictate that stand-alone SCPOs be used in limited circumstances.

When may courts make an SCPO?

To make an order, the appropriate court must be satisfied of two things:

1. The person has been convicted of a serious criminal offence, 'engaged' in serious crime-related activity or was 'involved' in serious crime-related activity (whether or not the person has been convicted) (ss 4 and 5(1)(b)).
2. There are reasonable grounds to believe the order would protect the public by preventing, restricting or disrupting the person's involvement in serious crime-related activities (s 5(1)(c)).

The first element extends the power to make SCPOs in respect of the many thousands of persons who have been convicted (at any time in the past) of a 'serious criminal offence'. Moreover, it extends the application of SCPOs to those who were 'involved' or have 'engaged' in serious crime-related activity. These two categories are a crucial extension of the scope of State power in this Act. These two groups include those who have (on the balance of probabilities) 'facilitated' another person engaging in serious crime related activity (ss 5(b)(ii) and 4(1)(b)) or are 'likely' to do so in the future (ss 5 (b)(ii) and 4(1)(c)). The threshold for facilitation is low, requiring far less stringent *mens rea* requirements than is required to establish accessorial liability, where aiding or abetting requires both intentional assistance and knowledge of all essential facts of a criminal act (*Giorgianni v The Queen*). It has been suggested that 'facilitation' of another person engaging in a serious crime-related activity could include a father lending a family member his car, unaware that his car will be used in the commission of a crime (NSW Bar Association 2016).

The second element is also assessed 'on the balance of probabilities'. The court must be satisfied that it is more probable than not that there are reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the

person in serious crime-related activities. This is far lower than the criminal standard of ‘beyond a reasonable doubt’ (*Woolmington v DPP*), the standard of proof required to inflict severe deprivations of personal liberty within the common law tradition. Thus, SCPOs avoid established criminal legal principles and evade the criminal trial (and its safeguards) as the mechanism for administering criminal justice (NSW Bar Association 2016:7).

What constitutes ‘serious crime-related activity’?

Serious crime-related activity is anything done by a person that is, or was at the time, a ‘serious criminal offence’, whether or not the person has been charged with, tried for or even acquitted of the offence, and whether or not the person subject to an SCPO was the person who had performed the offence (s 3). The Act adopts the definition of a ‘serious criminal offence’ in the CAR Act, which includes (s 6(2)):

an offence that is punishable by imprisonment for 5 years or more and involves theft, fraud, obtaining financial benefit from the crime of another, money laundering, extortion, violence, bribery, corruption, harbouring criminals, blackmail, obtaining or offering a secret commission, perverting the course of justice, tax or revenue evasion, illegal gambling, forgery or homicide.

The Bar Association has noted that ‘[m]ost of the offences in the *Crimes Act 1900* (NSW) are punishable by imprisonment for 5 years or more and would “involve” one or other of the matters specified in s 6(2)’ (NSW Bar Association 2016:3).

A ‘serious criminal offence’ is further defined to specifically extend to a number of offences under the *Firearms Act 1996* (NSW); prohibited drug cultivation, supply, possession or trafficking offences under the *Drug Misuse and Trafficking Act 1985* (NSW); and offences contrary to the *Crimes Act 1900* (NSW) relating to sexual servitude, child prostitution or child abuse, participating in criminal groups, and dishonestly destroying or damaging property (CAR Act s 6(2)). Eligible offences under the CAR Act that might found the making of an SCPO include:

- supplying a prohibited drug, such as cocaine, heroin, MDMA, methylamphetamine (crystal meth) or ketamine;
- possessing a prohibited plant, such as a cannabis plant;
- participating in a criminal group;
- larceny;
- harbouring criminals;
- fraud;
- tax evasion;
- obtaining a financial benefit from another person’s crime;
- assault occasioning actual bodily harm; or
- perverting the course of justice.

This is a broad definition, extending beyond the Government’s targeted areas of organised crime, terrorism and money laundering. It is questionable whether some of these crimes (such as assault occasioning actual bodily harm or harbouring criminals) are suited to crime prevention orders, justified by their prevention of ‘serious crime’, ‘organised crime’ and ‘terrorism offences’ (New South Wales 2016:8034–5).

