

LEGISLATIVE COUNCIL

Wednesday 30 November 2005

The President (The Hon. Dr Meredith Burgmann) took the chair at 11.00 a.m.

The Clerk of the Parliaments offered the Prayers.

PHOTOGRAPH OF LEGISLATIVE COUNCIL

The PRESIDENT: I advise members that before the House proceeds with business an official photograph will be taken of members and officers of the Legislative Council. For this purpose I ask members and officers to follow the instructions of the photographer.

POLICE AMENDMENT (DEATH AND DISABILITY) BILL

CRIMES AND COURTS LEGISLATION AMENDMENT BILL

WORKERS COMPENSATION LEGISLATION AMENDMENT (MISCELLANEOUS PROVISIONS) BILL

Bills received.

Leave granted for procedural matters to be dealt with on one motion without formality.

Motion by the Hon. Tony Kelly agreed to:

That the bills be read a first time and printed, standing orders be suspended on contingent notice for remaining stages, and the second readings of the bills be set down as orders of the day for a later hour of the sitting.

Bills read a first time and ordered to be printed.

AUDITOR-GENERAL'S REPORT

The President tabled, pursuant to the Public Finance and Audit Act 1983, the Auditor-General's Financial Audits Report, Volume Five 2005, dated November 2005.

Ordered to be printed.

BUSINESS OF THE HOUSE

Precedence of Business

Motion by the Hon. Michael Costa, on behalf of the Hon. John Della Bosca, agreed to:

That on Thursday 1 December 2005 Government Business take precedence of General Business.

SOCZEROOS WORLD CUP QUALIFIER

Motion by the Hon. Michael Gallacher agreed to:

That this House:

- (a) notes Australia last qualified for the Soccer World Cup Finals in 1973, only to be eliminated in the finals held in West Germany in 1974,
- (b) notes in 2001 Australia was defeated by Uruguay by three goals to one to miss out on the 2002 Soccer World Cup finals,
- (c) notes the fantastic win by the Soczeroos last night [Wednesday 16 November 2005] who defeated Uruguay in a penalty shoot-out by four goals to three,

- (d) notes, as a result of the win, the Australian Socceroos will be competing in the 2006 Soccer World Cup finals in Germany commencing on 9 June 2006, and
- (e) congratulates the Socceroos on this outstanding achievement and wishes them well representing the nation at the forthcoming Soccer World Cup finals.

DESALINATION PLANT PROPOSAL

Production of Documents: Dispute of Claim of Privilege and Report of Independent Legal Arbiter

Motion by Mr Ian Cohen agreed to:

1. That this House notes that an independent legal arbiter has been appointed by the President to evaluate and report on a disputed claim of privilege in relation to privileged documents on the proposed desalination plant at Kurnell.
2. That, in view of the public interest in the proposed desalination plant, if the House is not sitting when the report of the independent legal arbiter is lodged with the Clerk, the report is:
 - (a) on presentation and for all purposes deemed to have been laid before the House, and
 - (b) for all purposes deemed to be a document published by order or authority of the House.
3. That any document considered by the independent legal arbiter not to be privileged is authorised to be published by the Clerk by order or under the authority of the House.
4. That the report of the independent legal arbiter and any documents considered not to be privileged be laid on the table of the House by the Clerk at the next sitting of the House.

COAL INDUSTRY WORKERS COMPENSATION SCHEME

Production of Documents: Order

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [11.20 a.m.]: I seek leave to amend the motion of which I have given notice in the following terms:

By omitting "14 days" and inserting instead "21 days".

Leave granted.

Motion by the Hon. Duncan Gay agreed to:

That, under Standing Order 52, there be laid upon the table of the House within 21 days of the date of the passing of this resolution the following documents in the possession, custody or control of the Minister for Industrial Relations or the Department of Industrial Relations:

- (a) the Independent Review of Monopoly Arrangement of the NSW Coal Industry Workers Compensation Scheme conducted by Ernst and Young, and
- (b) any document which records or refers to the production of documents as a result of this order of the House.

SYDNEY ROADS CONSTRUCTION

Production of Documents: Order

Motion by Ms Sylvia Hale agreed to:

That, under Standing Order 52, there be laid upon the table of the House within 14 days of the date of the passing of this resolution, the following documents in the possession, custody or control of the Minister for Roads, the Roads and Traffic Authority, the Minister for Planning, the Department of Planning and Infrastructure, the Premier's Department, the Treasurer, Treasury and the Cabinet Office created since November 2004:

- (a) all documents relating to options to extend the M4 to the City West Link,
- (b) all documents referring to options for linking the proposed M4 East or Parramatta Road south through the southern Sydney growth area, including to Port Botany and the airport,
- (c) any arterial road widening affecting Liberty Street, Cardigan Street or Kingston Road, Stanmore, or Edgeware Road, Enmore,

- (d) all documents referring to options for the construction of the F6,
- (e) all documents relating to any new or upgraded road crossing of Sydney Harbour originating in the local government area of Leichhardt, and
- (f) any document which records or refers to the production of documents as a result of this order of the House.

TABLING OF PAPERS

The Hon. Eric Roozendaal tabled the following papers:

Annual Reports (Departments) Act 1985—Report of the Department of Health for the year ended 30 June 2005.

Annual Reports (Statutory Bodies) Act 1984—Reports for the year ended 30 June 2005:

Aboriginal Housing Office
Forests NSW
Newcastle Port Corporation
Port Kembla Port Corporation
Sydney Ports Corporation
Waterways Authority (trading as NSW Maritime)

Ordered to be printed.

PETITIONS

Breast Screening Funding

Petition requesting funding to ensure access to breast screening services for women aged 40 to 79 years and to reverse falling participation rates, received from **the Hon. Patricia Forsythe**.

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Order of the Day No. 1 postponed on motion by the Hon. Tony Kelly.

MINE SAFETY (COST RECOVERY) BILL

Second Reading

Debate resumed from 29 November 2005.

Ms LEE RHIANNON [11:25 a.m.]: I am pleased to join my colleague the Hon. Ian Macdonald in supporting this bill. When the Minister presented the bill he said it was a great achievement of his and a great achievement of his Government. I acknowledge that this bill is positive, but it is dubious that the Minister should regard it as a feather in his cap. It should be remembered that the Minister failed to explain to the House why he took so long to introduce the bill. In July this year the mining division of the Construction, Forestry, Mining and Energy Union [CFMEU] warned the New South Wales Government to honour its commitment to a more vigorous pursuit of safety standards and action in the coal industry.

The report of the Wran review was brought down on 10 April. Honourable members would be aware that that review contains important recommendations on mine safety. Up until July nothing had been done—the months continue to drag by—and that is why the warning was issued. Former Premier Wran recommended a properly resourced inquiry into fatality and injury rates backed up by action to prosecute and enforce penalties for those whose breaches of safety regulations lead to fatalities and injuries. Throughout that period scores of coalminers continued—as they do right now—to be seriously injured at work. Action should have been taken in the weeks, not months, after former Premier Wran brought down his report.

This Government reaps hundreds of millions of dollars a year in royalties from the New South Wales coal industry. The Greens support the call by the CFMEU for sufficient funding to pursue prosecutions for breaches of safety standards. That should not just be limited to those who are responsible for deaths in the industry; we also need adequate funding to ensure the enforcement of penalties against those whose breaches of safety laws have led to the spate of serious injuries plaguing the State's coal industry. The CFMEU made a huge

effort to get the Government to take action on this issue. When I read the Minister's speech I was therefore very surprised that he made no mention of the CFMEU, or of the hard work that it has done in this place. The Minister quite gleefully tried to misrepresent my position on mining issues. I am happy to again state the Greens' position: We do not support new coalmines or new coal-fired power plants.

The Hon. Duncan Gay: You do not support any coalmines.

Ms LEE RHIANNON: I acknowledge the interjection of the Deputy Leader of the Opposition, who said we do not support any coalmines. That is not true. We continually state what is our policy and it is available for all honourable members and members of the public to read—something that is not possible when it comes to the major parties. People are able to read our policies.

The Hon. Amanda Fazio: Rubbish!

Ms LEE RHIANNON: I acknowledge the interjection of the Hon. Amanda Fazio, who just said it is rubbish. If it is rubbish where is this Government's policies? We are not able to see its policies on any of these matters. That is the Greens' clear position on this matter. We are very committed to the rights and safety of workers at existing coalmines and power stations. I checked the Minister's speech using the control-F function on my computer to see whether I had missed a reference to the CFMEU, but he did not mention it. That is very disappointing considering the huge efforts the union has made—

The Hon. Duncan Gay: He was closely involved with it. He's probably trying to hide it.

Ms LEE RHIANNON: I acknowledge the interjection. I obviously cannot speak for the Minister on that front. But the Deputy Leader of the Opposition raises an interesting point. Over the years I have watched the Minister—who was a Parliamentary Secretary during my first four years in this place—act duplicitously. He worked closely with the right wing of his party in Parliament but when on the hustings he worked closely with the unions and promised to represent them in the House. So I was shocked and disappointed when the Minister failed to acknowledge the hard work of the union in prompting the Government to do the right thing and introduce this legislation.

I acknowledge the speech of the Deputy Leader of the Opposition, who led for the Opposition in this debate. He revealed the Opposition's true colours. For all my criticism of the Minister, at least he has done the right thing. If the Coalition were in power this bill would not be before the House today. That is an important point. I must admit I wondered about the Minister's speech. Perhaps he was desperate to have a win after Essendon failed even to make the Australian Football League semi-finals and was searching for some good news.

Reverend the Hon. Dr GORDON MOYES [11.31 a.m.]: I lead on behalf of the Christian Democratic Party in debate on the Mine Safety (Cost Recovery) Amendment Bill. The purpose of this bill is to provide for the payment of contributions by mining industry insurers to fund the costs incurred by the Department of Primary Industries [DPI] in carrying out its regulatory activities under mine safety legislation and in generally administering the legislation. The contributions made by mining industry insurers will be paid into a mine safety fund to be administered by the director general of the department.

Every employer ought to be concerned with the safety and welfare of his or her employees in the workplace. The provision of a safe workplace by employers should be a non-negotiable aspect of the work environment. Depending on the nature of the work required to be performed, employees will be exposed to varying degrees of risk in their jobs. Notwithstanding this, every reasonable measure should be taken to mitigate the risk of danger to employees. Even if risks are inherent in the task involved they should not be tolerated. Judge Boland in *Rodney Morrison v Wambo Coal Pty Ltd* said:

... there might be a view ... in relation to the coal mining industry that work in coal mines should be regarded differently from work in other industries in terms of defendant's liability under the occupational health and safety legislation. The legislation makes no such distinction. The liability of an employer under the legislation, regardless of the industry in which it operates, is absolute; the notion of some risks being acceptable because of the nature of the work of coal mining is a notion that should not be countenanced.

This view is worthy of support. On 14 November 1996 Gretley Colliery became a site that would be remembered for all the wrong reasons. Miners inadvertently broke through into the flooded workings of an old abandoned mine and four miners died in the inrush of water. The miners had struck through in that particular

area because they had been given maps that inaccurately described where the old workings were located. The disaster at Gretley prompted an inquiry into mine safety, which was conducted in 1997 alongside a mine safety review. The New South Wales Industrial Relations Commission fined Xstrata \$1.5 million and three mine managers a total of \$100,000 over the death of the four miners. Xstrata is appealing the commission's decision to the Court of Criminal Appeal.

Mining is one of those industries where, unfortunately, risks to life and safety have been realised. Across Australia about 4,000 deaths have been recorded in the mining industry. Between 1980 and 2004 104 fatalities occurred in New South Wales mines. On a positive note, between 2004 and 2005 no fatalities were recorded. However, in the first to the third quarters of 2004-05 there were four permanent total-partial disablements, 10 temporary disablements lasting for greater than six months and 1,264 temporary disablements lasting less than six months in the New South Wales coalmining industry. In metalliferous-extractive mining there were 47 total disablements. Notably, the number of disablements has decreased considerably over the past six years.

In the realm of serious injury within the coal sector, in 1997-98 61 serious injuries were recorded and the figure for 2004-05 stands at 18. There has been a progressive decrease in the number of serious bodily injuries recorded. Under the Coal Mines (General) Regulation 1999 clause 85 defines "serious bodily injuries" as including amputation, asphyxia, burns requiring hospital treatment, dislocation, fractures, internal haemorrhaging requiring hospital treatment and the loss of sight in at least one eye. All in all, we must think of these figures not as statistics but as real lives that have been taken prematurely or affected tragically. Our heart goes out to the families affected by these calamities. The New South Wales minerals industry currently employs about 15,000 people, mainly in rural and regional areas. We hope that risks will be mitigated to such an extent that none of those workers will ever be affected by tragedies of the kind that I have described.

The Government requested that former Premier the Hon. Neville Wran, QC, conduct a review on the steps that the Government had taken to improve mine safety. The Wran report looked particularly at whether the recommendations in the 1997 mine safety review and the Gretley inquiry report had been implemented. The Wran review found that the majority of recommendations arising from the review and suggested in the report had been carried out but that a number of matters that were the subject of recommendations in the earlier reports remained to be dealt with and/or completed. The review made an assortment of recommendations—31 in total. For example, recommendation No. 6 is that the responsibility for the regulation of mine health and safety issues be brought together under the DPI rather than overseen by separate agencies, as occurs at present. Recommendation No. 10 insists that a:

... new, strengthened Mine Safety Advisory Council should take forward future examination and progression of mine safety and health issues.

The advisory council has been established and is governed under the Mining Act 1992. It is made up of representatives from industry, unions and government. Another fundamental recommendation was to form a board of inquiry under section 94A of the Coal Mines Regulation Act 1982. The board will be given the responsibility of examining the issues of safety enforcement policy and implementation and will assess the adequacy of current enforcement policies. A number of recommendations will be referred to the Mine Safety Advisory Council while others will be referred to the Department of Primary Industries for implementation. These recommendations relate to the preparation and implementation of safety and health regulations and the benchmarking and improvement of safety data systems to international best practice. It is hoped that recommendation No. 2 will be heeded by the department. It states:

Regulations, proposed under the Coal Mine Health and Safety Act 2002, should be introduced without delay.

The Department of Primary Industries will also be given responsibility for identifying, monitoring and reporting on mine health hazards. One salient review recommendation was the call for a levy on the mining industry to:

... help provide funds necessary to enhance inspectorial resources and mine safety initiatives in NSW.

This bill seeks to provide a platform for the Government to recover costs for its mine safety functions from the mining industry. The Minister's second reading speech indicates:

... the cost of regulating mine safety and implementing the Wran recommendations is estimated to be at least \$13.5 million per year.

It is also said that the Government has provided the majority of the financial resources to support the mine safety functions of the Department of Primary Industries. The Government has argued that, as the earnings of the mining industry have been extensive—for example, in 2004-05 the value of mineral production in New South Wales is expected to be more than \$9 billion—the industry is in a good position to pay the levy. In fact, the industry is equivalent in size to the State's entire farming sector, including wool, crops and livestock. The levy is estimated to add merely about 11¢ a tonne to the cost of producing coal. An illustration is given in the second reading speech to demonstrate the impact of the levy on coal profits. Average free-on-board cash costs in New South Wales coalmines are between \$40 and \$45 a tonne.

By comparison, the average price in 2004-05 for export thermal coal prices was a little over \$61 per tonne and for export hard coking coal the price was more than \$83 per tonne. However, that does not take into account the money that the minerals industry contributes to the Government in royalty payments and State and Federal taxes, quoted at \$1.2 billion in the 2004-05 financial year. According to the New South Wales Minerals Council, the New South Wales Government is by far the largest single beneficiary and receives approximately 50 per cent of the pre-tax profits. The Federal Government receives a further 25 per cent. The levy will apply to mining, oil, gas and extractive industries.

The idea of levying an industry to cover workers compensation costs is not a novel one. In fact, the proposed levy will be modelled on other levies in place in the workers compensation system, such as the dust diseases levy. The dust diseases levy is charged as a small percentage of an employer's wages bill. It is proposed that this levy will begin operation in the first half of next year. As pointed out in the second reading speech to the bill, the manner in which the levy will be collected in the mining industry will be similar to the collection system in place for the dust diseases levy. The dust diseases levy is added to relevant workers compensation premiums and collected when these premiums are paid.

Coal Mines Insurance Pty Ltd, a separate specialised workers compensation insurer, will implement a similar system for the coal industry. In order to collect the levy, the bill will establish a Mine Safety Fund to be administered by the director general. The amounts that will be paid out of the fund include payments required to meet the costs incurred in the Department of Primary Industries in administering the mine safety legislation and money required to reimburse the WorkCover Authority for expenses incurred when it exercises functions under an arrangement with the director general.

The Hon. Duncan Gay: There is no process to cap it.

Reverend the Hon. Dr GORDON MOYES: The Mine Safety Fund will be based upon an amount estimated by the director general. As the Deputy Leader of the Opposition indicates, there are no caps on the funds and a possibility of their being loaded. Contributions to the Mine Safety Fund will be based on an amount estimated by the director general. Each estimate will be in respect of a financial year commencing 1 July. In spite of that one reservation, the Christian Democratic Party supports the Mine Safety (Cost Recovery) Bill.

The Hon. IAN MACDONALD (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [11.42 a.m.], in reply: I thank honourable members for their contributions to the debate, particularly Reverend the Hon. Dr Gordon Moyes and the Deputy Leader of the Opposition, both of whom made intelligent and clear-cut speeches debating the merits of the Mine Safety (Cost Recovery) Bill. Ms Lee Rhiannon's comments were of a different nature: they were gratuitous insults. I remind Ms Lee Rhiannon that I assumed responsibility for this portfolio only in August this year. I have engaged in more or less weekly consultations with the Construction, Forestry, Mining and Energy Union [CFMEU] Mining Division, at many different levels, the Minerals Council and WorkCover to discuss the issues.

The CFMEU Mining Division is very supportive of this bill. If Ms Lee Rhiannon had asked, rather than try to make a gratuitous point, I would have explained that I meet with unions regularly, from the national secretary of the CFMEU, to State officers, to the national president of the mining union. Ms Lee Rhiannon's comment was stupid. The Mine Safety (Cost Recovery) Bill introduces a levy on mining industry employers to pay for the implementation of the recommendations of the Wran review into mine safety. The levy will also cover the costs associated with the safety regulation of mine workplaces undertaken by the Department of Primary Industries. In relation to the points raised by the Deputy Leader of the Opposition, the bill sets out clearly that the levy contributions must be paid into a special Mine Safety Fund.

The bill also specifies what payments can be made out of the levy fund. These specified payments are for the Department of Primary Industries' regulatory activities under or in connection with mine safety

legislation, the administration or execution of the mine safety legislation, the administrative expenses related to the fund and money directed or authorised to be paid from the levy fund under the bill or any other Act or regulations to the bill. Those provisions ensure that the levy funds can be spent only on regulating and improving mine safety and costs associated with the fund. The Government will accept the amendment foreshadowed by the Deputy Leader of the Opposition on that point.

In relation to a further point raised by the Deputy Leader of the Opposition, the estimate of mine safety costs will be discussed each year with the Mine Safety Advisory Council. The council has representatives from industry, unions and government, as well as independent experts. The council will advise the Minister on the estimate, and the Minister will have to give approval before the levy can be raised. Further, a special set of accounts for the levy will be drawn up each year, which will show the amount of money collected and how it has been spent. I want to place on the record some further information about this bill and its operation. The bill provides for the director general to determine which insurers, or classes of insurers, are liable to contribute to the Mine Safety Fund. Insurers who can be the subject of those determinations are those who provide workers compensation cover to employers operating or partly operating in the mining industry.

Self-insurers operating or partly operating in that industry may also be liable to contribute. In the context of the bill, the mining industry includes employers in coalmining, metalliferous and extractive sectors, as well as those engaged in oil or gas exploration or extraction. The bill enables insurers to adjust premiums payable by mining industry employers to add amounts referable to the mine safety levy. In the case of employers insured under the main WorkCover premium scheme, those adjustments will be determined in accordance with detailed provisions to be contained in insurance premiums orders under the Workers Compensation Act. In the case of specialised insurers, which include Coal Mines Insurance Pty Ltd, the bill gives the insurer the power to adjust premiums by adding an amount to take account of the levy.

