The President of the New South Wales Bar Association, Jane Needham SC, today urged the NSW Government to exercise caution in relation to the premature review of the new Bail Act provisions which only commenced operation on 20 May 2014.

Last week the Government announced that a review would be conducted of the new Bail Act by the Hon John Hatzistergos, a former member of the NSW Parliament who served as Attorney General and is now practising as a barrister. It was stated that the review has been prompted by concerns which had been expressed about the new Bail Act.

The new Bail Act was introduced following an extensive period of consultation and research by the NSW Law Reform Commission since June 2011 which included significant input by the Director of Public Prosecutions, NSW Police, Legal Aid and the Courts.

As the NSW Attorney General has correctly noted, the new Bail Act replaces the complex set of presumptions which existed in the old Bail Act with a risk-based model that prioritises public safety above all else.

‘The proposed review is premature and misconceived. No rational explanation has been advanced as to why it is thought necessary to have legislation which commenced only weeks ago reviewed at this point in time’ said Ms Needham.

‘The new Bail Act seeks to strike the proper balance between individual liberty and the protection of the community. The simple fact is, that if there is a risk to community safety which cannot be dealt with by appropriate measures, then the new Bail Act dictates that bail should be refused’, said Ms Needham.

‘The task of reviewing the legislation should be left with the independent bail monitoring group which includes representatives from the NSW Police Force, the Office of the Director of Public Prosecutions, Legal Aid and the Bureau of Crime Statistics and Research, which is what the Government originally stated would take place. Reviews of legislation should not be instigated as a result of a knee jerk reaction to criticism in the absence of any evidence that the Bail Act is not operating in accordance with the intentions of Parliament’ said Ms Needham.
‘The proper test of the legislation’s effectiveness is whether there has been an increase in the numbers of people who have breached bail or who have offended whilst on bail, not who may be granted bail by the courts. As Dr Weatherburn from the Bureau of Crime Statistics and Research has observed, he will wait for three months of data on the operation of the new Bail Act before he can form a view as to whether or not the legislation has been effective to protect the community. Dr Weatherburn’s report is not due until September 2014, prior to the date upon which Mr Hatzistergos has been asked to prepare a report for consideration by the Parliament in its Spring sittings.’

‘The presumption of innocence is the cornerstone of our criminal justice system, and extreme caution needs to be exercised to ensure that our bail laws operate fairly, rather than potentially operate to incarcerate in remand innocent persons.’

‘The New South Wales Bar Association urges the Government to reconsider this premature review of the new Bail Act. Changing legislation because of a perception based on the result of one case is not good policy. Good policy is based on a mature consideration of all the facts – only then can it be effective and not result in unintended consequences’ Ms Needham said.

Media contact: Arthur Moses SC: 9229-7385 / 0400-703-717