To whom will the orders apply? What activities do SCPOs cover?

Serious Crime Prevention Orders can apply to people aged 18 years and older and to corporations (a ‘person’ under the *Interpretation Act 1987* (NSW) s 21(1); see also ss 8–10 of the Act). Terms of an order may consist of positive ‘requirements’ and/or negative ‘prohibitions’ or ‘restrictions’ (s 6(1)).

Potential orders may include:

- restricting a company’s financial, property or business dealings or holdings;
- placing limits on the hours, place and type of work of a person;
- restricting association or communication;
- reporting conditions;
- limiting someone’s means of communication, for example, their access to or use of mobile phone communications, email, blogs, or social media sites such as Facebook or Twitter;
- limiting the premises to which an individual has access, for example, by preventing them from attending a school, club or association, parks, shopping centres or places of worship;
- restricting a person’s ability to travel outside of NSW or even Australia; or
- limiting a person’s access to items that could be used as, or to make weapons.

These requirements and restrictions can be applied for a period of up to five years (s 7(2)). Consistent with the UK Act, s 6(2) of the Act outlines limits to orders, stating that a person may not be ordered to:

- answer questions or provide information orally;
- answer questions, or provide documents or other information subject to client legal privilege (legal professional privilege);
- disclose protected confidences (within the meaning of div 1A of Pt 3.10 of the *Evidence Act 1995* (NSW));
- provide documents or other information held by the person in confidence as part of a banking business unless:
 - the person to whom the confidence is owed has consented; or
 - the order specifically requires the provision or production of the documents or other information concerned;
- answer questions or provide documents or other information, that would result in a disclosure prohibited by a provision of another Act (other than the *Evidence Act 1995* (NSW)).

This lack of material limits, some of which can be circumvented (although there can be no compulsion to provide information *orally*, information can be requested in written form) invoke concerns about the width of discretion afforded to the executive and the judiciary in formulating and making SCPOs, and their propensity for misuse and arbitrary construction.

Breach of an SCPO

While an SCPO is a civil order, a breach constitutes a criminal offence (s 8). Thus SCPOs enable the executive, with the endorsement of the judiciary (as opposed to the legislature), to fashion the contents of a criminal offence: ‘a court sitting in civil proceedings can create a kind of personal criminal code for D, breach of which renders him liable to a maximum

punishment higher than that for many ordinary criminal offences' (Ashworth and Horder 2013:4).

Potentially criminalised behaviour — such as accessing the internet or failing to notify police of a change in address — may be remote from, or unconnected to, any serious harm. If convicted, a person can receive up to five years' imprisonment, a fine of up to A\$33 000, or both. For a corporation, a maximum fine of A\$165 000 may be applied, alongside orders to wind up the company or dissolve a partnership (s 9).

Although a court could potentially impose *mens rea* requirements into the terms of an order — and the authors submit that this practice should be adopted (see also Ashworth and Zedner 2012:555) — 'breach offences' are likely to be construed as strict liability crimes: offences that lack any mental element, such as intention or recklessness. Accordingly, the only applicable defence would be that of honest and reasonable mistake of fact (*He Kaw Teh v The Queen*). Serious Crime Prevention Orders therefore displace, and must be seen as part of the 'general movement away' from, 'established paradigms' (Ashworth and Horder 2013:5) of criminal law and procedure.

Learning from the UK experience

The UK experience illustrates how SCPOs could operate in NSW. The first matter that experience highlights is the question of pre-empting future risk. Serious Crime Prevention Orders exemplify a shift away from 'the retrospective workings of the criminal process' and towards 'preventative' justice predicated on 'actuarial calculation and risk reduction' (Zedner 2006:85). As in the UK, the Act relies upon the executive's ability to confidently predict future criminal activity. In *R v Hancox* (at [9]) the UK Court of Appeal held with regard to equivalent UK legislation that '[t]here must be a real, or significant, risk (not a bare possibility) that the defendant will commit further serious offences'. This raises the question of how real or significant risks can be predicted, given that, as Lord Bingham observed in *A v Secretary of State for the Home Department* (at [29]), '[a]ny prediction about the future behaviour of human beings (as opposed to the phases of the moon or high water at London Bridge) is necessarily problematical.'