That power of adjustment is intended to give the specialised insurer all necessary scope and discretion to determine the additional premium amount, if any, that particular employers are to be charged. The adjusted amount would become subject to normal arrangements applicable to payment and recovery of premiums under policies issued by the specialised insurer. The proposed wide premium adjustment power of specialised insurers would also allow the insurer to make any necessary alteration to those arrangements, including in relation to notifying the employer, requiring payment at specified times and, if necessary, taking recovery action. This bill is an important step in making sure that mine safety continues to improve. It is also important in bringing the mining industry into line with other industries, which pay for all their workplace safety regulation through the WorkCover scheme. It is responsible legislation with an important purpose.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 5 agreed to.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [11.48 a.m.]: During my contribution to the second reading debate I asked the Minister for Mineral Resources for a guarantee that the fund would not go out of control because it was not capped. The Minister quite properly indicated that he would answer that in his reply to the second reading debate. In his reply the Minister indicated that he had that power, and it goes before a committee. However, that power is vested with the director general and the committee is only an advisory committee. The industry and I want an indication as to how it can be controlled and a commitment from the Minister for restraint on his behalf in the next two years.

The Hon. IAN MACDONALD (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [11.50 a.m.]: The confusion is fairly easy to clear up. Division 2, contributions to mine safety fund, clause 9 (3) states that the director general's estimate for the relevant period has no effect unless it is approved by the Minister. The director general makes the estimate and the Minister has to approve it.

The Hon. Duncan Gay: So you will not approve any increases?

The Hon. IAN MACDONALD: I cannot give a commitment not to approve any increases because there could be problems that lead to some increases. I hope it does not happen. The intention is that the advisory

committee will give advice to the director general about the level for the levy and the purposes for which it is spent, which are outlined in the bill. I give a commitment that, other than necessary costs that might arise from time to time, I will not crank up the levy to any degree.

Clause 6 agreed to.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [11.51 a.m.], by leave: I move Coalition amendments Nos 1 and 2 in globo:

No. 1 Page 5, clause 7 (1) (e), line 30. Omit "or any other".

No. 2 Page 5, clause 7 (2), line 32. After "Fund", insert "nor can they be applied for any purpose by any other Act".

As the Minister indicated in his reply and in reply to my question a moment ago, he will accept the amendments, which I appreciate. The amendments are simple and will clarify that the money raised from the industry will apply to the costs of looking after mine safety and will remain in that area. The temptation for the Minister to move that money elsewhere has been removed. Those who are paying the money can rest assured that it will go to the area it is meant for.

The Hon. IAN MACDONALD (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [11.52 a.m.]: Clearly, the purposes of the levy are specified. It is not as though the levy is open-ended. Its purpose is defined in the bill. We accept the amendments. A transparent set-up has been arranged with the advisory council and representatives from the Minerals Council and the industry. The money is to go into a separate trust account. I am happy to accept the amendments.

Amendments agreed to.

Clause 7 as amended agreed to.

Clauses 8 to 19 agreed to.

Title agreed to.

Bill reported from Committee with amendments and passed through remaining stages.

INDUSTRIAL RELATIONS AMENDMENT BILL

Second Reading

The Hon. IAN MACDONALD (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [11.57 a.m.], on behalf of the Hon. John Della Bosca: I move:

That this bill be now read a second time.

The Industrial Relations Amendment Bill amends the Industrial Relations Act and implements proposals that have been prepared jointly by the Attorney General and the Minister for Industrial Relations. The major purposes of this bill are to clarify the Industrial Relations Commission's jurisdiction to declare void or vary unfair contracts, and to allow for appeals on questions of the jurisdiction of the Industrial Relations Commission [IRC] in Court Session, but only after the processes of the commission are complete. These amendments are necessary to clarify the situation following a number of recent judgments in the Court of Appeal, notably *Mitchforce v Industrial Relations Commission & Ors* [2003] NSWCA 151 and *Solution 6 Holdings Ltd & Ors v Industrial Relations Commission & Ors* [2004] NSWCA 200. These decisions threw the scope of the IRC's unfair contracts jurisdiction into doubt and allowed parties to remove disputes from the IRC to the Court of Appeal before the IRC had a chance to consider whether or not they fall within its jurisdiction.

The bill makes two other amendments: it enables the commission, in exceptional circumstances, to accept an application in relation to an alleged unfair contract that is made out of time, and it changes the name of the Commission in Court Session to the Industrial Court of New South Wales. I will provide the House with some background to these amendments before dealing in detail with their effect. Section 106 of the Industrial Relations Act allows the Industrial Relations Commission in Court Session to review contracts whereby work is performed in an industry, and, when it finds such contracts to be unfair, to vary them or declare them void in

whole or in part. Section 179 of the Act is a privative clause. In effect, it states that there can be no appeal from the decisions of the Industrial Relations Commission in Court Session, even on the grounds that the commission did not have the jurisdiction to hear the matter.

A number of recent judgments of the Court of Appeal, beginning with *Mitchforce*, have indicated difficulties with the jurisdiction of the Industrial Relations Commission to hear unfair contract cases that have a significant commercial element, and with the operation of section 179 as a privative clause. These cases have expanded the opportunities for matters to be brought before the Court of Appeal for consideration of jurisdictional issues prior to any hearing being held by the commission.

In the *Mitchforce* and *Solution 6* cases, the Court of Appeal criticised the Industrial Relations Commission for "intruding into the heartland of commercial contracts". The Court of Appeal in these decisions considerably narrowed the interpretation of section 106 that had previously been adopted by appellate courts by holding that the power to declare void or vary a contract, as defined in section 105, extended only to such aspects of it as closely relate to the performance of work in an industry. Further, in the *Solution 6* case the Court of Appeal held that since the privative clause says that there is no appeal from a decision of the Commission it was not prevented from hearing cases.

Pursuant to sessional orders business interrupted.

QUESTIONS WITHOUT NOTICE

BOARDING HOUSE REFORMS

The Hon. JOHN RYAN: My question without notice is directed to the Minister for Disability Services. Has he made plans to act on the New South Wales Ombudsman's recommendation that new laws are required to protect the health and welfare of residents living in boarding houses? Does the Government plan to review the Youth and Community Services Act to ensure inspectors from the Department of Ageing, Disability and Home Care can have free access to licensed and unlicensed boarding houses? Has he requested an explanation from his department about its failure to enforce current legislation which has left unlicensed boarding houses unregulated and has left residents who have disabilities without care, thereby exposing these vulnerable people to appalling living conditions?

The Hon. JOHN DELLA BOSCA: I thank the Hon. John Ryan for his question. As I think he is fully aware, the Boarding House Reform Program, as I have mentioned to him before in response to questions asked in similar terms, was commenced in 1998 with the objective of improving the standard of accommodation and support for residents of boarding houses. It aimed to relocate residents who have high support needs into more appropriate community-based accommodation and provide support services to residents remaining in the centres. For example, during this financial year almost \$50 million will be spent through the Boarding House Reform Program, including more than \$42 million in community-based accommodation and support services for the residents of boarding houses who have high support needs, including an additional \$1.5 million in growth funds, \$4.2 million in support services to assist people remaining in licensed residential centres, and \$2 million in recurrent growth funds for relocation to more appropriate accommodation of residents affected by boarding house closures.

Over 460 people who have high support needs have been provided with new community-based accommodation and support through the reform program. One of the aims of the program is to improve conditions in boarding houses and to address the issue of industry viability by easing pressures on centre operators. The provision of a range of targeted personal care, health care and community access services has enabled residents who are living in the centres to have an improved quality of life and better access to the community.

[Interruption]

The Hon. John Ryan interjected and asked me what I was doing about unlicensed boarding houses. I have previously indicated a number of points to him, but I will reiterate them for the benefit of the House. Boarding houses require a licence only if two or more residents are, according to the regulations, "handicapped and require supervision or social habilitation". If people are aware of unlicensed boarding houses that should be licensed, they should advise the Department of Ageing, Disability and Home Care so that appropriate action can be taken.

All boarding houses are required to meet public health, fire and safety requirements. Individual councils have responsibilities and powers to ensure that boarding houses meet those requirements. The Hon. John Ryan referred to the Youth and Community Services Act 1973. The Act is being reviewed to ensure that an appropriate regulatory framework is in place to achieve positive outcomes for people who have a disability and who are living in boarding houses, and to address concerns about the viability of the industry as a supplier of safe, affordable and suitable accommodation. The review's consultation process has provided opportunities for stakeholder input from licensed residential centre operators, residents, families of residents, service providers, non-government peak councils, advocacy groups, relevant government departments and statutory authorities.

Over a four-month period the consultant's report was available on the Department of Ageing, Disability and Home Care's web site and public comment on its recommendations was invited until December 2004. The report was also made available to the department's boarding house expert advisory group and two other stakeholders who were consulted on its recommendations. The Government will determine the action it will take in relation to the review of the legislation following further consideration and public consultation.

PORTS SECURITY

The Hon. PENNY SHARPE: My question is addressed to the Minister for Ports and Waterways. Will he outline the latest initiatives to protect our ports from the threat of terrorism?

The Hon. ERIC ROOZENDAAL: I thank the Hon. Penny Sharpe for her question on this very important issue. In these troubled times we have to be more vigilant than ever before in the war against terror. This Government has worked hard to put into place plans and procedures to counter the threat of terrorism in this State. The latest equipment in our frontline counter-terrorism hardware is the provision of anti-terrorist vehicle barriers at Sydney's Overseas Passenger Terminal, which can disable a speeding truck. This anti-terrorist barricade defence system is part of a \$23.4 million security upgrade of New South Wales ports.

Our ports are critical State infrastructure. Unfortunately, terrorism has made ports security a top priority. We have greatly boosted security at Circular Quay's Overseas Passenger Terminal. These defence devices can stop a truck travelling at 80 kilometres an hour. They activate out of the ground and form a physical barrier that can crush a speeding truck and immobilise it. The barriers can be triggered in less than two seconds. As Phil Black reported on Seven News on 19 November:

At 80 kilometres an hour the impact is much more than a little bump. The barrier slices through the engine and the truck stops so suddenly that the momentum of the trailer crushes the cabin from behind.

The anti-terrorist barricade defence system blocks vehicles from accessing the Overseas Passenger Terminal and around berthed vessels. At times of heightened security levels, these defence barriers will be permanently raised as a further security measure.

The Government has a range of measures in place to protect cruise ships and their passengers when they visit our shores. This is the biggest cruise season that Sydney has ever seen. Approximately 90 cruise ships will come into port over the coming months. We have to ensure that security requirements are appropriate to protect the ships and their passengers. With more than 156,000 tourists coming through Sydney every year on cruise ships, the cruise industry injects more than \$30 million into the New South Wales economy. It is critical that we protect this infrastructure at the national standard for counter-terrorism.

The New South Wales Government has security plans in place for all visiting cruise liners. All our ports have their own security plans for individual terminals and facilities. The closed-circuit television cameras monitor key areas. In excess of 20 cameras are trained on the wharves at Sydney Harbour and Darling Harbour, including six thermal imaging cameras that can detect heat sources that are not visible to the naked eye. There are 30-metre exclusion zones around all visiting cruise liners. NSW Water Police and Sydney Ports Corporation vessels conduct random water patrols in Sydney Harbour and at Wharf 8 at Darling Harbour. In addition, we have improved security fencing, signage and barriers at all ports. We have physically strengthened the perimeters of the Overseas Passenger Terminal and the Darling Harbour Wharf 8 perimeters with new fencing, barriers and bollards as well as additional lighting.

The Hon. Dr Arthur Chesterfield-Evans: Why do you not take a stand against the war in Iraq? Then we would not have all these problems.

The Hon. ERIC ROOZENDAAL: I acknowledge the interjection by the Hon. Dr Arthur Chesterfield-Evans because his comment is so silly, so ridiculous and so stupid. The issue of terrorism goes well beyond the war in Iraq, as the Hon. Dr Arthur Chesterfield-Evans knows. Al-Qaeda declared Australia a target after East Timor and if the Hon. Dr Arthur Chesterfield-Evans did a little bit of research he would know that. He should not trivialise the issue of terrorism. It shows how out of touch the Democrats are. His trivialising the important issue of terrorism is an insult to victims of terrorism around the world.

Our port security services are working with visiting ship security officers and rely on security intelligence that is gathered by Federal and State agencies. We live in troubled times, but the House will be reassured to know that our agencies are working hard to counter the ever-present threat of terrorism.

WYONG HOSPITAL EMERGENCY DEPARTMENT TREATMENT BENCHMARKS

The Hon. MICHAEL GALLACHER: My question without notice is directed to the Minister for Health. What action has been taken to stop a repeat of the unacceptable fact that 61 per cent of patients who were imminently life threatened who attended the Wyong Hospital emergency department in September were not seen within the 10-minute benchmark considered appropriate for the seriousness of their condition? Will there be an apology to all patients and their families who were consequently adversely impacted by the delay in receiving treatment?

The Hon. JOHN HATZISTERGOS: Obviously the Leader of the Opposition has not read the Auditor-General's report, which was issued last week. It clearly states that in four out of five triage categories, which the College of Emergency Physicians has set out nationally, New South Wales outperformed every other State.

The Hon. Michael Gallacher: I asked about Wyong.

The Hon. JOHN HATZISTERGOS: I do not have the specific details of Wyong Hospital, but I am happy to find out and advise the Leader of the Opposition.

The Hon. Michael Gallacher: Do you not agree that 61 per cent is unacceptable?

The Hon. JOHN HATZISTERGOS: Just a moment. The demand for emergency services is on the increase. During October 2005 there were 131,388 attendances at emergency departments. The emergency department information system recorded 1.516 million patient episodes during 2004-05, an increase of more than 3,000 patients, or 0.2 per cent when compared with the previous year. During the same time admissions from emergency departments to wards have increased by 2.6 per cent. Despite that increase the timely offloading of patients arriving by ambulances to emergency departments has improved. The percentage of patients offloaded within 30 minutes was 77 per cent. That is a 7 per cent improvement since October 2004.

Statewide, total non-emergency activity was 1.2 per cent higher in October 2005 compared with October 2004, resulting in an increase in the year to date in non-emergency activity. Of course, emergency departments always give priority to the most life-threatening cases and New South Wales hospitals continue to treat the most seriously ill patients in accordance with clinical priority and designated time frames. The percentage of patients who wait longer than eight hours in an emergency department to get an in-patient hospital bed across New South Wales has fallen from 31 per cent in October 2004 to 24 per cent in October 2005.

All those improvements have not come about by accident; they are due to careful planning and increased investment by the Government. We opened 563 new beds in 2004-05 and will add 822 beds in 2005-06. That is more than 1,300 new permanent beds in just two years. The Government has invested in new technology, including rolling out the electronic bed-board system to give hospital administrators real-time information on bed availability, as well as electronic ambulance arrival information so that emergency department staff is alerted about patients in transit to hospitals. We will invest almost \$20 million in the new Clinical Services Redesign Program in 2005-06, including specific projects to improve triage times and access block performance by streamlining a patient's journey from the emergency department to a ward and then back into the community. Some projects funded by that \$20 million are—

The Hon. Michael Gallacher: You still do not know about Wyong.

The Hon. JOHN HATZISTERGOS: I will deal with all of those in a moment.

The Hon. Michael Gallacher: I asked a specific question.

The Hon. JOHN HATZISTERGOS: There were a number of aspects to the question.

The Hon. Michael Gallacher: No, it was very specific, it was about 61 per cent of patients at Wyong.

The Hon. JOHN HATZISTERGOS: The \$20 million is allocated for all area health services. For example, Hunter New England Area Health Service has a project to reduce delays for mental health patients; the North Coast and Greater Western area health services has a project for the identification and development of solutions to delays in patient progress across the services; the Greater Southern Area Health Service has a project to develop a surgical services delivery framework; the South Eastern Sydney and Illawarra Area Health Service has a project spanning four teaching hospitals to reduce access block and increase productivity; and the Northern Sydney and Central Coast Area Health Service has a project to improve progress of mental health patients and another to reduce access block and off-stretcher time in emergency departments.

Other projects to be funded are the Children's Hospital at Westmead, to improve the patient journey for children requiring surgery; the Sydney West Area Health Service, to identify bottlenecks in the progress of cardiology patients, to optimise acute in-patient logistics and the flow of surgical patients; and the Sydney South West Area Health Service to help meet surgical demands.

The Hon. Michael Gallacher: Point of order: The Minister advised me to refer to the Auditor-General's report. Is it this report, which states that in triage categories 2, 3 and 4 only one of eight area health services got to category 2 within the required time? I seek the Minister's advice: Is this the report he was referring to?

The PRESIDENT: Order! Members must not attempt to make debating points under the guise of a point of order.

GREATER SOUTHERN AREA HEALTH SERVICE FINANCIAL OBLIGATIONS

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: My question without notice is addressed to the Minister for Health. Why is the Greater Southern Area Health Service not honouring invoices for basic services such as catering and purchasing office supplies? Is it correct that some office staff provide their own printer cartridges in order to keep up with necessary printing? Are milk supplies to the Cootamundra District Hospital no longer being delivered because of excessively delayed payments to the local vendor? Why is the area health service not paying normal housekeeping bills on time to ensure that local businesses survive in the Riverina? How many senior executive service positions have been created in the Greater Southern Area Health Service since the restructure?

The Hon. JOHN HATZISTERGOS: On 10 October I announced the appointment of an external adviser to review the creditor situation of the Greater Southern Area Health Service and the commencement of an independent review of the financial position of the service. Last week the following actions were taken. All unpaid invoices were called in from facilities within the Greater Southern Area Health Service and are now with the area health service office and are being processed and centrally paid. The acting chief executive issued a direction to all health facility managers outlining immediate action to be taken to strengthen accountability in procurement and payment practices across the service.

A report is to be provided every second day to the acting chief executive and to the Department of Health by the area health service accounts payable branch, updating progress on the payment of all outstanding invoices for the area. The chief executive and the department will review this to ensure that the service pays its outstanding invoices within appropriate payment terms. Liaison is also occurring with the providers of the new Oracle financial system, which was introduced in October, to overcome any remaining difficulties with the implementation of the new financial system. In relation to doctor payments, an issue reported in newspapers last week, I am advised by the Greater Southern Area Health Service that no doctor accounts are outstanding, beyond payment terms, at this time.

The Greater Southern Area Health Service received \$447 million this financial year. That is \$33 million more than last year and a boost of \$216 million since the Government came to office. NSW Health is a large organisation, with about 1.2 per cent of Australia's gross domestic product and a record expenditure of more than \$11 billion, including a capital works program of more than \$600 million. This year NSW Health will

purchase an estimated \$2.8 billion of goods and services, which represents about \$7.7 million every day of the year. Nevertheless, I expect health services to pay their suppliers' invoices in line with contract terms.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I ask a supplementary question. How many senior executive service positions have been created in the Greater Southern Area Health Service since the restructure?

The Hon. JOHN HATZISTERGOS: Those details are in the annual report, which will be tabled shortly.

FEDERAL GOVERNMENT INDUSTRIAL RELATIONS POLICY

The Hon. PETER PRIMROSE: My question without notice is directed to the Minister for Industrial Relations. Will the Minister inform the House of any recent assessments of the potential impact on families of the Commonwealth's extreme WorkChoices legislation?

The Hon. JOHN DELLA BOSCA: I thank the Hon. Peter Primrose for his ongoing interest in industrial affairs. To fill the void created by the Howard Government's failure to honour its promise to Senator Steve Fielding that it would provide family impact statements for its legislation, Unions New South Wales recently released an impact statement on the likely effects on families of the WorkChoices bill. The author of that statement is a well-respected academic in the field of family studies, Mr Don Edgar.

The Hon. Duncan Gay: What about your failure on regional impact statements? What about your promise on State issues, cobber?

The Hon. JOHN DELLA BOSCA: This is a State issue. Don Edgar was the foundation Director of the Australian Institute of Family Studies and is regarded as Australia's leading expert on work and family balance. Don Edgar says that the notion of examining new legislation for the impact it can have on families is a sensible goal, given that governments, at any level, are supposed to govern for the common good, the wider community and families as citizens, not just for an abstract economy or cause of growth.

He says that even though family and community work are unpaid they are crucial to the viability of our economy. It is inevitable that the demands of either work or family will impact on the other. It is important to the nation, therefore, that policies and systems help workers meet both their obligations to their employers and their families and communities. Don Edgar quite bluntly says that the changes to industrial relations being considered by the Senate this week "will damage relationships inside families, within workplaces and across the community". It is not at all obvious to him that a prosperous economy equals family wellbeing. Indeed, he goes on to state:

A prosperous economy based on inequality and job conditions not designed to help workers meet their family responsibilities is likely to be a divided and unhappy one for many families.

Don Edgar highlights the Howard Government's rhetoric surrounding the words "choice" and "flexibility" as being axiomatic to financial and economical prosperity when we all know that the workers' choice will be to take it or leave it. He states that the changes fail to acknowledge that unpaid caring work and healthy family and community relationships are the key to a thriving economy. Rather, the proposed legislation perpetuates the clash between work and family life and makes that clash more intense.

Mr Edgar systematically removes the veil that disguises the spurious claims of the Federal Government in his impact statement. There has been a 14.9 per cent increase in wages since 1996. In fact, during this time the bottom 20 per cent of wage earners saw only a 1.2 per cent increase. Individual workplace bargaining will deliver family friendly workplaces but not for those who lack the confidence, the skill or the market position to negotiate them. Lower pay will create jobs but higher productivity is more likely to come from enhanced skills training, not through a race to the bottom. The statement concludes that the WorkChoices legislation:

... breaks the nexus between family needs and appropriate wage rates. The proposed changes are a recipe for a more savage workplace, a less caring society, an individualistic, competitive auction room with no collective spirit.

Those are powerful words from another respected academic who joins with church leaders, lawyers, economists, industrial relations practitioners and even Liberal Party representatives across all the States in denouncing this

bill. The Howard Government's radical workplace changes are the wrong choice for workers, the wrong choice for families and the wrong choice for Australia. This legislation should be torn up and started again.

GENETICALLY MODIFIED CANOLA TRIAL

Mr IAN COHEN: My question without notice is directed to the Minister for Primary Industries. Can the Minister inform the House why the Commonwealth Scientific and Industrial Research Organisation [CSIRO] has abandoned research by Dr T. J. Higgins into a GE field pea after 15 years of work and millions of dollars of taxpayers' money? Is it because independent research published recently showed the GE pea had negative impacts on mice? Will the Minister inform the House why research published in the *Journal of Nutrition* in 1999 showed the same GE field pea had significant impacts on rat colons? In light of these findings is the Minister able to reassure the public that extensive independent health studies, including feeding studies, have been undertaken to guarantee that Monsanto's and Bayer's GE canola is safe for human and animal consumption? If not, will the Minister contact the Office of the Gene Regulator with some urgency to determine whether such long-term independent studies have been undertaken?

The Hon. IAN MACDONALD: The honourable member still fails to grasp the Federal-State arrangements that are in place in relation to these modifications. The Office of the Gene Regulator is in charge of environmental and health issues relevant to any application for the release for commercial purposes of genetically modified products. I do not have any responsibility for the Commonwealth Scientific and Industrial Research Organisation [CSIRO]. I imagine the honourable member would be able to direct his question to that body.

MARINE PARKS

The Hon. DUNCAN GAY: My question without notice is directed to the Minister for Primary Industries. In light of the late night announcement of the creation of two more marine national parks covering Port Stephens, Great Lakes and the southern section of the Batemans shelf, does the Minister recognise that people in this State are outraged by this Government's total lack of community consultation? What will that mean to the State's commercial and recreational fishing industries and dependent communities as they are forced into smaller and smaller areas? In light of the Minister's total lack of community consultation prior to this announcement, is it a fact that subsequent consultation will be nothing more than a bad joke? When will the Government finally stop this contempt for the State's fishing industries and communities that rely on both the recreation and commercial industries?

The Hon. IAN MACDONALD: It is interesting that the Deputy Leader of the Opposition put the establishment of marine parks into that context. After all, he has been advocating a \$36 million buyout program for the fishing community along the coast of New South Wales, which would have only one impact, that is, to reduce the size of the industry. The Deputy Leader of the Opposition comes into the Chamber today and has a go at the Government when this Government allocated \$18.5 million for commercial buyouts in relation to the two marine parks. I remind him that the bioregion studies, for both the Manning shelf and the Batemans area, have been on the web site and have been released for some time.

There is no surprise whatsoever that at some point the Government will make a decision about those marine parks. In relation to both marine parks the Government will form advisory councils comprising local people and local stakeholders who, in due course, will inform the Government of their views about sanctuary zones or whatever. After the advisory committee has considered the draft plan it will be put on public display for three months. That will give the community another round in relation to these marine parks.

The Hon. Duncan Gay: It is not going to change anything. You have made the announcement.

The Hon. IAN MACDONALD: The Government has not made the announcement. The Deputy Leader of the Opposition does not understand marine parks.

The Hon. Duncan Gay: I do understand marine parks.

The Hon. IAN MACDONALD: Tomorrow we will declare the boundaries of the park. There are 97,200 hectares in relation to the park in the Manning region in the north.

The PRESIDENT: Order! I call the Deputy Leader of the Opposition to order for the first time.

The Hon. IAN MACDONALD: There are 85,000 hectares in relation to the park between Brush Point and Wallaga Lake in the south. Those are only statements about the boundaries of the park. I refer, next, to the zoning within that park. There will be many months of consultation on this matter. I am sorry that the Deputy Leader of the Opposition raised this issue with such aggression. I believe that the two marine parks are great statements of the environmental strength of this Government.

The Hon. Duncan Gay: Point of order: In light of the Minister's answer can he tell the House why he hired a person to buy out these people some months ago?

The PRESIDENT: Order! There is no point of order.

The Hon. IAN MACDONALD: What an abuse of the standing orders of this House! These marine parks will be considered in relation to local communities and their views will be heard. Even the Deputy Leader of the Opposition could lodge a submission. I would be happy to receive a submission from him.

[Interruption]

I have not made up my mind about anything in particular inside the park. The only things that have been considered are the boundaries of the park and not the zones.

MARINE PARKS

The Hon. HENRY TSANG: My question without notice is addressed to the Minister for Primary Industries. Will the Minister educate the Deputy Leader of the Opposition and update the House on the latest steps taken by the State Government to fulfil its election promises to roll out a marine park system in New South Wales?

The Hon. IAN MACDONALD: I thank the Hon. Henry Tsang for his question and refer him to my previous answer.

PERISHER BLUE VILLAGE CENTRE LEASE

Ms SYLVIA HALE: My question is directed to the Minister for Commerce. Does Perisher Blue resort have an exclusive negotiation agreement with the Department of Commerce? If so, what is the nature of this exclusive negotiation agreement? Is the Perisher Blue lease currently being negotiated and has the Minister or anyone in his department met the proponent of the Perisher Blue village centre development regarding the Government's decision to spend \$160 million on upgrading infrastructure at Perisher Valley? Has this expenditure been discussed during the lease renewal negotiations? When will the terms of the new lease be made public?

The Hon. JOHN DELLA BOSCA: Ms Sylvia Hale asked in part about people whom I have met in recent times. I am happy to check my diary but, subject to my doing so, I do not believe I have ever met, let alone met recently, any of the proponents of the Perisher Blue village centre. In 1999 planning approval was granted for the development of accommodation additional to the Perisher Range resorts to meet growing visitor numbers. The planning approval followed a commission of inquiry and included approval for a new village centre on the existing car park at Perisher Valley. In June 2002 the then Department of Public Works and Services entered into an exclusive negotiation with Perisher Blue Pty Ltd for the development and leasing of the new Perisher Blue village centre.

Prior to the Government authorising the direct negotiations at Perisher Blue a careful review of alternative options was undertaken. Given that Perisher Blue already had a long-term lease over the car park, which represented the last area of degraded land suitable for the village centre development, direct negotiation was determined to be the only realistic option. This decision was confirmed by the Independent Commission Against Corruption. As required under the exclusive negotiation agreement, Perisher Blue prepared a detailed village design plan that is consistent with relevant environmental requirements for the Perisher Range resorts. The plan was conditionally approved by the then Department of Infrastructure, Planning and Natural Resources in October 2003. Formal negotiations are under way but will not be concluded until the Independent Pricing and Regulatory Tribunal [IPART] completes a review of municipal infrastructure charges. This should have occurred by the end of October 2005.

The Government is aiming to complete the entire village centre negotiation later this year on the basis of IPART's findings and subject to securing satisfactory value for money. In mid July 2005 the current owners of Perisher Blue conveyed to the Department of Commerce that they intended to sell their interest in the resort operations. However, in late September 2005 Perisher Blue advised that it had decided not to proceed with the sale process and was reviewing its investment strategy in the resort business prior to resuming negotiations with government.

PUBLIC SECTOR RECRUITMENT FREEZE

The Hon. GREG PEARCE: My question is directed to the Special Minister of State. Will the Minister explain to the House his Government's recruitment freeze on non-frontline staff, as referred to by the Treasurer in response to a question on notice and in light of his Government's criticism of the Opposition's policy of a recruitment freeze on non-frontline staff? How long has the freeze been in place? How many positions have been vacated since the freeze commenced? How many positions does the Minister expect to abolish prior to the March 2007 election?

The Hon. JOHN DELLA BOSCA: I note that the Hon. Greg Pearce has stopped asking the Deputy Leader of the Government questions and is directing them to me instead. I will make two points. First, the new Leader of the Opposition, the honourable member for Vaucluse, repeated the comments that were attributed to the former Leader of the Opposition that a Coalition government would sack upwards of 92,000 public servants. I thank the Hon. Greg Pearce for asking about the Treasurer's comments. I have not seen the answers to which he referred. I will check them out and respond in due course about the specifics of the Treasurer's response. My second point is that the Hon. Greg Pearce obviously has the concept of redundancy confused with the concept of staff freezes. If he is to be a useful shadow Minister for Finance and shadow Minister for Infrastructure he had better get a briefing on the difference between freezes and redundancies.

SENIORS CARD

The Hon. TONY CATANZARITI: My question is addressed to the Minister for Ageing, and Minister for Disability Services. Will the Minister please outline the benefits of the Seniors Card Program?

The Hon. JOHN DELLA BOSCA: The New South Wales Government is proud to support the New South Wales Seniors Card Program, which is administered and funded by the Department of Ageing, Disability and Home Care. The card provides a range of government and private sector benefits and discounts, including transport concessions to allow seniors to remain active in the community. The Seniors Card Program was launched in 1992 and today has more than 890,000 members. It is constantly recruiting new business partners to add to the thousands already in the program, and currently 5,000 business outlets around the State are offering discounts to seniors. Community response to the program is extremely positive, with 80 per cent of all eligible people over the age of 60 living in New South Wales holding a card.

I am extremely pleased to announce that the success of the Seniors Card Program and the positive response of the community has been formally recognised by the New South Wales public sector. On Friday 4 November the Department of Ageing, Disability and Home Care received a bronze award for the New South Wales Seniors Card Program in the category of social justice at the 2005 Premier's Public Sector Awards. These awards acknowledge projects and initiatives that have produced measurable outcomes, with proven results and benefits to the people of New South Wales. A team approach is essential to the success of a program such as the Seniors Card, and I congratulate the four staff in the Department of Ageing, Disability and Home Care who manage the program and its dedicated team of volunteers on their outstanding efforts. I also take this opportunity to congratulate the four other projects nominated by the department this year: Hornsby Vacation Respite, the Lachlan Centre's Slowpitch Softball Community Participation Project, the Tomaree Lodge Community Participation Program, and the International Day for People with a Disability 2004.

GOVERNMENT SCIENTIFIC ADVICE

The Hon. JON JENKINS: My question is directed to the Special Minister of State, representing the Premier. In a speech last night the Premier made several claims that I would like the Premier to substantiate. He said that access to favourite fishing spots in the new marine parks would be protected. How is this claim consistent with the fact that in excess of 6,000 submissions from fishers against zoning in the Byron Bay Marine Park have been ignored completely? The Premier said that Australia had had its warmest year on record in 2005. Is the Premier aware that the year is not yet over and that the statement from the Australian Bureau of

Meteorology actually said, "Australia has experienced its warmest start to a year on record (since 1950)"? The Premier also mentioned that the United States of America had had a record hurricane season. Is the Premier aware that geological records show that the recent season was a quiet period for hurricane activity? Does the Premier have a scientific advisory panel to consider significant scientific problems, such as global warming and other environmental issues? If he does not, who is advising the Premier on his scientific statements?

The Hon. JOHN DELLA BOSCA: I thank the Hon. Jon Jenkins for his question, which I will refer to the Premier. It is clearly directed to the Premier personally. I assure the honourable member that the Premier is quite well aware of the issues that he raised and quite well informed about those matters. The Hon. Jon Jenkins knows full well that the Premier is aware that the year is not over. Although the honourable member asserted that this year's hurricane season in the United States of America was not particularly remarkable, I am not sure that the people who live along the western coast of that country would necessarily see it that way.

EMERGENCY SERVICES MAPPING INFORMATION

The Hon. CHARLIE LYNN: My question is directed to the Minister for Emergency Services, and Minister for Lands. Can the Minister explain to the House and the community why the State Government departments responsible for our emergency services, such as the police, ambulance and fire services, and the Department of Lands have distanced themselves from blame relating to the failure to make up-to-date maps available to all emergency services? Who is ultimately responsible for this failure and what is the Minister doing to ensure that the problem is addressed immediately?

The Hon. TONY KELLY: This morning the Minister for Police, Mr Carl Scully, and I, as Minister for Emergency Services, and Minister for Lands, ordered a review into how emergency service personnel can have immediate access to and use current on-line mapping information. We asked the Surveyor-General, Warwick Watkins, to co-ordinate the review. The group will include the chief executive officers of all emergency services groups. As honourable members know, councils have to provide the Department of Lands or the Geographical Names Board with information on new subdivisions. Each day something like 4,000 transactions pass through the Department of Lands. Unfortunately sometimes councils are not quite so forthcoming with the naming of new streets. In fact, in relation to one suburb no request has been made by council to the Geographic Names Board with regard to a name. The Local Government and Shires Associations of New South Wales have been invited to be part of the group, the purpose of which is to ensure that in future all emergency service groups are able to get on-line information as quickly as possible.

DRUG USE

The Hon. KAYEE GRIFFIN: My question is addressed to the Minister for Health. Will the Minister provide the House with details of the Government's plan to prevent and treat the use of so-called party drugs such as amphetamines, cocaine and ecstasy?

The Hon. JOHN HATZISTERGOS: The honourable member's question is most timely. Over the past five years the Government has allocated \$424 million for drug programs focusing on four key areas: prevention, education, treatment and law enforcement. The evidence is that the Government's ongoing and significant investment in fighting drugs and alcohol and related crime is having an impact. Most importantly, drug use is down in this State. The 2004 household survey found that in New South Wales from 1998 to 2004 recent illicit drug use was down from 19.8 per cent to 14.6 per cent, recent cannabis use was down from 16.7 per cent to 10.7 per cent, recent heroin use was down from 0.6 per cent to 0.1 per cent, recent cocaine use was down from 2.1 per cent to 1.2 per cent, and recent amphetamines use was down from 3.8 per cent to 3.1 per cent.

However, evidence from the 2004 household survey is that ecstasy use may be emerging as a key challenge for governments, treatment providers and law enforcement agencies. That is why the New South Wales Government has developed a prevention and treatment plan to guide the health sector's response to the use of amphetamines, ecstasy and cocaine. Today I was pleased to release an important plan to address the problem of amphetamines, ecstasy and cocaine use in our community. This plan provides the framework for the health system to deal with the abuse of psychostimulants.

The plan's focus includes developing protocols between mental health services, NSW Police, emergency departments and drug services for the treatment of drug-induced psychosis; improving the skills and knowledge of general practitioners to enable them to recognise and treat psychostimulant health issues; developing appropriate information campaigns targeting different age, social and user groups ranging from

those who have not started using to those who are heavy users; formalising the alerts system to ensure clinicians can respond rapidly to emerging trends in psychostimulant use, such as the warnings issued about red mitsubishis or paramethoxyamphetamine—a new strong form of amphetamine which causes numerous overdoses; developing early interventions for cocaine users and training clinicians in their use; researching and developing strategies to address psychostimulant drug use in the long-haul trucking industry; researching psychostimulant use in rural and regional areas; and working in partnership with a broad range of government agencies, drug agencies, clinicians, industries and other groups.

Psychosis, mental and physical health problems, blood-borne viruses and crime are the terrible consequences that can result from the use of stimulant drugs. The seriousness of the problem should not be underestimated. An estimated 12,000 Sydneysiders are dependent on ice, or crystalline methamphetamine. Amphetamines are now the second most commonly used illicit drugs after cannabis. Up to two thirds of regular methamphetamine users are classified as dependent on the drugs. The community is justifiably concerned at an increasing number of people using amphetamines whilst use of other drugs is falling. That is why we have developed this comprehensive prevention and treatment plan to guide the health response to this very serious drug issue. The plan targets key groups who are particularly at risk with these types of drugs: young people, long-haul truck drivers, Aboriginal people, people with mental health issues, people of non-English speaking background, and injecting drug users.

The plan covers information and education, early intervention, treatment approaches, research, monitoring and evaluation and partnerships. Clinical guidelines have been developed to improve the skills and confidence of health workers in the recognition, assessment and treatment of psychostimulant use. The Government has allocated \$400,000 over the next two years to implement the actions in the plan, including research into the use of pharmacotherapies for treatment of psychostimulant dependence. All of those tools will support prevention programs aimed at stopping and reducing the use of these substances, as well as support health workers to identify and respond appropriately to drug misuse.

STATE RAIL AUTHORITY EMPLOYEES MISCONDUCT ALLEGATIONS

Reverend the Hon. Dr GORDON MOYES: I direct my question to the Minister for Ports and Waterways, representing the Minister for Transport. Will the Minister confirm that investigations into the conduct of State Rail Authority employees who work at depots at Wollongong and Thirroul was concluded during the second half of 2005? Will the Minister confirm that some of those employees were caught on camera during April and May 2004 systematically leaving work hours early and claiming overtime that they did not work, among other improper behaviour? What action, if any, did the State Rail Authority take against those employees found to be in breach of their employment obligations after the authority spent tens of thousands of dollars hiring private investigators to gather evidence? Is the Minister aware of allegations that those employees, and others at the depots, continue to act in breach of their employment obligations?

The Hon. ERIC ROOZENDAAL: I will refer the honourable member's question to the appropriate Minister for a response.

QUEANBEYAN DISTRICT HOSPITAL UPGRADE

The Hon. MELINDA PAVEY: My question is directed to the Minister for Health. Given that the Labor member for Monaro stated in his 2003 newsletter that construction of the new Queanbeyan District Hospital will begin in 2005, will the Minister inform the House of the date set over the next 32 days to break ground on the redevelopment of the Queanbeyan hospital?

The Hon. JOHN HATZISTERGOS: The program for the completion of Queanbeyan hospital is on time.

CROWN LAND WEED CONTROL AND WILDLIFE PROTECTION

The Hon. CHRISTINE ROBERTSON: My question is addressed to the Minister for Lands. What is the Government doing to protect our native wildlife and control the spread of weeds on Crown land?

The Hon. TONY KELLY: I commend the Hon. Christine Robertson for her continued interest in rural matters. Almost half the land in New South Wales is Crown land and, as such, the State Government has a responsibility to meet its obligations as a major landholder. It has a duty to protect native wildlife and various

vegetative environments such as wetlands, rain forests, rangelands and State parks. Accordingly, the Iemma Government stands by its commitment to the environment and has set aside \$585,000 for the financial year 2005-06 for weed control programs on Crown land. The funds are being provided by the Department of Lands and the Department of Primary Industries, through their Noxious Weeds Advisory Committee in a cost-sharing venture. The money will be distributed between 108 weed control projects throughout New South Wales.

The Hon. Duncan Gay: How much has been set aside?

The Hon. TONY KELLY: \$585,000.

The Hon. Duncan Gay: Oh gee!

The Hon. TONY KELLY: When the Coalition was in power it gave zilch. All projects are based on a co-operative approach with responsibility being shared by trusts, councils, county councils, state agencies, private landholders and the community. Common control programs are the New South Wales Bitou Bush Threat Abatement Plan, Weeds of National Significance Plan and the Recovery Plan for Threatened Species. As I said in this House two weeks ago when I spoke about pest control programs, these funds are part of a \$2 million initiative targeting specific weed and animal pests on public land over four years. Weed funding, like that for the pest programs, is allocated to five main regions including \$189,000 for the South Coast of New South Wales, \$145,540 for the North Coast, \$123,500 for Central New South Wales, \$115,000 for the Sydney-Hunter region and \$12,000 for the Far West. Some examples include the Killalea State Parks Trust, which has been awarded a grant of \$5,000 to assist with its weed control program. The weeds being addressed at Killalea State Park include the bitou bush, and blackberry and lantana, which are both weeds of national significance. The Illawarra District Noxious Weeds Authority has been allocated \$11,000 to address an infestation of bitou bush.

The Hon. Duncan Gay: What do you have to be to be a weed of national significance?