To rely on past or current behaviour of the person to prevent future criminal conduct 'evinces a growing belief that criminals are not capable of reform, but rather retain the potential to commit further criminal behaviour and so should be surveyed continuously' (Campbell 2013:198). This belief has a strong pedigree, with writers such as David Garland (2002:180) and Michel Foucault (2002) each arguing along related lines. For Foucault specifically:

Penal systems ... always assumed that there were not two kinds of crimes but two kinds of criminals: those who can be corrected by punishment, and those who could never be corrected even if they were punished indefinitely. The death penalty was the definitive punishment for the incorrigibles, and in a form so much shorter and surer than perpetual imprisonment (Foucault 2002:459).

In this way, SCPOs comprise part of a 'new penology' (Feeley and Simon 1992) geared towards 'supervision and control' rather than 'rehabilitation or reform' (Campbell 2013:198).

The second concern is that of privacy. A salient example comes from the county of Hertfordshire, where police have published online the full names, photographs and detailed terms of SCPOS, imploring the public to report 'any breach of conditions to: SCPO@herts.pnn.police.uk' (Hertfordshire Constabulary 2015). The UK National Crime

Agency ('NCA') also publishes the full names and dates of birth of those subject to orders, alongside the terms and duration of their orders (National Crime Agency 2016).

There is cause for concern that this practice of naming and shaming SCPO recipients could be adopted by law enforcement agencies like the NSW Police or the NSWCC, or by third parties. New South Wales public sector agencies are generally bound by the Information Protection Principles in the *Privacy and Personal Information Protection Act 1998* (NSW) ('PIIP Act'), including limits on the use and disclosure of 'personal information' (ss 8–19). However, it could be argued that SCPOs fall outside the definition of 'personal information', given that such court orders could be construed as a 'publicly available publication' (PIIP Act s 4(3)). Further, aside from their 'administrative and educative' functions, NSW Police and the NSWCC are exempted from complying with the Information Protection Principles (PIIP Act s 27).

The third striking feature is the flexibility of the orders. The UK Crown Prosecution Service recognises 'the possible terms of an order could restrict the person's life in almost any respect, and to a very significant degree' (Crown Prosecution Service 2015). Evidencing this, the Crown Prosecution Service has established a precedent library of over 100 potential SCPOs (Crown Prosecution Service 2015). Published orders include:

- Not to be in possession of over £1000 cash.
- Only allowed one bank account at a time.
- Not to contact Madeleine RICHARDSON or Sheryl SCOTT directly or indirectly.¹
- Not to enter any NHS hospitals or private health care premises with exception for own ill-health.
- Advise of any hotel room bookings.
- Notification of access to a personal computer or device.

The NCA database (at July 2016) revealed that UK orders have been predominantly founded upon offences relating to drug supply, money laundering, counterfeit currency, proceeds of crime, fraud and immigration (National Crime Agency 2016). All except 16 of the 142 orders (89 per cent) published on the database extend to the maximum five-year duration (the minimum term imposed was three years), indicating a judicial reluctance to limit the duration of the orders sought by the executive. The SCPOs applied to persons who were in the community and in prison, with a number of orders becoming effective once a person was released from prison (National Crime Agency 2016). In October 2013, the UK High Court imposed the first non-conviction related ('stand-alone') SCPO (National Crime Agency 2014:23–4). The rarity of so-called 'stand-alone' SCPOs in the UK is consistent with the Crown Prosecution Service Guidelines, which recognise that SCPOs should not be used as 'a soft alternative to prosecution'. The Guidelines advise:

an application for an SCPO should generally only be made either following a conviction for a serious offence or following a decision that ... the evidence available does not provide a realistic prospect of a conviction or a prosecution would not be in the public interest, for reasons other than the availability of an SCPO. It will usually be in the public interest to prosecute a defendant for a serious crime listed in the schedule to the Act (Crown Prosecution Service 2016).