The Hon. TONY KELLY: That is what The Nationals are. We are addressing infestations of bitou bush at Seven Mile Beach, Werri Beach, Perkins Beach, Bevans Island, Windang Island and Gerringong Boat Harbour. The trust of Lake Keepit State Park also has been awarded a grant of 3,000 to help control various weeds including Noogoora burr, Bathurst burr, galvanised bur and prickly pear. To assist trusts and other management groups apply for funding, a published set of guidelines is available to the public. An interagency committee evaluates the various applications and measures them against the guidelines. Looking after our environment and native vegetation is extremely important not just for today but for future generations.

NATURE CONSERVATION COUNCIL LEGAL AID FUNDING

Reverend the Hon. FRED NILE: I ask the Special Minister of State, representing the Attorney General, a question without notice. It is the fact that legal aid is designed for low-income individuals facing our legal system? Is it a fact that the Nature Conservation Council, through its director, is conducting an appeal with the support of legal aid funds? What amount of legal aid funds has been used in these appeals? Is this the correct use of legal aid when many low-income individuals and families are waiting desperately for legal aid? Will the Government give an assurance that organisations seeking to challenge matters for political purposes cannot in future misuse legal aid funds?

The Hon. JOHN DELLA BOSCA: The honourable member would be aware of the public consensus and the Government's view that legal aid is for the assistance of people in litigation, especially people with a low income, and also for matters in the public interest. I will seek urgent advice from the Attorney General on the matter about which the honourable member has inquired and provide him with the information as soon as practicable.

CHILDREN'S HOSPITAL AT WESTMEAD EMERGENCY DEPARTMENT TREATMENT BENCHMARKS

The Hon. DAVID CLARKE: My question without notice is directed to the Minister for Health. Is the Minister aware that in September 2005, 58 per cent of children at the Children's Hospital at Westmead waited longer than they should have under current benchmarks to be treated in the emergency department? What action has the Minister taken to ensure that these types of delays are not repeated?

The Hon. JOHN HATZISTERGOS: This is a follow on from a previous question.

The Hon. Michael Gallacher: You didn't answer the previous one. You were asked specifically about one hospital and now you are asked about another.

The Hon. JOHN HATZISTERGOS: Let me answer it quite directly. The benchmark for the first category of triage is that those with life-threatening illnesses have to be seen within 10 minutes. Our performance for a number of years has been 100 per cent.

The Hon. Michael Gallacher: Let's go to category two.

The Hon. JOHN HATZISTERGOS: Just a moment.

The Hon. Michael Gallacher: Let's go to categories three and four.

The Hon. JOHN HATZISTERGOS: What was the Coalition's performance when it was in government—77 per cent of people with a life-threatening illness were seen within two minutes. That is the performance level that the Leader of the Opposition is justifying. Nationally, for triage category one the level is 99 per cent, but in New South Wales it is 100 per cent. Nationally, for triage category two it is 76 per cent and in New South Wales it is 76 per cent—the same percentage. Triage category three is the one category in relation to which the level in New South Wales is below the national level. Nationally, for triage category four the level is 61 per cent, but in New South Wales it is 65 per cent. Nationally, for triage category five it is 82 per cent, but in New South Wales it is 86 per cent. In four of the five categories New South Wales has a performance equal to or better than the national average. The other statistic I want to share with honourable members—

The Hon. Michael Gallacher: Point of order: The Minister was asked a very specific question about the Children's Hospital. He is now talking percentages. This matter is extremely important for parents and citizens because it affects their children. The Minister should answer the question first before going on with all this waffle.

The PRESIDENT: Order! The Minister was making general comments in his answer.

The Hon. Michael Gallacher: It was waffle!

The PRESIDENT: Order! The Minister's answer was entirely in order.

The Hon. JOHN HATZISTERGOS: The performance across categories one to five, over the last five years particularly, has shown consistent improvement in most categories, and that is due to the fact that we are putting in additional resources. I emphasise that New South Wales hospitals have clinical initiative nurses, who ensure that any person who is not seen within the benchmark time can be reassessed by a nurse and, if necessary, have his or her clinical priority changed. That applies at the Children's Hospital as it does at other hospitals to ensure that all those who are not seen within the benchmark time are reassessed clinically and, if necessary, have their priority changed. I will get some specific information about the Children's Hospital, but I wish to make some general comments with regard to it. We have responded to the growing demand for medical care by increasing the Children's Hospital budget this year by 6.3 per cent to \$163 million, an increase of \$10 million. Those opposite are in no position to argue because in all these areas we have been improving consistently. Our performance, compared with that of the Coalition when it was in government, is as different as night is to day. The Coalition did not even keep statistics for most of these categories because they were so embarrassing.

The PRESIDENT: Order! I call the Leader of the Opposition to order for the first time.

The Hon. JOHN HATZISTERGOS: In July 2005— [*Time expired.*]

COASTAL BEACH REHABILITATION SCHEME

The Hon. GREG DONNELLY: My question without notice is to the Minister for Juvenile Justice. What is the latest information on the contribution of the Department of Juvenile Justice to the Coastal Beach Rehabilitation Scheme in the Hunter region?

The Hon. TONY KELLY: Juvenile Justice is committed to firm, but fair, treatment of young offenders that encourages them to face up to their offending behaviour and to give something back to the

community. Programs that target offending behaviours are designed to guide young people into becoming productive members of our society. One such program, which operates in the Hunter region, is the Coastal Beach Rehabilitation Scheme, an initiative of Newcastle Juvenile Justice in consultation with Newcastle City Council. I acknowledge the foresight of the council and Coastcare Australia for allowing these young people to be involved. The Department of Juvenile Justice has provided a supervisor to work with juvenile offenders on community service orders since November last year. To date more than 100 offenders have taken part in the project. Attendance for young offenders who are assigned to this program is mandatory, and missing just one day will result in a revocation of the community order by the department and a breach notice for the young person submitted to the issuing Children's Court. I understand that Dixon Park Beach has just received the cleanest beach award for the Hunter-Port Stephens area.

The Hon. Michael Gallacher: Toowoomb Bay received the award for the Central Coast.

The Hon. TONY KELLY: Toowoomb Bay was given the cleanest beach award for the Central Coast. That award is regarded as prestigious for the Port Stephens area, and much of the credit is being attributed to the department's involvement through the Coastal Beach Rehabilitation Scheme. The target group of this project consists of young people who are subject to community service orders under the supervision of the Department of Juvenile Justice. The project is carried out in four phases. In phase one, young people commence with a crime prevention component which has a duration of four weeks. In phase two, they move on to the graffiti removal component, which is supported by the Lake Macquarie City Council and involves the painting of bus shelters.

Successful completion of phases one and two entitles a young person to progress to phase three, the Newcastle Beach site, where they are involved in bitou bush removal, landscaping targeted areas with native vegetation, and receiving education about issues that are specific to coastal vegetation within the Newcastle local area. Phase four, the final stage, involves the links to educational, vocational and recreational opportunities. Agencies involved include Mission Australia, through its employment skilling program, the Department of Sport and Recreation at Myuna Bay, local TAFEs and police and community youth clubs within the Hunter region.

This project allows young people to be actively involved in the beautification of the coastal environment and provides them with learning outcomes as well as the possibility of acquiring a sense of ownership and belonging within the local community. The works undertaken by young people allow them to play productive and constructive roles within our community and to repay a debt to our society. At the same time they gain a sense of achievement and self-worth. This worthwhile program is an example of the excellent work being carried out by the men and women of the Department of Juvenile Justice and the Government's commitment to breaking the cycle of juvenile crime.

The Hon. JOHN DELLA BOSCA: I suggest that if honourable members have further questions, they place them on notice.

PARRAMATTA CORRECTIONAL CENTRE STAFF

The Hon. TONY KELLY: On 10 November 2005 the Hon. David Clarke asked me a question without notice relating to the Parramatta Correctional Centre staff. I undertook to obtain further information and report back to him. I advise that an investigation is currently being conducted into the matter raised by the honourable member. I advise that, to date, no staff member has been suspended.

DEFERRED ANSWERS

The following answers to questions without notice were received by the Clerk during the adjournment of the House:

CURRAWONG RECREATION AREA SALE

On 8 November 2005 Reverend the Hon. Dr Gordon Moyes asked the Special Minister of State, representing the Minister for the Environment, a question without notice regarding the Currawong recreation area sale. The Minister for the Environment provided the following response:

Yes, I am aware that Unions New South Wales plans to sell the Currawong recreation area. However, I am advised by the Department of Environment and Conservation (DEC) that the natural and cultural values of the site are not considered to be of sufficient priority to require protection by the area's inclusion in Ku-ring-gai Chase National Park.

DEC's land purchase program is currently focussed on government priorities including coastal wetlands, the Greater Blue Mountains World Heritage Area, wilderness and a range of poorly reserved ecosystems in western NSW.

MR IAN HARRISON, SC, SUPREME COURT APPOINTMENT

On 9 November 2005 the Hon. David Oldfield asked the Special Minister of State, representing the Attorney General, a question without notice regarding the appointment of Mr Ian Harrison, SC, to the Supreme Court. The Attorney General provided the following response:

Mr Harrison has not been appointed to the Supreme Court.

MANLY COUNCIL INFRASTRUCTURE LEVY

On 16 November 2005 Reverend the Hon. Dr Gordon Moyes asked the Minister for Justice, representing the Minister for Local Government, a question without notice regarding Manly Council's infrastructure levy. The Minister for Local Government provided the following response:

I provide the following details in response to your questions:

Councils exercise their planning and development functions under the provisions of the Environmental Planning and Assessment Act 1979.

As the Minister for Planning, the Hon Frank Sartor MP administers this Act, I suggest that the honourable Member direct his questions to the Minister representing the Minister for Planning.

Questions without notice concluded.

YOUNG PEOPLE DISABLED ACCOMMODATION

Personal Explanation

The Hon. JOHN DELLA BOSCA, by leave: I wish to make a personal explanation. Yesterday during the course of question time I responded to an interjection from the Hon. Catherine Cusack while answering a question from the Hon. John Ryan about people with disabilities in group homes. I think the question related particularly to the Council of Australian Governments [COAG] process in respect of young people in nursing homes. During the course of a visit to a group home in the past couple of months—I will not be specific, for privacy reasons—I carried out what has become my normal custom since becoming the Minister for Disability Services: I introduced myself to the clients of the group home. I said to one of the clients, "My name is John Della Bosca. I am the Minister for Disability Services". He said to me, "I know who you are. You're the boss—blah, blah, blah, blah." I took that as a political critique about the way in which governments deliver disability services.

By way of further elucidation, I point out that only recently I visited the home of the parents of a man who supports someone with a disability in a non-government residence. They recounted to me an anecdote concerning my predecessor as Leader of the Government, the Hon. Michael Egan, who visited that particular residence in reasonably recent times—I think it was while he was still the Leader of the Government, so it must have been approximately 12 months ago. During the course of Michael Egan's visit to the residence he was introduced to one of the clients and said, in a similar manner, "My name is Michael Egan." The resident said, "I know who you are—blah, blah, blah, blah."

The Hon. Catherine Cusack's interjection, which is officially recorded in *Hansard* as "Blah, blah, blah, blah", did indeed remind me of the two remarks from clients of disability services. I took their remarks as a legitimate critique of the way in which disability policy was being delivered. The Hon. Catherine Cusack clearly was referring either to the COAG process or to what the Hon. John Ryan says was a wordy and long-winded answer. I claim to be misrepresented because I believe, as I said in response to the Hon. Catherine Cusack, that the client's remark was absolutely true.

The second point I make is that I claim to be misrepresented by the Hon. John Ryan, who said that my answer was incoherent, rambling and long-winded. I think it was quite a specific answer to the question that the honourable member asked me. It was completely inappropriate for him to issue a press release in the terms he used last evening. I think the motto of this House translates as "Evil is as evil sees". I suggest to the Hon. Catherine Cusack and her colleagues on the opposite side of Parliament that what needs to be reviewed is their attitude to people living in disability service accommodation.

NSW OMBUDSMAN**Reports**

The Hon. Eric Roozendaal tabled, pursuant to the Ombudsman Act 1974 and the Child Protection (Offenders Registration) Act 2000, a report entitled "Review of the Child Protection Register", dated May 2005.

The Hon. Eric Roozendaal also tabled, pursuant to the Ombudsman Act 1974 and the Police Powers (Vehicles) Act 1998, report entitled "Vehicles Powers", dated September 2003.

Ordered to be printed.

TABLING OF PAPERS

The Hon. Eric Roozendaal tabled the following papers:

- (1) Annual Reports (Departments) Act 1985—Reports for the year ended 30 June 2005
Department of Energy, Utilities and Sustainability
New South Wales Crime Commission
NSW Police
- (2) Annual Reports (Statutory Bodies) Act 1984—
 - (a) Reports for the year ended 30 June 2005:
Australian Technology Park Precinct Management Limited
Honeysuckle Development Corporation
 - (b) Report of Redfern-Waterloo Authority for the period 17 January 2005 to 30 June 2005.

Ordered to be printed.

[The President left the chair at 1.06 p.m. The House resumed at 2.30 p.m.]

RESIDENTIAL PARKS AMENDMENT (STATUTORY REVIEW) BILL

Bill received, read a first time and ordered to be printed.

Motion by the Hon. Henry Tsang agreed to:

That standing orders be suspended to allow the passing of the bill through all its remaining stages during the present or any one sitting of the House.

Second reading ordered to stand as an order of the day.

INDUSTRIAL RELATIONS AMENDMENT BILL**Second Reading**

Debate resumed from an earlier hour.

The Hon. HENRY TSANG (Parliamentary Secretary) [2.31 p.m.]: Further, in the Solution 6 case the Court of Appeal held that since the privative clause says that there is no appeal from a decision of the commission, it was not prevented from hearing cases that were brought before it before the commission had made a decision in the matter. This meant that if a party brought a matter before the Court of Appeal in the very early stages of proceedings—for example, at the time that the statement of claim is filed in the Industrial Relations Commission [IRC]—section 179 would not come into effect. This practice has the potential to subject workers to substantial expense and delay by forcing them to litigate in the Court of Appeal, which is expensive and not as expeditious as the IRC. Following those cases, in 2004 the Attorney General formed an expert working party to consider all the issues involved.

The terms of reference for the working party were to consider the scope of sections 106 and 179 of the Industrial Relations Act. Acting Justice Stein of the Court of Appeal chaired the working party. Other members

were Mr Joe Catanzariti of Clayton Utz, representing the Law Society; Mr Dick Grozier, of Australian Business Ltd; Mr Max Kimber, SC, representing the Bar Association; and Mr Mark Lennon, of the Labor Council, now Unions NSW. The working party's report contained 12 recommendations, most of which either did not require legislative action or were matters for the IRC to consider. The bill seeks to implement a number of the recommended legislative amendments. It is important to note that the amendments made by the bill will affect only the Commission in Court Session, which exercises judicial functions: there is no change proposed to the industrial arbitration functions of the commission.

I will now address in more detail the bill's amendments to section 106 of the Industrial Relations Act. Section 106 gives the commission the power to amend or vary any contract whereby a person performs work in any industry, if it finds that the contract is unfair. An unfair contract is defined to be one that is unfair, harsh, or unconscionable; or against the public interest; or that provides a total remuneration that is less than a person performing the work would receive as an employee performing the work; or that is designed to, or does, avoid the provisions of an industrial instrument. This provision was originally designed to protect the industrial arbitration system and awards, by giving the IRC the power to strike down arrangements that would undermine that system.

The provision gave the IRC effective powers to deal with contractual substance and not mere form, because it was considered unlikely that either the common law or equity would provide an effective remedy for unfairness in work-related contracts. The terms of section 106 and its predecessors have remained essentially unchanged for 45 years. However, over that time work practices have changed radically and the protection provided by section 106 has been validly extended to a wide range of transactions including franchise, licence and lease agreements in circumstances where work is performed in an industry. Section 106 must be read together with section 105, which defines the term "contract".

Read together, those sections provide that contracts or arrangements, or collateral arrangements or related conditions, are reviewable under the unfair contracts jurisdiction. Up until the decision in *Solution 6*, the commission and appellate courts had interpreted the words of the equivalent sections in previous versions of the Industrial Relations Act to mean that as long as there was a contract or arrangement between the parties whereby work was performed, any collateral arrangements or related conditions—for example, a superannuation scheme or share bonus scheme—could also be varied or declared void. These other arrangements did not, in themselves, have to satisfy the test of being contracts whereby a person performs work in an industry. In *Solution 6* the Court of Appeal held that the commission may only declare void or vary a collateral arrangement or related condition that itself leads directly to the performance of work.

This interpretation of the section significantly narrows the scope of the commission's unfair contracts jurisdiction. It is problematic, because an arrangement that leads to the performance of work may consist of a formal work contract as well as other related agreements which, of themselves, may not lead to the performance of work. If this interpretation were continued, and a person's total package were not reviewable, then the commission's unfair contract jurisdiction would be narrowed to a significant extent for employees and independent contractors. It would then be open to unscrupulous employers to ensure that the contract for work was minimalist and carefully quarantined from other aspects of the relationship that are set out in different documents, or entered into at different times.

This bill amends section 106 to clarify that if the commission finds that there is a contract or arrangement whereby a person performs work in an industry, then it can vary or declare void any related condition or collateral arrangement found to be unfair, even though that related condition or collateral arrangement does not in itself relate to a person's performance of work. For example, the commission will be able to vary a superannuation arrangement, share option agreement or franchise agreement that is related or collateral to a contract whereby a person performs work in an industry. However, the amendment requires that the performance of work is a significant purpose of the overall contractual arrangements between the parties.

By adopting the requirement that there be a significant connection between the arrangements and the performance of work, the bill ensures that the Court of Appeal will be able to continue to set the parameters of what are industrial matters, as opposed to those which are essentially commercial in nature. This has been done deliberately to allow the Court of Appeal to continue to apply the necessary degree of rigour in determining jurisdictional questions involving section 106, as it has in recent cases.

Apart from the use of the accepted test for jurisdiction in section 106 matters that may involve a contract whereby a person performs work in an industry, there are two other significant restrictions on the reach

of section 106. It does not apply to contracts for the sale of goods or services—*Production Spray Painting & Panel Beating Pty Ltd v Newnham* 1991, 27 New South Wales Law Reports at page 644—and since the Government capped unfair contract claims in 2002 employees and partners earning remuneration in excess of \$200,000 per year are not eligible to bring claims.

These restrictions should be taken together with the bill's intention, for the first time since 1996, to give the Court of Appeal a clear and ongoing role of review to define the limits of the commission's jurisdiction. This explicit review role, together with the intention of the section 106 amendments to restore the jurisdiction to the commonly understood position prior to Solution 6, ensures that the bill will not unduly affect the court's commercial jurisdiction. The Government regards it as crucial that the Court of Appeal should be able to scrutinise judicial decisions of the IRC to ensure that they involve the proper exercise of its jurisdiction. At the same time, the Government acknowledges the crucial role of the IRC in safeguarding principles of industrial equity.

The test has long been established by the High Court that contracts or arrangements whereby work is performed in an industry have an industrial flavour. The principal test that should be applied to jurisdictional questions involving section 106 should not be the monetary value of the contracts involved but whether the contract has the requisite industrial flavour. This approach was adopted in the Court of Appeal in *Mayne Nickless v IRC & 3 Ors*, 2004 New South Wales Court of Appeal at page 359, where it was recognised that if an individual claims a large sum of money it does not necessarily mean that the contract is commercial. The amendments aim to reverse the decision in Solution 6, in so far as it held that the power to declare void or vary a contract, or arrangement, under section 106 extended only to such aspects of it as closely relate to the performance of work in an industry.

The amendments will clarify the commission's power to vary or declare void any provision or aspect of the overall arrangement found to be unfair. I should also bring to the attention of honourable members the transitional provisions in the bill concerning the amendment to section 106. The proposed change to section 106 is to apply to cases pending in the commission, but not to any case pending in a higher court. This provision is particularly important in view of the fact that an appeal against Solution 6 has been heard in the High Court, and judgment is currently reserved. The Government has no intention of interfering with the High Court's determination in this matter, and the bill accordingly makes it clear that it does not apply to proceedings pending in any court or tribunal apart from the IRC at the time of the commencement of the bill.

The second necessary amendment that is made by the bill is to the privative clause, section 179, which states that a decision or purported decision of the commission is final and may not be appealed against, reviewed, quashed, or called into question by any other court, whether on an issue of fact, law, jurisdiction, or otherwise. This section is designed to prevent other courts from dealing with any appeal or review of decisions of the commission. The purpose is to preserve the commission's status as a superior court of record that exercises a specialist jurisdiction. The main purpose of the commission's specialist jurisdiction is to settle disputes between employers and employees and to ensure that work-related disputes are resolved quickly and cheaply. Section 179 has been around in more or less its current form for over a century.

The most significant amendment was made to it in 1996, when the words "or purported decision" were added, following the High Court's decision in *Public Service Association of South Australia v Federal Clerks Union*. In that case the court drew a distinction between a decision and a purported decision. Essentially, the court found that where a court makes a decision that is outside its jurisdiction it can only be a purported decision because it is not one that was within the court's power to make. In order to afford decisions of the IRC the greatest possible protection from appeal and review, section 179 was amended to state that even purported decisions of the IRC—that is, decisions that were outside its jurisdiction—could not be reviewed or appealed against. That amendment made section 179 one of the most complete privative clauses on record.

The Court of Appeal considered that it was, in fact, too effective in preventing appeals and reviews. This is why, in Solution 6, the Court of Appeal adopted a new approach to section 179 and decided to allow parties to bypass the commission by applying directly to the Court of Appeal before the commission has made any decision at all—that is, as soon as the plaintiff lodges the originating process in the commission. Following this decision in 2004 the Law Society of New South Wales issued a practice note to all solicitors informing them of the Court of Appeal's preparedness to deal with unfair contract cases in advance of the commission. Since then at least 29 applications concerning unfair contract matters, which would ordinarily be dealt with in the commission, have been lodged in the Court of Appeal.

The Court of Appeal has in a number of its decisions granted orders prohibiting the commission from exercising, or purporting to exercise, its power under section 106 with respect to particular proceedings, or from hearing and determining certain proceedings, on the basis that the commission does not have jurisdiction. These orders have been made where no decision has yet been made in relation to the matter by the commission: for example in *BEA Systems Pty Ltd v Industrial Relations Commission of New South Wales in Court Session & Anor*, 2005 NSWCA 227. Further, these applications are no longer confined to applications under section 106: an additional 13 matters relating to prosecutions for occupational health and safety matters have been filed in the Court of Appeal. This is a bad result for workers, the courts and the community.

The IRC is a quicker, cheaper, and less adversarial jurisdiction than the Supreme Court or Court of Appeal. In 2003 the IRC resolved over 90 per cent of all matters by conciliation, without the need for a full hearing and the expense and delay that that entails. The Court of Appeal's decisions in *Mitchforce* and *Solution 6* have created the potential for additional, more drawn out and more expensive litigation. The bill seeks to remedy this situation in two ways. Firstly, it removes the protection of purported decisions of the Commission in Court Session from the privative clause.

This allows for review of decisions that are claimed to be outside the jurisdiction of the Commission in Court Session and so should cause the Court of Appeal to reinstate the doctrine of restraint, and to refrain from accepting very early applications before the commission has had an opportunity to consider jurisdiction. Secondly, the bill makes clear that there will be no access to the Court of Appeal under any circumstance until the processes of the commission, including appeal, are complete. This will ensure that parties cannot use the judgment in *Solution 6* to bypass the commission.

The effect of these amendments is that the Court of Appeal will be able to review the decisions of the Commission in Court Session, but only in so far as there is a challenge to the commission's jurisdiction and only after the processes of the commission, including appeal to the Full Bench of the commission, are complete. These amendments provide for a reasonable amount of appellate supervision, including review by the High Court. At the same time they will prevent the jurisdiction of the IRC from being undermined and employees and contractors from being forced into expensive and delay-ridden appeals. These changes will apply only to the Commission in Court Session. The intention is to preserve the full operation of the privative clause in so far as the arbitral function of the IRC is concerned. Under the transitional provisions of the bill, the amendments to section 179 will not apply to current proceedings in the High Court. Again, this provision has been drafted to ensure that the bill does not interfere in any way with the High Court's determination in the *Solution 6* case.

The other amendments made by the bill, whilst also important, are somewhat more straightforward. One of these amendments is an extension, with the leave of the court, of the time in which an application for review of an unfair contract may be brought. The time frame is currently limited to 12 months and there is no discretion to allow any extension of time. This does not allow for exceptional circumstances, and so the bill amends the section to give the court discretion to allow any application made within three months of the expiry of the original 12-month period. The bill also amends the Industrial Relations Act to change the title of the IRC in Court Session to the Industrial Relations Court of New South Wales.

The Industrial Relations Commission of New South Wales consists of both judicial and non-judicial members. Both types of members can exercise the arbitration powers of the commission, but only the Commission in Court Session, which is constituted by one or more judicial members, can exercise the judicial functions of the commission. These judicial functions include the hearing of unfair contract applications, prosecution of offences against the Act, proceedings for breach of industrial instruments, appeals against decisions of inferior courts in industrial matters, and prosecution of occupational health and safety offences under the Occupational Health and Safety Act 2000. Section 152 of the Act provides that the Commission in Court Session is a court of superior record and is of equivalent status to the Supreme Court and the Land and Environment Court.

Whilst the present provisions of the Industrial Relations Act, particularly section 152, make it clear the commission constituted as the Commission in Court Session is a court for the purposes of part 9 of the Constitution Act 1902 and a superior court of record equivalent in status to the Supreme Court, the Government considers it important to remove any doubt or confusion that may exist because of the court's present title, which includes reference to both "commission" and "court". The Commission in Court Session is an independent court in its own right and not merely an adjunct to the commission. In *Taudevin v Egis Consulting Australia Pty Limited and the Commonwealth (No 1)* (2001) 131 IR 124 at 171 it was held:

In addition, there have been a number of decisions of this Court which have emphasised that the Commission in Court Session is not only a superior court of record but is a separate and distinct body to the Commission otherwise constituted: see, for example, the Full Bench judgments in *GIO Australia Ltd v O'Donnell* (1996) 70 IR 1 at 9-10 and *Hollingsworth v Commissioner of Police* (1998) 81 IR 276 at 292, 309-310; and those of single judges in *Virtue v New South Wales Department of Education and Training* at 448 and *Packer v The Greater Murray Area Health Service* [2000] NSWIRComm 149 at [13]. We consider that those judgments correctly state the legal situation.

The flexibility, however, provided by the legislation that enables judicial members of the court to sit also as presidential members of the commission has proved to be invaluable and such an arrangement should continue. Moreover, the court's jurisdiction is a substantial one and its functions include criminal prosecutions under the occupational health and safety legislation, proceedings in relation to unfair contracts, proceedings for offences under the Industrial Relations Act, proceedings for declarations of right, proceedings in relation to the regulation and registration of industrial organisations, proceedings for recovery of money and proceedings for contempt.

Consequently, the Industrial Relations Commission in Court Session will now be known as the Industrial Court of New South Wales. The new title does not involve any changes to the composition or functions of the Commission in Court Session. The title of "Commission in Court Session" may cause some confusion in the public mind about the status and powers of this body. This is particularly significant in the area of occupational health and safety. The Commission in Court Session deals with prosecutions for occupational health and safety offences, some of which have a serious impact on the health and safety of workers and which may result in severe penalties being imposed.

The criminal nature of these proceedings is sometimes lost on those who do not understand that the proceedings are being dealt with by a court because the judicial body is generally referred to as the commission. The bill therefore amends the Act to provide that the Commission in Court Session should be referred to and known as the Industrial Court of New South Wales. The only change will be to the name or title of the body—there will be no variation to the way in which the court and commission interrelate or to how the functions of each are allocated under the Act. I commend the bill to the House.

The Hon. GREG PEARCE [2.58 p.m.]: This is one of the most shameless and appalling attacks by the Australian Labor Party on the institutions of justice and the Constitution of this State that we are likely to see. It is all being done in the name of a claptrap nineteenth century class-based ideology and, of course, looking after Labor's mates. The idea that the Government will come in here—I am not sure in what name because I cannot make much out of the speech from the Minister and the Parliamentary Secretary—and try to pervert the judicial system of this State in such a way, take away the rights of appeal of litigants and transfer to a body that does not have the experience or the background to deal with a wide range of commercial and other disputes has to be opposed. The Opposition will be opposing this bill today. For some time the Australian Labor Party has had an agenda to destroy the centuries old judicial and constitutional system, which are the basis of our society and the growth of our economy. What has the Labor Party done? It has placed its mates in a position to take over the rights of litigants, to interfere with the rights of business and other people, and to attack everything that has made this State and country as strong as they are.

[Interruption]

What did she say?

The Hon. Duncan Gay: She said the Governor of the Reserve Bank is a crook.

The Hon. GREG PEARCE: The Hon. Amanda Fazio accused the Governor of the Reserve Bank of being a crook?

The Hon. Amanda Fazio: I did not!

The Hon. GREG PEARCE: I would not expect her to do that. However, it is consistent with the Australian Labor Party agenda to destroy all the institutions of democracy so that the State is run by its mates and cronies. I refer to a couple of comments made in the second reading speech. It was absolutely extraordinary for the Parliamentary Secretary to have no shame and to state that the Labor Party in this State acknowledges that this bill would not interfere with the High Court. Boys, last time I looked the High Court was not in the jurisdiction of New South Wales! That is the level of the Government's arrogance.

Government members come in here bald faced and speak as though they have the authority of the community to make the sorts of changes they are making. They do not have any shame and it is extraordinary to

hear them. The Parliamentary Secretary said that changing the title of the Industrial Relations Commission to a court does not involve any change in status or power. I might have missed something, but why are we dealing with this bill if it does not change anything? Of course, it makes changes. It is extraordinary to reflect on the second reading speech in the Legislative Assembly and the shameless way in which the Government attacks our institutions and sets up its own mates to ensure it can advance the agenda of the Labor Party. In the Legislative Assembly the Minister made it quite plain in his second reading speech that that is what the Labor Party is on about and what the bill is intended to do. He said:

These amendments are necessary to clarify the situation following a number of recent judgments in the Court of Appeal—

And he noted them. He continued:

These decisions threw the scope of the IRC's unfair contracts jurisdiction into doubt and allowed parties to remove disputes from the IRC to the Court of Appeal ...

That happened because the court had to consider whether the Industrial Relations Commission [IRC] fell within its jurisdiction, which is precisely what the Court of Appeal is there to do. The Court of Appeal considers whether bodies such as the IRC are acting within its jurisdiction. I congratulate the Court of Appeal on its good work for pulling up the IRC when it exceeded its jurisdiction. The separation of powers is a fundamental part of our system. The Court of Appeal is meant to be independent and to pull up a body such as the Industrial Relations Commission if it exceeds its jurisdiction. We then get to the nub of the matter. The Labor Party wants to deprive litigants of any right to appeal to an independent body such as the Court of Appeal so it put in section 179 of the Act. The Minister in the other place continued:

In effect, it [section 179] states that there can be no appeal from decisions of the Industrial Relations Commission in Court Session, even on the grounds that the commission did not have the jurisdiction to hear the matter.

I cannot think of anything more extraordinary in our legal system than a body set up by the Labor Party that cannot have its actions appealed when it has acted outside its jurisdiction. The most appalling suggestion within our legal system one can ever imagine is when the Labor Party wants its agenda pursued and implemented by its own body, notwithstanding whether it has jurisdiction. The Minister was bald faced in saying that. He continued:

A number of recent judgments of the Court of Appeal, beginning with *Mitchforce*, have indicated difficulties with the jurisdiction of the IRC to hear unfair contract cases that have a significant commercial element ...

Exactly! Why is the Industrial Relations Commission hearing commercial matters? The twisted, inverted logic of this Labor Government is breathtaking. The fact that it can apply that twisted, inverted logic and introduce this sort of legislation is something about which all honourable members of the Australian Labor Party should be totally ashamed. For them to pursue that agenda in the twenty-first century shows their nineteenth century class ideological colours. If they do not move out of that sort of mindset they certainly will not survive for much longer in this State or in this country. It is important not to let these slimy comments pass through to the keeper. It is not something that should just appear in *Hansard* as though no-one has noted and objected to what the Government has said. The Minister continued:

In the *Mitchforce* and *Solution 6* cases, the Court of Appeal criticised the IRC for "introducing into the heartland of commercial contracts".

I again commend the Court of Appeal for getting it right. The fact that this Government is so shameless in now bringing this legislation forward is absolutely a disgrace and an unwarranted attack on our judicial system and the rights of the people of New South Wales. The IRC has no right to be involved in dealing with commercial contracts. Frankly, I listened to the Parliamentary Secretary read out a list and I wondered whether the IRC has any right to be involved in many of the other areas.

It is a shameless and arrogant Labor Party with a disgraceful agenda attacking the institutions of this country and of this State. The intention of the Government is to stop the ability of the Court of Appeal to scrutinise the judicial systems of the Industrial Relations Commission, which is abhorrent in this State and must be opposed. It beggars belief that the Government is prepared to take away the fundamental rights of litigants to appeal to the Supreme Court, which is an independent pillar of our legal system, and to ensure that the IRC operates only within its own jurisdiction.

I do not propose to go through the various provisions of the bill because it is flawed, and it is an outrageous attack on our judicial system and the rights of people in this State. If the Government is allowed to

pursue to the end its clapped-out nineteenth century class ideological agenda then the State will crumble and suffer. The Supreme Court should retain its role in reviewing the actions of the IRC. If the IRC is not acting within its jurisdiction it should be appropriate for a superior court to rule on that. This attempt by the Government to extend the role and powers of the IRC into commercial and other matters should be stopped. The Opposition opposes the bill.

Ms LEE RHIANNON [3.11 p.m.]: Overall the Greens support the Industrial Relations Amendment Bill. However, it is poorly worded in parts. On the whole it contains a positive set of reforms to try to alleviate the consequences of recent interventions in the area by the Court of Appeal. I will make a couple of comments about the provisions in the bill to extend, with the leave of the commission, the time in which an unfair contract claim can be brought. Currently claims can be brought within a one-year non-discretionary time limit. The proposal, which is an improvement, will allow a further discretionary three-month extension in certain circumstances.

I will make two comments. First, the test "that there are exceptional circumstances justifying the making of the later application" is unnecessarily strict. A better test would be that "it is in the interests of justice to allow the later application". Second, it is unclear why it should be limited to three months. It would be far better to have the period extended for a further 12 months, which would provide a combined two-year period in which claims may be brought and is far less than the six years available for a contractual breach. This brings a bit of fairness into an industrial relations system that is about to become a whole lot more unfair and unequal.

Reverend the Hon. Dr GORDON MOYES [3.13 p.m.]: On behalf of the Christian Democratic Party I speak to the Industrial Relations Amendment Bill. The purpose of the bill is to amend the Industrial Relations Act 1996 to clarify the unfair contracts jurisdiction of the Industrial Relations Commission, to limit the exclusion of the Commission in Court Session from the supervisory jurisdiction of the Supreme Court, to authorise the Commission in Court Session to be called the Industrial Court of New South Wales and for a number of other minor, but significant, purposes. Privative clauses are a fascinating example of the interplay between commissions and/or tribunals and higher courts. Privative clauses are found commonly in industrial relations legislation—they have been used for the best part of a century within this context—and have reared their heads more recently within migration law. Privative clauses provide that a particular form of decision, such as an industrial award, cannot be challenged, appealed against, reviewed, quashed or called into question in a court.

The bill seeks to redefine the privative clauses found within the Industrial Relations Act in view of a couple of decisions of the Court of Appeal that have affected the jurisdiction of the commission relating to unfair contracts. It also amends section 106 of the Industrial Relations Act dealing with the scope of decisions relating to contracts that can be varied or declared void in whole or in part. The bill also will provide the Commission in Court Session with the discretion to extend the time in which it may accept an application with regard to an alleged unfair contract. It also changes the name of the Commission in Court Session to the Industrial Court of New South Wales. Section 179 of the Industrial Relations Act is a privative clause. The effect of this clause is to prevent appeals from decisions of the Industrial Relations Commission in Court Session, even on the grounds that the commissioner did not have the jurisdiction to hear the matter. The privative clause prevents appeals from decisions, but not from proceedings that have not yet been arbitrated by the commission.

A couple of recent judgments in the Court of Appeal, *Mitchforce v Industrial Relations Commission & Ors* [2003] NSWCA 151 and *Solution 6 Holdings Limited & Ors v Industrial Relations Commission & Ors* [2004] NSWCA 200, have dealt with the operation of section 179 as a privative clause and also have highlighted problems with the jurisdiction of the commission to hear unfair contract cases that have a significant commercial element. The bill amends the privative clauses in section 179. To understand the context of the proposed amendments to the section it is worthwhile backtracking to 1996 when the words "or purported decision" were added to the section following the High Court decision in *Public Service Association of South Australia v Federal Clerks Union*. That case drew a distinction between a decision and a purported decision. The court found that when a court makes a decision that is outside its jurisdiction, it could be only a purported decision because it was not one that was within the power of the court to make. This expanded the scope of the notion attached to the privative clause so that decisions and purported decisions could not be reviewed or appealed against.

In the *Solution 6* case the Court of Appeal, in interpreting section 179, allowed two parties to bypass the commission by applying directly to the Court of Appeal before the commission had made any decision at all.

At least 29 applications concerning unfair contract matters that ordinarily would have been addressed by the commission have been lodged in the Court of Appeal in this manner—it bypasses the commission altogether. The bill will remove the protection of a purported decision of the Commission in Court Session from the privative clause, which allows for a review of decisions that are claimed to be outside the jurisdiction of the Commission in Court Session, thus allowing the Court of Appeal to reinstate the doctrine of restraint and to refrain from accepting very early applications before the commission has had an opportunity to consider jurisdiction.

Turning now to section 106, the Court of Appeal also narrowed the interpretation of this section that previously had been adopted by appellate courts by holding that the power to declare void or vary a contract as defined in section 105 extended only to such aspects of the contract as related closely to the performance of work in an industry. The effect of restricting the potential scope of the commission's jurisdiction is to relay the increased workload to higher courts in the judicial system. Not only does this mean that employees would be subject to increased costs in time and money because of the nature of litigation in the Court of Appeal, as mentioned by an earlier speaker; it also means that those matters that the commission is more than capable of handling will be referred to the Court of Appeal.

In the Solution 6 case the Court of Appeal held that since the privative clause states that there is no appeal from a decision of the commission, it was not prevented from hearing cases that were brought before it prior to the commission having made a decision in the matter. It is conceivable that lawyers acting for employers could use this finding as a basis to force the workers to face the jurisdiction of the Court of Appeal rather than for the matter to continue to proceed in the Industrial Relations Commission. The finding is a sound grounding for clever strategy to force workers into the Court of Appeal to face lengthy proceedings and increased costs, and it may be said fairly that workers are in a relatively less optimal decision to face the brunt of these costs than employers in similar situations.

These cases expand the opportunities for proceedings to be brought before the Court of Appeal for consideration of jurisdictional issues prior to any hearing being held by the commission. These Court of Appeal decisions threw open issues that prompted the Attorney General to form an expert working party comprising Acting Justice Stein of the Court of Appeal, who chaired the working party, and representatives of the Law Society, the Bar Association, Australian Business Ltd and Unions NSW. The terms of reference of the working party were essentially to consider the scope of section 106 and section 179—the subject of the Mitchforce and Solution 6 cases.

Section 106 gives the commission the power to amend or vary any contract "whereby a person performs work in an industry" if it finds that the contract is unfair. An unfair contract is one that is, for example, unfair or unconscionable or provides for total remuneration that is less than a person performing the work would receive as an employee who is performing the work. This section is read in conjunction with section 105, which defines what is meant by the term "contract". Together, these sections provide that contracts, or arrangements, or collateral arrangements, or related conditions, are reviewable under the unfair contracts jurisdiction. As pointed out in the second reading speech, up until the Solution 6 decision, the commission and appellate courts had:

... interpreted the words of the equivalent sections in previous versions of the Industrial Relations Act to mean that as long as there was a contract or arrangement between the parties whereby work was performed, then any collateral arrangements or related conditions—for example, a superannuation scheme or share bonus scheme—could also be varied or declared void. These other arrangements did not, in themselves, have to satisfy the test of being contracts "whereby a person performs work in an industry".

It was not required for these arrangements to satisfy the test of being contracts "whereby a person performs work in an industry". However, in the Solution 6 case, the Court of Appeal held that the commission may declare void or vary a collateral arrangement or related condition only if that itself leads directly to the performance of work. There are arrangements within the employment context that do not relate directly to the performance of work but relate to conditions of employment—for example, a person's total work package. As the Minister stated in his second reading speech:

It would then be open to unscrupulous employers to ensure that the contract for work was minimalist and carefully quarantined from other aspects of the relationship that are set out in different documents, or entered into at different times.