To the authors' knowledge, similar guidelines have not been adopted in NSW. The authors submit that the DPP, NSWCC and NSW Police should adopt similar guidelines, stipulating that SCPOs should not (except in exceptional circumstances) be used to restrict the activities

¹ Unlike the UK Crown Prosecution Service website, we have anonymised the names.

of a person where police or the NSWCC have failed to amass sufficient evidence to charge that person with a criminal offence, or where a person has previously been acquitted of an offence.

The lack of human rights protections in NSW compared with the UK is another distinction between the two regimes. The NSW executive and judiciary are not bound by human rights protections such as those in the *Human Rights Act 1998* (UK) ('HR Act'). Section 6 of the HR Act requires judges to act compatibly with the *European Convention on Human Rights* ('the Convention'), while s 3 requires judges to interpret statutory provisions, so far as is possible, in a way that is compatible with articles of the Convention, including art 5 (liberty and security), art 8 (private life), art 10 (freedom of expression) and art 11 (freedom of assembly and association). Article 6 of the Convention stipulates that for a civil order not to be considered criminal, and thus to attract additional protection, the conditions attached must be designed to prevent harm and must not be punitive.

Key concerns

It is disappointing to need to cite the 'golden thread' of *Woolmington v DPP* as a critique of contemporary criminal law policy in NSW. Yet its principle that the prosecution must prove the guilt of the defendant beyond reasonable doubt is here being unwound. The core issue with the Act, raised also by its other critics, is that the powers it creates are so total and broad that they lack any reasonable or material legal constraints or appropriate judicial oversight (NSW Bar Association 2016:2[a]). Through its use of 'hybrid' civil orders, the breach of which attracts criminal sanction, the Act not only evades important criminal law safeguards, but it also undermines central bases of the rule of law. It does so principally by creating an alternative to criminal prosecution, founded upon a significantly eroded standard of proof, while enabling the executive to — with judicial oversight — craft personalised criminal laws for selected individuals and corporations.

Taken together, the Act substantially increases powers and weighting in favour of the state against its citizens, compared even to existing preventive and control order powers. For example, in relation to serious sex or violent offenders ('high-risk offenders'), the NSW Supreme Court may only impose an order for post-custodial supervision or detention of offenders where the Court is 'satisfied to a high degree of probability that the offender poses an unacceptable risk of committing' a serious violence or sex offence 'if he or she is not kept under supervision' (*Crimes (High Risk Offenders) Act 2006* (NSW) ss 5B(2) and 5E(2)). The Court may issue a detention order only where 'adequate supervision will not be provided by an extended supervision order' (ss 5D(1) and 5G(1)) on those same grounds. The standard required by the SCPO regime is far lower than that required by the 'high degree of probability' applied in other like-settings (see *Cornwall v A-G* at [21]). The Act fashions an SCPO regime with a significantly lower standard of proof than that applied to high-risk offenders in NSW and yet this lower standard applies to persons who may never have been found guilty of a serious crime, nor charged, and may even have been acquitted. This lowers basic legal protections for NSW citizens to levels well below that afforded to those convicted of serious sex and serious violent offences, an already problematic low-water mark.

In NSW, other parts of the preventive civil order regime continue to receive criticism in a range of judgments. Judges of the Supreme Court charged with the administration of the high-risk offender post-custodial detention and supervision regime have been vocal about the completely unsatisfactory management of powers by various stakeholders. In *State of New South Wales v Phillips*, Bellew J gave voice to this sense of dissatisfaction from 'a number of

other Judges of the court' (at [11]). In that case, Bellew J revealed a range of circumstances which had 'combined to place the defendant in a position which was both invidious and unfair' (at [15]–[16]). These included consistent delays that had coalesced to cause the preliminary hearing to come before the court 48 hours prior to the defendant's release from custody for an order designed to come into effect upon release. This necessitated a decision being made 'virtually immediately ... creat[ing] a number of difficulties with the court's administration, not the least of which was ensuring the availability of a Judge to hear the application' (at [15]–[16]).