One of the seminal objects of this bill is to amend section 106 so that, if the commission finds that there is a contract or arrangement whereby a person performs work in an industry, it may vary or declare void any related condition or collateral arrangement that is found to be unfair, even though that related condition or collateral arrangement does not relate to a person's performance of work. Those arrangements, other than formal contracts

that may be varied, include superannuation arrangements, share option agreements or franchise agreements that are related or are collateral to a contract whereby a person performs work in an industry.

The amendments will seek to reverse the decision in *Solution 6* in so far as that decision held that the power to declare void or vary a contract or arrangement under section 106 extended only to such aspects of it as closely relate to the performance of work in an industry. The proposed change to section 106 will apply to cases that are pending in the commission, but not to any case that is pending in a higher court. The bill will apply only to proceedings in the commission at the time of the bill's commencement.

The bill will make a couple of other minor but important amendments. The first relates to extending the time frame for applications to be made to the commission to review alleged unfair contracts. Currently, the commission may consider only a review of an unfair contract brought forward by an employee within 12 months of the contract being made. The bill will give the court discretion to allow any application made within three months of the expiry of the original 12-month period. That seems to me to be a suitable time frame.

The bill will amend the Industrial Relations Act to change the title of the Industrial Relations Commission in Court Session to the Industrial Relations Court of New South Wales. The Industrial Relations Commission in Court Session is presided over by one or more judicial members whose functions include the hearing of unfair contract applications, prosecution of offences against the Act, proceedings for breach of industrial instruments, appeals against decisions of inferior courts in industrial matters, and prosecution of occupational health and safety offences under the Occupational Health and Safety Act 2000. Given the role of the Industrial Relations Commission in Court Session, the title of Industrial Relations Court does not misjudge the nature of the arbitration powers exercised by the commission in court session. In fact, section 152 of the Act provides that the commission in court session is a court of superior record and is of equivalent status to the Supreme Court and the Land and Environment Court.

It makes sense to give the commission in court session the new title of Industrial Relations Court to provide the community with certainty about the role that the commission will play in the appeal system. As pointed out in the second reading speech, the commission in court session deals with prosecutions for occupational health and safety offences, some of which have a serious impact on the health and safety of workers and may result in severe penalties being imposed. Having made those comments, I conclude by stating that the Christian Democratic Party commends the Government on its introduction of the Industrial Relations Amendment Bill.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [3.25 p.m.]: This bill strengthens the New South Wales courts in the administration of industrial relations at a time when the Howard Government is introducing very stringent and widespread changes to industrial relations in Australia. The relative equity of wages has provided Australians with an expectation of a reasonable and decent life. Part of the reason for the general social peace and contentment in Australia is that everybody has had a reasonable opportunity to have a fair go. However, we currently live in a highly competitive world.

There are Third World workers who will work for a fraction of wages paid to Australian workers. That difficulty has resulted in a shift of Australian manufacturing industries offshore where wages are low. With the advancement of communications technology, changes in the Australian wages structure spread into the communications field because any work that could be done remotely has been contracted to workers in a country where lower rates of pay apply. Multinational work forces have made a great deal of difference to Australia. The basic proposition in the book *The Future of Capitalism: How Today's Economic Forces Shape Tomorrow's World* is that the United States of America effectively allowed wages to follow the trends of the market and consequently created a Third World in its own country.

As a result, its overall economic structure is less threatened by Third World competition whereas Europe, having maintained its wages and welfare systems instead of investing in new plant and allowing wages to follow market trends, has placed itself at a disadvantage. Interestingly enough, that book tends to rate Australia with the United States of America because Australia has a welfare system that is very much leaner than the European system, thereby providing greater scope for profitability. The book points out that investment in future capital is the way that countries will prosper in the future. The downside of that approach is that flexibility in work force structures results in workers immediately being dismissed when a downturn in workload occurs. People at the lower end of the skills and socioeconomic scales will receive no wages when there is no work.

In contrast to that, the current industrial relations system in Australia is characterised by the person in control deciding, "I have only 30 hours work, but I accept that I will have to employ someone for 35 hours" on the basis that, on balance, the system provides for great social stability when there is equanimity in the capital position of the employer vis-a-vis the employee. In 2003, at the funeral of Tas Bull and in the context of a large population enduring conditions of unreliable availability of work, reference was made to the Hungry Mile on the waterfront where people used to go to find a few hours work during the Depression.

A couple of years ago we endured the unedifying spectacle of a swaggering former United States Marine, George Trumbull, whose annual contract salary for managing Australian Mutual Providence [AMP] was \$17.4 million. While boasting about how much he was worth, he cut several billion dollars from the value of the company and swaggered off with a severance package worth millions of dollars. At one end of the spectrum in Australia some people are receiving salaries that are almost obscene, whereas at the other end the poor are being ground into the dust.

It is not just in the naked corporations that this is happening; there have been changes in other areas, for example with the public service cleaning contract. Some years ago cleaners on public service wages were sacked and the contract for public service cleaning was given to a big corporation, which, of course, paid its employees far less than public service cleaners were paid. The cleaning was not done well. No-one was better off in that situation; the schools were no cleaner and any savings were inequitably distributed between the employer and the employees.

It is a bit rich for the Opposition to accuse the Government of living in the last century, and hanging on to a good deal for its mates. The Opposition is happily sending us back to the Dickensian poor house; having us hold out our begging bowl. It is a bit much to say that we are looking after our rich mates, because the Liberals are not being liberal at all; they are becoming conservative and returning us to the days of the rich looking after their interests and the poor going to hell in a hand basket. The Mike Moore movie *Bowling for Columbine* covered the—

The Hon. Duncan Gay: That is an authoritative source.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: It is popular culture. We did not read clever literature, but we took a journalistic look at the movie that depicted a family of kids who went and shot other kids at a school in middle-class Columbine, in the United States of America. It was the story of a broken marriage, and of a mother who had to get out of bed before dawn and travel miles from home to make ice-cream sodas, returning home after dark. Her kids had to more or less bring up themselves. Guns were available to them and in some of them their anger spilled over.

The Hon. Greg Pearce: True to life, Arthur.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Yes, sadly it was true to life, although it was portrayed in the media. We are heading towards that sort of world, sadly. To the credit of the Government it is trying to shore up industrial relations, to clarify the jurisdiction of the Industrial Relations Commission following a number of recent judgments in the Court of Appeal, notably *Mitchforce v Industrial Relations Commission & Ors* (2003) NSWCA 151 and *Solution 6 Holdings Ltd & Ors v Industrial Relations Commission & Ors* (2004) NSWCA 200. Although the Minister did not spell it out so clearly in his second reading speech, the bill is one aspect of the State Government's attempt to mitigate the Federal Government's proposed industrial relations reforms. For that, the State Government should be congratulated.

The bill amends the Industrial Relations Act 1996 to clarify the Industrial Relations Commission's jurisdiction to declare void or vary unfair contracts, and to allow for appeals on questions of the jurisdiction of the Industrial Relations Commission in Court Session, but only after the processes of the commission are complete. The bill also removes any ambiguity that the Industrial Relations Commission [IRC] has the ability to deal with arrangements that are directly related to or collateral to an employment contract. On 17 November 2005 the Minister for Aboriginal Affairs said, on behalf of the Minister:

These [court] decisions threw the scope of the IRC's unfair contracts jurisdiction into doubt and allowed parties to remove disputes from the IRC to the Court of Appeal before the IRC had had a chance to consider whether or not they fell within its jurisdiction ...

In the *Mitchforce* and *Solution 6* cases, the Court of Appeal criticised the IRC for "introducing into the heartland of commercial contracts". The Court of Appeal in these decisions considerably narrowed the interpretation of section 106 that had been adopted previously by appellate courts by holding that the power to declare void or vary a contract, as defined in section 105, extended

only to such aspects of it as closely relate to the performance of work in an industry. Further, in the Solution 6 case, the Court of Appeal held that since the privative clause says that there is no appeal from a decision of the commission, it was not prevented from hearing cases that were brought before it prior to the commission having made a decision in the matter. This meant that if a party brought a matter before the Court of Appeal in the very early stages of proceedings—for example, at the time that the statement of claim is filed in the IRC—section 179 would not come into effect.

Following those cases in 2004, the Attorney General formed an expert working party to consider all these complex issues. Acting Justice Stein of the Court of Appeal chaired the working party, other members included Mr Joe Catanzariti of Clayton Utz, representing the Law Society; Mr Dick Grozier of Australian Business Ltd; Mr Max Kimber, SC, representing the Bar Association; and Mr Mark Lennon of the former Labor Council, now Unions NSW. The Minister said further:

Section 106 gives the commission the power to amend or vary any contract "whereby a person performs work in any industry", if it finds that the contract is unfair. An unfair contract is defined to be one that is unfair, harsh, or unconscionable, or against the public interest, or that provides a total remuneration that is less than a person performing the work would receive as an employee performing the work, or that is designed to, or does, avoid the provisions of an industrial instrument. This provision was originally designed to protect the industrial arbitration system and awards by giving the IRC the power to strike down arrangements that would undermine that system ...

Section 106 must be read together with section 105, which defines the term "contract". Read together, these sections provide that contracts or arrangements, or collateral arrangements, or related conditions, are reviewable under the unfair contracts jurisdiction. Up until the decision in Solution 6, the commission and appellate courts had interpreted the words of the equivalent sections in previous versions of the Industrial Relations Act to mean that as long as there was a contract or arrangement between the parties whereby work was performed, any collateral arrangements or related conditions—for example, a superannuation scheme or share bonus scheme—could also be varied or declared void. These other arrangements did not, in themselves, have to satisfy the test of being contracts "whereby a person performs work in an industry".

To those who think that this is all beer and skittles, I shall relate my experience at Sydney Water, where after some time I was told that I would be put on a three-year contract. I was told that as I would have a car, and that with my salary of \$65,000 my package would be equivalent to \$80,000 a year, so in effect I would be getting a pay rise. When I argued that I would be losing permanency I was told that everyone else had grabbed the chance to earn more money. When I said that I might not want the package, I was told I could go back to grade 16 on a 12-month placement, and if I did not find a placement in that grade in that time I would be made redundant. When I said, "That means I do not have a choice", I was told that everyone was grabbing the opportunity because there was more money in it.

It was like an ant negotiating with an elephant—me against a huge corporation. In other workplace agreements effectively there is no arbitration. If a worker does not agree with his boss, he goes to the next layer up, and if the worker gets no satisfaction there, he goes to the managing director. If the worker gets no satisfaction there, too bad. The worker has no power at all. When Sydney Water revised its pay structure, an actuarial consulting firm inquired into how people should be paid. In the end it found that the professionals were grossly downgraded, because it was decided that the only test of a person's skill was how many people the person was managing. If that went to its logical conclusion, there would be no professionals in the public service.

Comparing knowledge bases with the private sector, particularly in medicine—and I was already on far less money than I would have earned were I working in private practice—and the implementation of arbitrary arrangements that are managerial in nature, one can see that wage relativities have been changed quite grossly. So, it is as Cressida said in *Troilus and Cressida*, "What is aught, but as 'tis valued?" I turn now to the Howard Government's proposed industrial relations reforms, which are anti-work, anti-family and anti-commonsense! Liberal Party members are not even liberals, they are right-wing conservatives. In a press release of 18 November Senator Andrew Murray stated:

At the last day of the very rushed WorkChoices inquiry, expert academic—

The Hon. Charlie Lynn: An academic?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Yes, an academic. For the Hon. Charlie Lynn it is an intellectual contest. He is always anti-intellectual in his approach. The press release continued:

—Dr Jill Murray argued that the Bill does not permit the development of modern, productivity-enhancing labour standards through processes which are public, democratic and participative. The Bill will set no maximum weekly hours, no entitlement to a stable income, no meaningful entitlement to overtime payment, no access to modern work and family standards, little or no job security for many Australians, no right to collectively bargain, and no entitlement to penalty rates for working on public holidays. Australian Democrats Workplace Relations Spokesperson, Senator Andrew Murray—

The Hon. Melinda Pavey: Who?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Senator Andrew Murray. Does the Hon. Melinda Pavey have a hearing deficit? The press release continued:

—argues that "The mark of a civilised successful first world liberal democracy is high living standards and equitably shared wealth, and an egalitarian society that respects and protects the working poor, and the disadvantaged, and that has advanced working conditions." I believe that the Bill fails that test."

What this Government has failed to consider is that labour is not just an input to production, but that wider social objectives and relationships are involved including the relationships between work, leisure and family, providing safe workplaces and the role of workers in society at large.

The Award system has played an important part in Australian society, not only in providing a safety net for Australian workers but in setting out modern labour and community standards.

The Award and the award making process should continue to underpin Australia's safety net. It is the only way we can guarantee that ALL Australian workers have access to modern conditions and rights.

While we will be opposing this Bill because it is seriously flawed and undermines the egalitarian nature of our society, our role now is to convince the Government to ameliorate the worst aspects of the Bill. To this end we will be moving a raft of amendments.

Senator Murray goes on to elaborate the Democrats position on industrial relations. As I said earlier, this bill at least is an attempt to ameliorate the worst excesses of the Howard Government's industrial relations bill, which I believe will put us in a Dickensian state where the poor are ground into the dust. That inability to have dignity in and reliability of work will lead to immense social problems—which exist to a far greater extent in the United States of America than they do in Australia. We are in danger of losing the concept of a fair go and the economic basis of a decent and equal country—and all that for the idea that we will be marginally more competitive by allowing wages at the top end to go to infinity and wages at the bottom end to go to zero. This bill, which ameliorates these problems, must be supported.

The Hon. HENRY TSANG (Parliamentary Secretary) [3.42 p.m.], in reply: I thank all members, particularly, the Hon. Dr Arthur Chesterfield-Evans, Ms Lee Rhiannon and Reverend the Hon. Dr Gordon Moyes, for their support for and their contributions to the bill. In reply it is necessary to correct the misconception by the Hon. Greg Pearce concerning the intent and thrust of the Industrial Relations Amendment Bill. It was asserted or forcefully implied in debate, both in this Chamber and in the other place, that the Government is backing the Industrial Relations Commission in a power play with the Court of Appeal in what the Government is setting out to achieve with its amendments to the Industrial Relations Act.

I emphasise and clarify that the amendments to section 106, unfair contracts jurisdiction, and to section 179, privative clause arrangement relating to finality of the commission's decisions, are balanced. They represent amendments that serve to clarify the commission's jurisdiction as a result of a series of Court of Appeal cases that have resulted in uncertainty for both workers and employers. No broadening of the commission's jurisdiction is entailed in the amendments. For a contract, including a related condition or collateral arrangement, to be covered by the unfair contract jurisdiction it is intended that it must involve a person's performance of work in an industry—being a significant purpose of the overall contractual arrangements.

This test is one for the commission's satisfaction based on the individual facts of each case coming before it. When a case does not include such an industrial favour it will properly be excluded from the commission's involvement. Parties to an unfair contracts case before the commission will ultimately be able to challenge the commission's jurisdiction in the Court of Appeal but only after a Full Bench of the commission has considered the matter and all internal appeals mechanisms are exhausted. This is the thrust of the clarifying new privative clause. Litigants will not be able to invoke the early, unnecessary and costly intervention of the Court of Appeal when the matter having an inherent industrial component should primarily be determined in an industrial court.

So the Court of Appeal will continue to have a role. It is a clear and ongoing role in determining jurisdictional questions involving section 106. It is a role that it has exercised in recent cases but this intervention role will arise only after exhaustion of jurisdictional appeal possibilities within the commission's framework. Apart from maintaining the overall supervisory capacity of the Court of Appeal the bill also serves to ensure that the focus of section 106 matters is in the judicial environment of the Industrial Relations

Commission, in which the accent is on conciliation processes that are cheaper and quicker. It is expected that, rather than pursue costly adversarial proceedings in the Court of Appeal, parties will be more likely to settle their differences in the commission, in which at present approximately 90 per cent of all section 106 cases are resolved successfully by conciliation.

Litigants, the courts and the community will be saved time and money. Thus, rather than backing one court against the other in a struggle over commercial contracts hearing primacy, the Government believes, first, that it is clarifying the industrial elements of section 106 matters before the commission and, second, averting the inordinately early intervention of the Court of Appeal in these cases when the processes of the commission should be allowed to fully eventuate. The bill is not denying a section 106 supervisory role on jurisdictional matters for the Court of Appeal. This scheme is a sensible, balanced approach to clarifying recent litigious action centred upon the two courts and ensuring that workers and employers alike are absolved of the present uncertainties thrown up by that litigation.

The bill will restore the section 106 jurisdiction to what was the commonly understood position before the Solution 6 case. The outcome will not unduly trespass on or affect the commercial jurisdiction of the Supreme Court of New South Wales and certainly will not act to discourage business to this State. On the contrary, parties will always want to locate to a setting in which certainty in areas of the law is evident and court access in the resolution of worker disputes is unambiguous, swift, effective and low-cost. Another issue that was raised in debate is why the commission should involve itself in retail lease arrangements and other matters that seemingly have nothing to do with the worker-employer situation.

Under the Court of Appeal's Solution 6 decision the courts consistently held that the commission's section 106 power extended to related conditions of collateral arrangements that did not in themselves directly lead to the performance of work so long as they were related or collateral to a contract that did. As such, a worker's superannuation plan, share options scheme or franchise agreement were subject to scrutiny by the commission to ensure that they were not unfair, harsh or unconscionable. The bill clarifies that the commission may examine related conditions or collateral arrangements provided that the performance of work is a significant purpose of the overall contractual arrangements existing between parties.

By holding that these collateral arrangements must also in themselves be conditions or arrangements whereby work is performed in any industry, the Court of Appeal in Solution 6 materially narrowed the scope of the section 106 jurisdiction. If related conditions and collateral arrangements were not included in the jurisdiction, it would be possible for unscrupulous parties to avoid the unfair contracts jurisdiction by ensuring that the contract for work was minimalist and carefully quarantined from other parts of the total package, or completely left out of written contracts.

Employment contracts are made and exist in a commercial context. Accordingly, contracts whereby a person performs work often also involve leases, franchises and licences or other commercial elements. If transactions were excluded on the basis of their being commercial there would be very little left in the section 106 jurisdiction and unjust situations would invariably occur. Of course, the issue of jurisdiction in each case will depend on the facts. Modern business practices cannot be an excuse for unfair, harsh or unconscionable behaviour towards workers. The bill restates that principle.

As to retail leases specifically, it is recognised that the retail leases division of the Administrative Decisions Tribunal [ADT] has wide review powers in this field but they do not extend to varying a contract found to be unfair. Moreover, most employment situations where the lessee is working for or carrying on a business for the lessor are excluded from ADT review. Therefore, persons in this situation would have limited avenues of redress available if the section 106 jurisdiction excluded them. Why is the Government tinkering with the unfair contract jurisdiction when the Commonwealth's WorkChoices legislation will shortly intrude into this field in respect of constitutional corporations? The constitutional validity of the hostile workplace relations legislation that is presently before the Commonwealth Parliament is problematic. New South Wales and the other States and Territories will challenge that legislation before the High Court, and we are optimistic about our prospects of success.

In the meantime, it is important that the uncertainty brought about by the recent decision of the Court of Appeal be settled. As stated, the bill's provisions seek to reinstate the jurisdiction of the commission in relation to section 106 matters and to emphasise the final supervisory role on jurisdictional matters in this area of the Court of Appeal. In conclusion, I remind honourable members that this bill is the end result of a lengthy debate in industrial relations, commercial and legal settings over several years. The bill reflects the conclusions of the

Stein working group, whose eminent and representative members have considered fully the circumstances affecting the jurisdictional bases of the Industrial Relations Commission and the Court of Appeal in the specific unfair contracts and the wider commercial law fields. In that the Government has acted upon that working group's recommendations, it has endeavoured through this bill to resolve a difficult situation and provide future certainty in the area of unfair contracts jurisdiction.

I repeat that the bill's provisions are clarifying and restorative in nature and that the outcome is balanced, logical and fair so as to overcome the current uncertainties surrounding this aspect of the law in this State. The clarification of the commission's jurisdiction in section 106 matters, when aligned with a recognised ultimate supervisory role for the Court of Appeal on jurisdictional issues, is timely and effective law. I commend the bill to the House.

Question—That this bill be now read a second time—put.

The House divided.

Ayes, 24

Mr Breen	Ms Griffin	Mr Roozendaal
Ms Burnswoods	Ms Hale	Ms Sharpe
Mr Catanzariti	Mr Hatzistergos	Mr Tsang
Dr Chesterfield-Evans	Mr Kelly	Dr Wong
Mr Cohen	Reverend Dr Moyes	
Mr Costa	Reverend Nile	
Mr Della Bosca	Mr Obeid	<i>Tellers,</i>
Mr Donnelly	Ms Rhiannon	Mr Primrose
Ms Fazio	Ms Robertson	Mr West

Noes, 13

Mr Clarke	Mr Gay	Mr Ryan
Ms Cusack	Mr Lynn	
Mrs Forsythe	Mr Oldfield	<i>Tellers,</i>
Mr Gallacher	Mrs Pavey	Mr Colless
Miss Gardiner	Mr Pearce	Mr Harwin

Pair

Mr Macdonald	Ms Parker
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Question resolved in the affirmative.