In submissions to the NSW Sentencing Council in relation to the *Crimes (High Risk Offenders) Act 2006* (NSW), the then Chief Judge of the District Court of NSW, Justice Blanch, noted the High Court's characterisation of preventive regimes as 'highly exceptional' and that the outcome of the regime was that *at best* 'two or three persons out of ten' submitted to the process 'are wrongly identified and punished accordingly' (Blanch 2011).

The 'highly exceptional' (see Blanch 2011; *Buckley v The Queen* at [6]) nature of SCPOs will, as before, be proven to be less exceptional in practice as net-widening takes effect, and as similar legislation is adopted across Australia (Ananian-Welsh and Williams 2014). As with terrorism-related preventative detention and control orders created post-September 11 2001, laws that were once labelled 'extraordinary' become accepted as 'ordinary' or 'normal' (McGarrity and Williams 2010:131–2) and are thereafter replaced by further 'highly exceptional' laws of ever-wider application. An additional aspect of the 'creep' effect (Appleby and Williams 2010) of serious invasive and coercive powers is that they come to be used in situations very different from those for which they were initially designed. The Rule of Law Institute of Australia notes that 82.2 per cent of people charged under Queensland's anti-bikie legislation had no known links to 'outlaw motorcycle gangs', the target of that controversial law (Rule of Law Institute of Australia 2016). That submission also highlighted that, in some regions, 84 per cent of people affected by NSW's anti-consorting laws introduced in 2012 were Indigenous Australians.

Conclusion

Each extension of the civil preventive regime canvassed in this comment has been met with strong criticism for eroding civil liberties, procedural safeguards and basic legal principles at the time of proposal or enactment. The hasty introduction of even more sweeping 'preventative' powers indicates a preparedness by the NSW Government to pursue legal policy without proper consultation or review, respect for the rule of law and unfortified by basic criminal law safeguards or human rights. Given rising prison populations and costs of administering criminal justice in NSW, the Government should be required to make an exceptionally strong case as to why new powers and offences that further burden the system are needed. The NSW Government has provided no evidence or convincing rationale, if one can rightly be made, for laws such as these.

Cases

A v Secretary of State for the Home Department [2004] UKHL 56

Buckley v The Queen (2006) 224 ALR 416

Cornwall v A-G (NSW) [2007] NSWCA 374 (22 March 2007)

Giorgianni v The Queen (1985) 156 CLR 473

He Kaw Teh v The Queen (1985) 157 CLR 523

New South Wales v Phillips [2014] NSWSC 205 (7 March 2014)

R v Hancox [2010] EWCA Crim 102

Woolmington v DPP [1935] AC 462

Legislation

Crimes (High Risk Offenders) Act 2006 (NSW)

Crimes (Serious Crime Preventions Orders) Act 2016 (NSW)

Crimes (Serious Crime Preventions Orders) Bill 2016 (NSW)

Criminal Assets Recovery Act 1990 (NSW)

Drug Misuse and Trafficking Act 1985 (NSW)

Evidence Act 1995 (NSW)

Firearms Act 1996 (NSW)

Human Rights Act 1998 (UK)

Interpretation Act 1987 (NSW)

Privacy and Personal Information Protection Act 1998 (NSW)

Serious Crimes Act 2007 (UK)

References

Ananian-Welsh R and Williams G (2014) 'The New Terrorists: The Normalisation and Spread of Anti-Terror Laws in Australia', *Melbourne University Law Review* 38(2), 362

Appleby G and Williams J (2010) 'The Anti-Terror Creep: Law and Order, the States and the High Court of Australia' in N McGarrity, A Lynch and G Williams (eds), *Counter-Terrorism and Beyond: The Culture of Law and Justice after 9/11*, Routledge, 150–69