Motion agreed to.

Bill read a second time and passed through remaining stages.

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Orders of the Day Nos 3 to 6 postponed on motion by the Hon. Eric Roozendaal.

POLICE AMENDMENT (DEATH AND DISABILITY) BILL

Second Reading

The Hon. ERIC ROOZENDAAL (Minister for Ports and Waterways) [4.03 p.m.]: I move:

That this bill be now read a second time.

I seek leave to incorporate the second reading speech in *Hansard*.

Leave granted.

The death of a police officer performing his or her duty is tragic, and it is important that should such an event occur, the family of the police officer is looked after. Likewise if a police officer is injured as a result of their occupation it is appropriate that assistance and support is provided to the police officer.

On 9 May 2005, the Government formally announced a 105 million dollar package of initiatives to overhaul the way in which NSW Police supports police officers who are killed or injured in the performance of their duty. The package was endorsed by the New South Wales Police Association on 23 June 2005.

A major component of the package is a new death and disability scheme. The purpose of this Bill is to introduce minor amendments to the Police Act 1990 and the State Authorities Superannuation Act 1987 to facilitate the introduction of the new scheme. The scheme will be established by a specified industrial award.

The bill is based on deliberations of the Police Superannuation Working Party, chaired by the Premier's Department, with representation from the Ministry for Police, NSW Police, the Police Association of New South Wales and NSW Treasury.

The Working Party was formed in 2003 in recognition of the limitations of the current system of death and disability coverage for police officers, and the need to provide police officers with insurance protection commensurate with the level of risk they face in the line of duty.

Under the current system, serving police officers operate under different death and disability insurance schemes. Prior to April 1988, police operated under the Police Superannuation Scheme. When this scheme was closed by the Greiner Government, police officers who joined after April 1988, who comprise some 70 per cent of the current force size, became members of the State Authorities Superannuation Scheme [SASS], unless they transferred their benefits to First State Super [FSS]. These latter schemes are not police specific but rather cover all workers in New South Wales.

This has produced the unusual situation whereby two officers, rostered on the same shift, and responding to the same incident, will be treated differently with respect to insurance payments if they are both injured, or indeed killed.

The introduction of new death and disability insurance, available to police officers employed on or after 1 April 1988, other than those who contribute to the Police Superannuation Scheme, will redress this inequality, and ensure that the unique dangers faced by all police officers when performing their duty are duly recognised.

In addition, police officers who are currently members of the State Authorities Superannuation Scheme [SASS] will be able to elect to participate in the new death and disability scheme and pay the additional benefit levy.

The bill also contains provision to enable the commissioner to still make a special benefit payment if for some reason the police officer is injured on duty but for some reason is not covered by the new scheme.

The bill will thereby permit all police officers to go about their daily tasks safe in the knowledge that should they suffer injury or illness, support will be provided to themselves and their family.

Some aspects of the new death and disability scheme include:

- availability of a lump sum payment for work-related injuries. The benefit will be paid if the injury prevents the injured officer from continuing to work with NSW Police, or the broader public sector;
- benefits paid based on the injured officer's age and the degree of incapacity suffered;
- should an officer be killed on-duty, his or her benefits will be payable to their spouse, or to their estate; and
- enabling police to pay additional insurance for off-duty injuries.

The benefits for death or total and permanent disablement will be covered under an insurance arrangement with Metlife Insurance Limited. The benefits for partial and permanent disablement will be met by NSW Police.

Separate to this bill are a number of other additional measures that have been developed to foster the health and welfare of police officers. These measures, to be included as part of the award to establish the scheme for death and disability, are:

- the creation of a specialist unit within NSW Police to oversight and improve the injury management process. The specialist unit will administer the new death and disability scheme and provide advice and education to Local Area Commands on management of injured police officers.
- the extension of the Wellcheck program. The Wellcheck program, piloted within the Child Protection and Sex Crimes Squad, enables staff at high risk of psychological injury to participate in quarterly 'well being check-ups' with an Employee Assistance Program [EAP] psychologist. This program recognises that not all injuries are physical, and able to be treated with a course of physiotherapy. Clearly, tasks performed by police officers can cause mental anguish and it is critical that a program is available to police officers who are at risk of suffering psychological injury.

The occupation of policing is demanding both physically and psychologically, and the establishment of the special unit, and implementation of the Wellcheck program will help prevent, detect and manage injury to police officers.

Schedule 1 amends the Police Act 1990.

Clause 1 of schedule 1 repeals section 216 of the Police Act which currently provides the Commissioner of Police with discretion to make a payment, called a special risk benefit, in respect of a police officer who is retired from NSW Police, or dies, as a result of being hurt on duty.

The special risk benefit will be replaced by the new death or disability benefits that will be available to police under a scheme to be established by a specified industrial award. The scheme will be available to police officers employed on or after 1 April 1988, and who are not contributors to the Police Superannuation Scheme.

Clause 2 provides that the special risk benefit as applied to students of policing will still remain, as the new scheme will not extend to students of policing.

Clause 3 amends section 216A of the Police Act to allow only a student of policing or the spouse or personal representative of a student of policing to apply to the District Court for a determination in relation to a decision of the commissioner regarding a special risk benefit.

Should the commissioner fail or refuse, within 6 months after a student of policing suffers an injury, to make a decision about payment of a special risk benefit, then the commissioner is taken to have made a decision to refuse to pay any amount in relation to the student.

Clause 4 further amends section 216A of the Police Act to remove the ability for the District Court to make decisions with respect to section 216.

Clause 5 provides for savings, transitional and other provisions to be specified by way of regulation.

Clause 6 provides that the Commissioner of Police can still make a payment under section 216, as if that section had not been repealed, if a police officer is hurt on duty prior to the commencement of the new death or disability scheme, but is not entitled to, nor eligible for, payment under the new death or disability scheme.

Conversely, provision is made for recovery of the special benefit if for some reason both a special risk benefit and a death and incapacity benefit is paid.

Schedule 2 amends the State Authorities Superannuation Act 1987.

Clause 1 of Schedule 2 enables police officers who are currently members of the State Authorities Superannuation scheme to elect to participate in the new death and disability scheme and pay the additional benefit levy.

Clause 2 provides for savings, transitional and other provisions to be specified by way of Regulation.

A regulation will be made to permit police officers who are currently members of the State Authorities Superannuation scheme to elect to participate in the new death and disability scheme and pay the additional benefit levy.

This bill, by facilitating the introduction of the new death and disability scheme, confirms the Government's strong commitment to protecting the very people who perform the demanding job of protecting the State of New South Wales.

I commend the bill to the House.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [4.03 p.m.]: This legislation is long overdue. In fact, the process that has finally resulted in fair and decent legislation for members of NSW Police commenced in 1987. It is extremely important to state that a division exists in the Police Force in regard to what is commonly referred to as pre-1988 and post-1988, an issue with which I am sure Reverend the Hon. Fred Nile is well and truly familiar. It is wrong that a definition of "pre-1988" and "post-1988" should exist to determine benefits for police officers in relation to workers compensation, superannuation, death and disability. The legislation that was passed in 1987, during the dying days of the Unsworth Labor Government, drew that distinction which disadvantaged so many officers for such a long time.

The New South Wales Police Association has continued to fight for equity in relation to police entitlements. I am pleased to say that irrespective of the changes that have occurred at the Police Association hierarchy level, the rank and file members have steadfastly remained committed to ensuring equity for all officers. As a former secretary delegate to the Police Association I am incredibly proud and pleased to see this matter finally come to fruition. I have received information that the legislation is not perfect and does not provide a completely equitable reference for officers appointed post-1988 but at least it is a series of significant steps forward that, hopefully, will provide some assurance.

I will explain what this legislation seeks to correct at the end of the day. I give an example of two police officers, one who joined the Police Force in 1975 and the other in 1995. Both have similar commitments. Perhaps the children of the officer who joined in 1975 are older, but both officers have a mortgage and ongoing commitments to look after their family and maintain their lifestyle. Both officers are involved in a motor vehicle accident and, remarkably, receive exactly the same injuries. But the similarity stops there. From that moment on the two officers are dealt with totally differently in regard to the benefits they receive and the security and

support they get not only from NSW Police but also from the Government—the architect of the legislation that created a serious disadvantage to the officer who was appointed post-1988. This legislation finally recognises the need to correct the ledger, and takes a step in the right direction.

The bill will facilitate the introduction of a new death and disability benefits scheme for New South Wales police officers employed at 1 April 1988. I indicate at the outset that the Opposition supports this important legislation. It is unfortunate that its introduction has taken so long, given that the scheme came into effect on 23 June 2003, and we are arguably in the final 30 hours of the 2005 parliamentary sittings before it is finally resolved. I can assure the Government that when the second reading debate is concluded the Opposition will do all it can to expedite the passage of the legislation through the Parliament in order to provide protection to all officers, no matter whether they joined the Police Force in 1975 or in 1995.

The Minister for Ports and Waterways was not a member of Parliament when the reforms to the workers compensation legislation passed through this House. However, Reverend the Hon. Fred Nile, who is in the chair, well remembers it because on that occasion his view was different to mine in regard to the changes needed to the legislation. During debate on the that bill I drew the attention of honourable members to the fact that it was important to recognise that police officers, more than any other employees, face the possibility of psychological and psychiatric damage as a result of their work, and sought to provide them with a level of protection.

The Special Minister of State was then responsible for workers compensation, as he is today. He did not accept the amendments, nor did the members of the Committee, but I believed then and I believe now that it was a very sad day for members of the Police Force. Because of the nature of their work, police officers see things and work under pressure that members of this House and the wider community could not begin to imagine. Imagine turning up at the scene of a horrific motor vehicle accident, such as that which occurred in the last couple of days on the Pacific Highway. Imagine turning up at the scene of a fire such as the one at Wyong which resulted in the death of a number of young children in and around the home. Imagine turning up at the scene of a violent crime or finding that a police officer has taken his or her life—as has happened far too often.

The general jobs that police officers attend day in and day out include attending premises in the middle of the night and being told it is believed that armed offenders are inside. They enter those premises with their partner while waiting for backup. Most of us in this place could not begin to imagine the stress and strain under which police officers perform their duties. But when the Opposition put forward reasonable amendments to protect police officers, particularly those suffering from psychological or psychiatric impairment, I could not believe it when this Labor Government—which purports to look after the workers—walked away from the very people we pay to protect us, our family and our community.

In walking away, this Labor Government put the injuries of, and benefits to, police officers on the same workers compensation level as gardeners and librarians. This equitable system, as the Labor Government saw it, allowed injured police officers to be treated in exactly the same way as a librarian, a gardener or an office worker—it may be someone who does nothing more than lick stamps and put them on envelopes. I call on members opposite to put themselves in the place of a 24-year-old or 25-year-old police officer at Macquarie Fields with 100 or 150 drunken hooligans hell-bent on causing him physical harm.

Imagine standing in line with other young officers, watching bricks and Molotov cocktails flying through the crowd and thinking, "If I get hit on the head with this brick or if I get hit with a Molotov and I am seriously injured, who is going to look after me and my family?" For other workers who may be the victim of an armed robbery or violence, it may be a one-off event in their entire working lives, but for police officers it can become part of the job day in and day out. This Labor Government walked away from its responsibility to look after the workers to whom we entrust our safety. Each night when we put our heads on the pillow we know that police officers will protect us. The situation was disgraceful then, and it is disgraceful now.

I am pleased that the Police Association, supported by the rank and file of the Police Force, has stood its ground and forced the Government to do something about it. We held a series of meetings with not only members of the Police Association but also members of the Fire Brigades Union, recognising that something had to be done about the workers compensation reforms. Fortunately, subsequent to our meetings with the Fire Brigades Union, reforms have been pushed through for its members and, finally, reforms are going through for members of the New South Wales Police Force. All members of the Police Force who work full hours will be eligible for cover from 23 June 2005.

The bill distinguishes between officers who joined post-1988 and members of the old Police Superannuation Scheme and the State Superannuation Scheme, neither of which will be covered by the legislation. Over the years I have been inundated with, and saddened by, the number of concerns raised by police officers and their loved ones who have had no protection. Many officers have walked away from the job. I am not talking about the old, more experienced police officers but the younger officers in whom we invest and who we expect to develop into future leaders and become mentors within the New South Wales Police Force.

I encourage members to read a column in the *Police News*—the publication of the New South Wales Police Association—called "Changes in the Force". That section lists officers who have left the force in the previous month or two and enables officers to remain in contact with their colleagues. I do not want to denigrate the magazine, but it probably is the most widely read section of the *Police News*. I was a police officer for many years and I have spoken to countless police officers, and I know that the first thing they read in *Police News* is "Changes in the Force". Some officers read it to work out where the promotional and transfer opportunities are, but most read it to find out where their colleagues are going, whether they have left the Police Force because of injury or whether they have passed away.

Members of this House should read the column regularly because it indicates what is happening to morale in the Police Force. It also shows the number of officers we are losing. The Opposition tries not to listen to the Government because we seek the truth; we try to talk to the officers to get an indication of what is occurring. But the Government says it is senior people who are leaving because they want to top up and maximise their superannuation. But many of the officers who are leaving are very junior constables.

[Interruption]

It is great to hear the Hon. Tony Catanzariti calling out from the other side, "Go, Mike. Go!" It is fantastic to know that I have the support of some members of Country Labor.

The Hon. Eric Roozendaal: He said, "You should go, Mike."

The Hon. MICHAEL GALLACHER: No. He said, "Go, Mike. Go!" The Minister for Ports and Waterways wishes I would go. When I speak to the Hon. Tony Catanzariti, a Country Labor member of the upper House, he says that he talks to his local police officers. I suspect that if he is talking to his local police he will know that what I am saying is correct. I thank the Hon. Tony Catanzariti for his support. As I move around the State I continually see a lack of support for injured officers. A few months ago when I travelled to the North Coast to meet with officers I could not believe the level of emotion they displayed. It was as raw as one could imagine.

Most people would say that working on the North Coast would be fantastic. Perhaps a couple of weekends a year it might get a bit chock-full, but otherwise it would not be too bad. But officers there will tell you that it is the same day in and day out. They obviously have to deal with the road toll and road trauma that occurs on the Pacific Highway, but they also have to deal with itinerant movements through their commands, which increases criminal activity. There are increasing demands on them to maintain a police presence in areas where the numbers and the make-up of those involved in criminal acts is changing as people move between Sydney and the Queensland border, and up and down the coast.

It is difficult for officers when many people who have fled Sydney as a result of any number of problems are attracted to the North Coast and become involved in criminal activity such as illegal drugs. Not unlike many country areas of New South Wales, the North Coast is a difficult area to police. I could not believe what I was hearing about the workloads, the sheer lack of support, the number of officers who are on long-term sick leave and the number of officers who are confronted, day in and day out, with their rest days being cancelled because no-one is available to do their work.

I hope this bill forces the Government to recognise that unless it exercises control over the current state of morale in the NSW Police and the problems caused by injuries the police budget will explode. If the Government adopts the attitude of simply passing cheques to police officers in the hope that money will take care of the problem it is courting disaster. As honourable members may imagine, my ongoing relationship with the Police Association has led to a number of discussions with senior members of the executive, secretary delegates, branch level, and rank and file members about a matter that the Government is yet to take serious action on—a matter that is crucial to the success of this legislation.

Managing the rehabilitation and continued training of officers who have been injured as a result of the performance of their police duties will not simply be a case of giving them a cheque in the hope that they will go away. Most injured officers believe they have a career and a role to play in policing. This Government has failed through headquarters, local area commands and specialist areas to force commanders to take their responsibilities seriously in relation to the rehabilitation of injured officers. There is virtually no rehabilitation provided for officers in specialist areas to direct them to other duties. While such officers may not be able to perform the full range of police duties, many of them want to maintain an ongoing policing role.

The point is often made that the alternative duties police officers perform after they have been injured are occupations that merely involve shuffling papers. Police officers are given minor tasks that would be better carried out by clerks and public servants and not by trained police officers. Police officers feel that it is an insult to their training and to their office to be performing rostering duties, compiling court documents, filing court papers and assisting prosecutors in a local area command. That is not what police officers are trained to do. Many of them are highly skilled and the community has invested quite heavily in their training. They want to perform an ongoing police role.

I know from discussions I have had with the Police Association that the Government is vulnerable in relation to this issue. Years ago the majority of officers were in the pre-1988 pool; the majority of officers are now in the post-1988 pool. They are working in a discriminatory and unfair system, as I outlined earlier in my contribution to this debate. The Police Association realises that the Government is talking the talk, but has not commenced the walk towards doing something about this problem. For this legislation to be a success, the Government must embark on a serious attempt to ensure that local area commanders from the top of the NSW Police structure to the bottom are compelled to ensure that, whenever possible, injured officers are given real work to do instead of minor office work.

Unless the Government adopts that approach, within a very short time those officers will feel they are being ostracised and are no longer part of the police family. They will perceive themselves as people who do office work. One only has to recall what has happened to countless officers who stuck it out in an office for a little while but became increasingly dissatisfied because it was not the type of work they had been trained to do. They regressed from office jobs to long-term sick leave simply because their disillusionment manifested itself in problems such as depression. Many injured police officers engaged in clerical work feel they are regarded as shonks and that they are no longer part of the team in a local area command. In many cases, officers endure a bitter regression from performing office duties to a depressed state because they feel that they are no longer accepted by their peers and colleagues. Some people even question the legitimacy of their injuries in the first place.

One only needs to travel throughout the State and talk to any officer in any police station to hear repeatedly the story of the manner in which injured officers are being treated. A matter that has been raised with me, my office and a number of officers of the NSW Police is the feeling among injured police officers that their hurt on duty applications [HODs] have been expedited. While most people would welcome the clarification, post-1988 police officers feel that their HODs have been rushed through prior to this legislation being introduced. I am not suggesting that that is the case for one moment, but I flag the issue for the information of the Government's advisers who are present in the lobby. It is important to draw attention to this matter so that the Government's advisers are aware that a number of officers have raised the issue with me.

In conclusion, as I mentioned in my opening comments, the Opposition is strongly supportive of this legislation. While I do not believe the legislation will finally put the issues to rest, it is a significant leap forward. I congratulate the Police Association and rank and file members of the NSW Police for maintaining pressure on the Government. It was only a matter of time before the matter was finally resolved. I hope the legislation will be enacted as quickly as possible.

The Hon. ERIC ROOZENDAAL (Minister for Ports and Waterways) [4.27 p.m.], in reply: I thank the Leader of the Opposition for his contribution to the debate. Policing is dangerous, whether it involves responding to domestic violence incidents at two o'clock in the morning, investigating alleged child sexual offences, performing surveillance on organised crime figures or, as has been the case in more recent times, dealing with alleged terrorists. There can be no doubt that police officers face challenges and risks that the vast majority of professions simply do not face. Under current arrangements, two police officers responding to the same event, experiencing the same situation and incurring the same injuries may receive notably dissimilar insurance cover, as pointed out by members who participated in the debate. The bill, which has been developed in close consultation with the Premier's Department, the Ministry for Police, the NSW Police, the Police

Association of New South Wales and the New South Wales Treasury will provide for consistency in the way in which death and disability protection is provided to police officers in this State.

I mention two important aspects of the bill. The first is the creation of a specialist unit within NSW Police to oversight and improve the injury management process, which is a very important point that is worth emphasising. The specialist unit will administer the new death and disability scheme and provide advice and education to local area commands on the management of injured police officers. The unit will go a long way toward addressing some of the issues that were raised during the debate. The second aspect is the extension of the Well Check Program. As honourable members may be aware, the Well Check Program was piloted within the child protection and sex crime squad. The program has enabled staff who are at high risk of psychological injury to participate in quarterly wellbeing check-ups with an employee assistance program [EAP] psychologist. The program recognises that not all injuries are physical or able to be treated with a course of physiotherapy. Clearly, there are tasks performed by police officers that may cause mental anguish. It is critical for a program to be available for police officers who are at risk of suffering psychological injury. That is a very good feature of this bill. Police work is demanding, both physically and psychologically. The establishment of a special unit and implementation of the Well Check Program will help to prevent, detect and manage injury suffered by police officers.