Ashworth A and Horder J (2013) *Principles of the Criminal Law*, 7th ed, Oxford University Press

Ashworth A and Zedner L (2012) 'Prevention and Criminalization: Justifications and Limits', *New Criminal Law Review* 15, 542–71

Blanch RO (2011) *Letter, Regarding: Sentencing Serious Violent Offenders Consultation Paper, May 2011* <http://www.sentencingcouncil.justice.nsw.gov.au/Documents/svo18_chiefjudgedc.pdf>

Campbell L (2013) *Organised Crime and the Law: A Comparative Analysis*, Bloomsbury Publishing

Crown Prosecution Service (2016) *Legal Guidance: Serious Crime Prevention Orders* <[http://www.cps.gov.uk/legal/s_to_u/serious_crime_prevention_orders_\(scpo\)_guidance](http://www.cps.gov.uk/legal/s_to_u/serious_crime_prevention_orders_(scpo)_guidance)>

Crown Prosecution Service (ND) *Serious Crime Prevention Orders Precedent Library* <<http://www.cps.gov.uk/legal/assets/uploads/files/SCPO%20precedent%20library.doc>>

Dennis I (2012) 'Serious Risk and Preventative Orders' in GR Sullivan and I Dennis (eds), *Seeking Security: Pre-empting the Commission of Criminal Harms*, Hartford Publishing, 169–91

Feeley MM and Simon J (1992) 'The New Penology: Notes on the Emerging Strategy of Corrections and its Implications', *Criminology* 30(4), 449–74

Foucault M (2002) *Essential Works of Foucault 1954-1984 Volume 3: Power*, Allen Lane

Garland D (2002) *The Culture of Control: Crime and Social Order in Contemporary Society*, University of Chicago Press

Hertfordshire Constabulary (2015) *Serious Crime Prevention Orders* <https://www.herts.police.uk/hertfordshire_constabulary/help_us_fight_crime/crime_prevention_orders.aspx>

McGarrity N and Williams G (2010) 'When Extraordinary Measures Become Normal' in N McGarrity, A Lynch and G Williams G (eds), *Counter-Terrorism and Beyond: The Culture of Law and Justice after 9/11*, Routledge, 131–49

National Crime Agency (2014) *Annual Report and Accounts 2013/14* <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/380378/NCA_Annual_Report__Accounts_2013-14_v1.0__web_.pdf>

National Crime Agency (2016) *Publication of Ancillary Orders: July 2016* <<http://www.nationalcrimeagency.gov.uk/news/899-serious-offender-management-orders-published>>

New South Wales (2016) *Parliamentary Debates*, Legislative Assembly, 22 March 2016, 8034–5 (T Grant)

NSW Bar Association (2016) *Submission: Crimes (Serious Crime Prevention Orders) Bill 2016*, <http://www.nswbar.asn.au/docs/webdocs/SCPO_13042016.pdf>

NSW Legislative Council (2016) *Crimes (Serious Crime Prevention Orders) Bill 2016 Proposed Amendments* <<https://www.parliament.nsw.gov.au/bills/DBAssets/bills/LCCConsideredAmendments/3284/c2016-036.pdf>>

Rule of Law Institute of Australia (2016) *Serious Crime Prevention Orders in New South Wales*, Media release, 14 April 2016 <<http://www.ruleoflaw.org.au/media-release-serious-crime-prevention-orders-new-south-wales/>>

Secretary of State for the Home Department (2012) *Memorandum to the Home Affairs Committee and Justice Committee: Post-legislative Scrutiny of the Serious Crime Act 2007 Cm 8502*

Tulich T (2012) 'Prevention and Pre-emption in Australia's Domestic Anti-terrorism Legislation' *International Journal for Crime and Justice* 1(1), 69–85

Wade C (2008) 'Prevention of Harm — Legislative Strategies for Law Reform', *Journal of Criminal Law* 72(3), 236–50

Zedner L (2006) 'Policing Before and After the Police: The Historical Antecedents of Contemporary Crime Control', *The British Journal of Criminology* 46(1), 78–96