The bill amends the Police Act 1990 and the State Authorities Superannuation Act 1987 to facilitate the introduction of a new death and disability scheme. The scheme, to be established by a specified industrial award, will be available to police officers employed on or after 1 October 1988 other than those who contribute to the Police Superannuation Scheme or to the State Authorities Superannuation Scheme. They will be able to elect to participate in the new scheme and pay the additional benefit levy. The amendments give police officers and their families peace of mind in the event that they are injured or killed in the execution of their duty and recognise the extraordinary and diverse duties that police officers perform every day. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

CRIMES AND COURTS LEGISLATION AMENDMENT BILL

Second Reading

The Hon. ERIC ROOZENDAAL (Minister for Ports and Waterways) [4.30 p.m.], on behalf of the Hon. John Della Bosca: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Government is pleased to introduce the *Crimes and Courts Legislation Amendment Bill 2005*.

The Bill makes a number of miscellaneous amendments to the criminal law and court procedure. These amendments are designed to improve the administration of the justice system. The principal amendments proposed by the Bill are made to the *Bail Act 1978*, the *Drug Court Act 1998*, the *Law Enforcement (Powers and Responsibilities) Act 2002* and the *Electronic Transactions Act 2000*.

I now turn to the detail of the Bill.

Schedules 1 and 2 of the Bill propose amendments to the *Bail Act 1978* and the *Bail Regulation 1999*. These amendments come about as a result of the Commonwealth *Law and Justice Legislation Amendment (Serious Drug Offences and other Measures) Act 2005*. That Act creates a new regime of Commonwealth drug offences. Firstly, it deletes offences relating to illegal drug importation from the *Customs Act 1901* of the Commonwealth. Secondly, it adds a new Part to the *Criminal Code* of the Commonwealth, called "Serious Drug Offences". That Part both replicates the old offences under the *Customs Act*, and creates an extensive number of new Commonwealth drug offences. The new *Criminal Code* drug offences are not limited to conduct that has a drug importation or exportation element. Included in the new Part of the *Criminal Code* are a full range of offences relating to illegal drug activity. Among other offences, the Commonwealth Act creates new offences of trafficking controlled drugs, supplying precursors with the knowledge that they will be made into controlled drugs, and procuring children to traffic, import or export controlled drugs. The relevant changes to the Commonwealth drug offences take effect on 6 December 2005.

Under the NSW *Bail Act*, Commonwealth drug importation offences currently carry a presumption against bail, where the quantity of drugs involved would be sufficient to carry a presumption against bail if the alleged offender had been charged with one of the drug supply or manufacturing offences in the NSW *Drug Misuse & Trafficking Act*. Schedules 1 and 2 of the Bill amend the *Bail Act* to remove reference to deleted Commonwealth *Customs Act* offences, and insert reference to the new Commonwealth drug offences in the *Criminal Code*. The policy behind the amendments is that criminal behaviour which attracted a presumption against bail under the old regime, will continue to attract a presumption against bail under the new regime. Similarly, for those offences in the middle tier in the range of seriousness, drug-related crime which has no presumption in favour of bail now, will continue to have no presumption in favour of bail, regardless of whether it is charged under existing NSW law or the new Commonwealth law.

Schedule 6 of the Bill makes amendments to the definition of the term **serious narcotics offence** in the *Listening Devices Act 1984*, to accurately refer to the new Commonwealth offences.

Schedule 3 of the Bill proposes amendments to the *Drug Court Act 1998* in relation to compulsory drug treatment orders. In 2004, the Government passed an Act to provide the legislative basis for the Compulsory Drug Treatment Correctional Centre, which will commence in early 2006. The scheme will allow the Drug Court of NSW to make Compulsory Drug Treatment Orders in relation to offenders who have already been sentenced to imprisonment in the ordinary court system, provided the offenders have a drug dependency and meet other criteria such as having a remaining non-parole period of between 18 months and 3 years on their sentence. Offenders subject to such Treatment Orders will receive intensive drug treatment within the Compulsory Drug Treatment Correctional Centre, and if successful in the first two phases of that treatment, will be eligible for home detention while undergoing the third phase of treatment. The amendments made by Schedule 3 of this Bill are twofold.

Firstly, the Bill amends the *Drug Court Act* to provide for the situation where an appeal court has allowed a sentence appeal and imposed a new sentence on an offender. The amendment makes it clear that, when considering whether to refer the offender to the Drug Court for it to decide whether to make a Treatment Order, the court must consider the offender's eligibility after the new sentence is handed down, not before. Alternatively, if the appellant is already subject to a Treatment Order, the appeal court need not make an unnecessary second referral to the Drug Court.

Secondly, the Bill amends the *Drug Court Act* to remove any doubt that a decision of a sentencing court to refer an offender to the Drug Court, for it to consider whether to make a Treatment Order, cannot be appealed.

Schedule 4 of the Bill amends the *Electronic Transactions Act 2000* to facilitate the greater use of technology in the courtroom through the use of Electronic Case Management, or "ECM", courts. The amendment allows ECM courts to be used in any hearings other than those at which oral evidence is to be received. An ECM court is a virtual courtroom which allows a judicial officer to consider and determine issues while communicating electronically with the parties. Initially, ECM courts will operate through CourtLink in certain proceedings in the Supreme Court and Court of Criminal Appeal.

Schedule 5 of the Bill proposes amendments to the *Law Enforcement (Powers and Responsibilities) Act 2002*. That Act commences operation on 1 December 2005. The commencement of the Act will be a significant event, as for the first time the vast bulk of powers that police exercise will be able to be found together in one Act, rather than in a range of disparate Acts. As police and other relevant agencies prepared for the commencement of the *Law Enforcement Act*, it became apparent that some relatively minor amendments needed to be made, to ensure that the Act operates as it was intended to.

The most significant of those amendments cover two topics: firstly, they amend the provisions of the Act that deal with duration and extension of warrants, and secondly they make changes to the new crime scene warrants scheme created in Part 7 of the Act.

The Bill proposes that the provisions of the Act that deal with duration and extension of warrants be divided into separate sections, and the rules that apply to duration and extension of warrants be set out more clearly. The Bill does so by omitting the current section 73 of the Act, which covers both duration and extension of warrants. Instead, the Bill inserts a new section 73, which addresses how long each warrant has effect, and a new section 73A, which addresses which types of warrants may be extended and how they may be extended. The greater clarity offered by these new sections will benefit both police officers who apply for warrants and extensions to warrants, and authorised officers who must decide whether to grant their applications.

In relation to the crime scene warrant powers set out in Part 7 of the Act, there was concern that the Part as currently drafted might be interpreted to require that the particular police officer who established the crime scene must remain on the crime scene at all times. Such an interpretation would present major operational problems. For example, a junior general duties police officer may come across the scene of a major homicide. The proper role of the general duties officer will generally be to secure the scene and protect the evidence at the scene, until specialist homicide police arrive, at which point the junior officer will continue with usual duties; however it is that general duties officer who established the crime scene. It would be pointless and impractical to require that junior officer to remain at the crime scene, and theoretically in charge of it, even though he or she has no ongoing role in the investigation. The amendments made by the Bill will clarify that provided a police officer has lawfully established a crime scene, then another police officer may exercise crime scene powers if allowed to do so by the *Law Enforcement Act*. They also clarify that specialist crime scene officers who are not police officers, but are employed by NSW Police, may lawfully perform their duties at crime scenes, once the crime scene has been established.

A concern had also been raised that the Part as it now appears might be interpreted to require that only the individual police officer who was intending to exercise crime scene powers could apply for a crime scene warrant and be named in that warrant. Officers actively involved in the investigation of the case are often busy at the crime scene urgently making measurements, taking photographs, taking statements, etcetera, before that evidence is no longer available. It would be impractical to require one of those officers to leave the crime scene and prepare an application for a crime scene warrant, with all investigative activity ceasing while the application for the warrant is prepared. The amendments made by the Bill make it clear that an officer may apply for a crime scene warrant on behalf of another police officer or officers, and that the crime scene warrant once issued may authorise any police officer, not just a particular named police officer, to exercise crime scene powers.

Schedule 5 of the Bill makes other amendments to the *Law Enforcement (Powers and Responsibilities) Act* of a more minor or technical nature. **Schedule 7** of the Bill makes a minor consequential amendment to the *Independent Commission Against Corruption Act 1988*.

The amendments made to the *Law Enforcement Act* by the Bill will help to ensure a smooth transition when that Act commences on 1 December 2005.

I commend the Bill to the House.

The Hon. DAVID CLARKE [4.31 p.m.]: The Crimes and Courts Legislation Amendment Bill makes a number of amendments to the criminal law and court procedure for the purpose of improving the administration of justice in New South Wales. The Opposition has long campaigned for our administration of justice system to be updated and improved, and accordingly does not oppose the bill. Presently, pursuant to the Bail Act 1978, Commonwealth drug importation offences carry a presumption against bail where the quantity of drugs involved would be sufficient to carry a presumption against bail if the alleged offender had been charged with a drug supply or manufacturing offence pursuant to the New South Wales Drug Misuse and Trafficking Act.

The Crimes and Courts Legislation Amendment Bill amends the Bail Act to remove reference to offences that have recently been removed from the Commonwealth Customs Act and inserts reference to the new Commonwealth drug offences. Thus, criminal behaviour that now attracts a presumption against bail will continue to attract a presumption against bail under the new arrangements and offences in the mid range of seriousness that currently have no presumption in favour of bail will continue to have no presumption in favour of bail, regardless of whether a person is charged under existing State law or the new Commonwealth law.

The Listening Devices Act 1984 is amended to change the definition of "serious narcotics offence" to accurately refer to the new Commonwealth offences. The Electronic Transactions Act 2000 is amended to provide for the extension of the kinds of hearings that may be conducted by electronic communication throughout our courts. A series of amendments are made to the Law Enforcement (Powers and Responsibilities) Act 2002 to simplify the law and procedures relating to search warrants. The amendments clarify that general drug detection warrants and domestic violence or entry warrants are subject to the same conditions as search warrants in relation to expiry and extension.

Other amendments to that Act include modifying the grounds on which a general drug detection warrant may be issued or extended for more than 72 hours provided that an application for extension of a warrant is not required to be in writing and made in person if it is impractical for the applicant to appear before an authorised officer before expiry of the warrant. Provision is made that certain crime scene powers currently contained in the Act may be exercised by a police officer with the aid of any member of NSW Police responsible for examining or maintaining a crime scene and, further, that a police officer can apply for a crime scene warrant that authorises any police officer to enter premises and exercise crime scene powers.

The Law Enforcement (Powers and Responsibilities) Act 2002 will commence on 1 December 2005 and these amendments will assist in an efficient transition. The Independent Commission Against Corruption Act 1988 is amended in respect to search warrants as a consequence of amendments to the Law Enforcement (Powers and Responsibilities) Act 2002. Section 18B of the Drug Court Act 1998 is amended so as to provide that the duty imposed by that Act on a court to consider whether a person should be referred to the Drug Court when sentencing a person to imprisonment, or confirming a sentence of imprisonment on appeal, does not apply to an appeal court if the person whose sentence is confirmed in the appeal is already the subject of a compulsory drug treatment order as a consequence of a referral to the Drug Court.

It is clarified that the duty imposed presently in section 18B applies to an appeal court if the person whose sentence is confirmed by the appeal court is not already the subject of a compulsory drug treatment order. By amendment to the Electronic Transactions Act 2000, the use of electronic technology in courts, by use of electronic case management, is extended to allow its use in any hearings other than those at which oral evidence is to be received. The bill contains a diverse series of amendments to a number of New South Wales Acts relating to the criminal justice system. It is hoped that they achieve their purpose in streamlining and improving the administration of justice in this State, which is certainly in need of further and continuing improvement.

Reverend the Hon. Dr GORDON MOYES [4.36 p.m.]: The Christian Democratic Party supports the Crimes and Courts Legislation Amendment Bill.

The Hon. ERIC ROOZENDAAL (Minister for Ports and Waterways) [4.37 p.m.], in reply: I thank honourable members for their contributions to this debate. The Crimes and Courts Legislation Amendment Bill makes a number of amendments designed to improve the administration of the justice system. In particular, the amendments to the Bail Act will ensure that criminal behaviour involving Commonwealth drug offences will continue to attract the appropriate presumption on bail. The bill will help to ensure a smooth transition when the Law Enforcement Act commences on 1 December 2005. I am most chuffed that the Hon. David Clarke has taken time out of his busy schedule of number counting and found time to comment on this bill. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

**WORKERS COMPENSATION LEGISLATION AMENDMENT (MISCELLANEOUS PROVISIONS)
BILL**

Second Reading

The Hon. ERIC ROOZENDAAL (Minister for Ports and Waterways) [4.38 p.m.], on behalf of the Hon. John Della Bosca: I move:

That this bill be now read a second time.

I refer to the speech delivered by the Minister for Regional Development, Minister for the Illawarra, and Minister for Small Business in the other place.

The Hon. GREG PEARCE [4.38 p.m.]: The Workers Compensation Legislation Amendment (Miscellaneous Provisions) Bill makes a number of amendments to legislation. The Opposition will not oppose the amendments. However, the Opposition is concerned that the bill was introduced with so much haste. As the Minister for Regional Development, Minister for the Illawarra, and Minister for Small Business introduced the bill in the lower House only yesterday, there was no opportunity for consultation last night.

The Government has not explained why it could not have allowed a proper debate on this legislation and why debate on this bill proceeded in these circumstances. The Opposition notes that the Government should make a number of reforms following amendments to the workers compensation scheme that began in 2001 and that was further amended in 2003 and 2004. The Government claims that, as a result of these reforms, injured workers are receiving payments and treatment faster, return to work rates have improved, and the number of disputes has dropped significantly, but the position is not quite as rosy as that.

The Standing Committee on Law and Justice, which is inquiring into various schemes, found that workers are not receiving the same level of payments that they might have received under the previous scheme. The savings in the workers compensation scheme and the reduction of unfunded liabilities have been achieved not just at the expense of lawyers and other participants in the scheme; they have been achieved also at the expense of workers who have been forced into a situation where in many case they are not able to take commutations. Instead, they are put on a drip feed forever. This Government's ideological approach to workers who have been seriously injured is to put them on a drip feed.

The amendments attempt to deal with at least one of the major concerns that employers and workers alike have had over a period—that is, the definition of "worker". I refer honourable members to the speech made last night by the shadow Minister for Industrial Relations in the other place, the honourable member for Gosford. He outlined in detail a number of quite disturbing examples of small businesses, contractors or other businesses being subjected to major workers compensation bills on the basis that WorkCover and insurance companies decided they were workers when they might well have been independent contractors or other contracted parties. Regrettably, there have been quite a number of bankruptcies and other failures as result of the approach to that issue by WorkCover and insurance companies. So a number of the amendments will attempt to clarify the position in relation "to persons whose services are temporarily lent or on hire to others to be workers for the purposes of the workers compensation legislation". The explanatory notes state that the bill attempts:

- (k) to clarify that outworkers are deemed to be workers for the purposes of the Workers Compensation Act only if they neither employ any worker nor subcontract work for their own profit,
- (l) to provide that certain contractors are deemed to be workers employed by labour hire agencies where the labour hire agencies provide services to the contractors to facilitate the contractors' performance of work,

One interesting and possibly innovative change that is included in the legislation—and this is something that small businesses have been concerned about—is the attempt to deal with the problem that WorkCover has not been able to advise businesses and, for that matter, workers, of their rights and positions, particularly in relation to the definition of "workers". One provision in this bill states:

- (q) to provide that WorkCover may make private rulings, for workers compensation insurance premiums purposes, as to whether any person is a worker, or any class of persons are workers, employed by an applicant for the ruling.

It will be interesting to see just how that provision works and whether it improves the position for small businesses. One provision that is included in the bill—the right to appeal against an interlocutory decision of the commission constituted by an arbitrator—will be removed if the regulations prescribe that that decision may cause concern. Obviously we would like to see the regulations to establish whether there is anything new in relation to that matter and to see whether the Government intends to make any other changes to the regulations. I wish briefly to touch on the increase by 5 per cent of compensation payable for permanent back injuries. I indicated at the outset that amendments to the workers compensation scheme by and large have meant that workers are worse off than they were under the previous scheme.

As I understand it, the mechanism for dealing with claims has become dominated by paperwork and the shuffling of paper that bureaucracies seem to enjoy—and all at a continuing expense to businesses in New South Wales through workers compensation premiums, which are continuing to drive business to other States, in particular Queensland. I note that the Opposition has already announced its policy to procure a reduction of 10 per cent in workers compensation premiums. The Government responded with a promise to reduce premiums by 5 per cent. However, that comes only after an Opposition policy was announced and five years after the scheme was changed. Supposedly one of its purposes is to reduce premiums. The final amendment to which I refer is as follows:

- (o) to provide that the WorkCover Authority... orders requiring a person to make available certain records relating to the performance of work, may only be made in relation to work that was performed in the 3 years preceding the order, unless WorkCover is of the opinion that there has been a serious failure to comply with Workers Compensation Acts...

That has been lined up with the change that requires audits to go back only three years. But the provision goes on to state:

... the order (or a subsequent order) may relate to records with respect to work performed in the 7 years preceding the order.

That provision might well cause hardship to some businesses. It would certainly continue to add to the bureaucratic nature of WorkCover arrangements and the administration of the workers compensation scheme. We are concerned that this bill was introduced without time for proper debate and consideration. We will not oppose the bill, but we hope to see improvements in premiums for business, improvements for business and workers in resolving claims, and improvements in compensation to enable injured workers to get back to work as soon as possible.

Reverend the Hon. Dr GORDON MOYES [4.49 p.m.]: On behalf of the Christian Democratic Party I speak to the Workers Compensation Legislation Amendment (Miscellaneous Provisions) Bill. The purpose of this bill is to amend the Workplace Injury Management and Workers Compensation Act 1998 and the Workers Compensation Act 1987 to implement a myriad of reforms. The three main areas of reforms aim to do the following: to improve the dispute resolution process undertaken by the Workers Compensation Commission; to statutorily entrench the recommendations of the Hon. James Macken, AM, a former judge of the Industrial Commission of New South Wales in his review role of a WorkCover discussion paper; and to increase benefits payable to workers who suffer from spinal injuries. I will speak to each of those areas.

The Christian Democratic Party supports the urgent reforms that the Government has planned. The Workers Compensation Legislation Amendment (Miscellaneous Provisions) Bill makes extensive amendments to workers compensation legislation. It must be noted that the bill was debated in the other place only yesterday and thus members of this House have had little scope to understand thoroughly the nature and implications of the proposed provisions. I place on record my appreciation to my research assistant, Linda Munoz, who worked extremely hard—with very little notice—to help me prepare my speech. It is disappointing that the bill was accessible only this morning, on the very day that it was to be debated. Nevertheless, I will draw honourable members' attention to a number of salient aspects of the bill, many of which are commonsense improvements on the status quo.

I will comment first on reforms to the dispute resolution process. The bill makes a range of amendments to the arrangements underpinning the workers compensation dispute resolution process. This is

definitely an improvement. Schedule 1 to the bill deals with these amendments, which as a whole will make remarkable improvements to the practical outworking of workers compensation legislation within the context of dispute resolution. It is envisaged that the dispute resolution process will be made more effective by, for example, resolving interlocutory decisions other than by appeal to a presidential member, and more efficient by, for example, filtering out matters from the system that are not in dispute. At present 70 per cent of disputes within the Workers Compensation Commission system are resolved within 26 weeks and 85 per cent are resolved within 39 weeks. Although these figures demonstrate that the system is working, there is always room for improvement.

There is a norm of law, and a body of precedent supporting this norm, that litigants within the administrative law system are entitled to procedural fairness. One aspect of according procedural fairness is requiring the decision maker to give reasons for his or her decision in the event that the decision is not favourable to the claimant. In this context the bill accords some semblance of the spirit of procedural fairness to an injured worker by requiring that an insurer give full reasons for his or her decision when a decision has been made to decline or reduce the provision of workers compensation benefits. Included in the insurer's reasons for the decision will be the dispute notice and all documents relevant to the decision to dispute the claim. The information tendered to the injured worker will be information that the insurer can rely upon if a dispute application is lodged with the Workers Compensation Commission.

It is necessary that reasons for the decision are given in these sorts of cases not only for the peace of mind of the injured person but also to provide an understanding of the insurer's perspective on the injured worker's situation. It is worth noting that the letter given to the injured worker will also inform the worker about how to challenge the decision made by the insurer—this is also a great advance—either by requesting a review from the insurer or by lodging an application with the Workers Compensation Commission. Such notification is common in other areas of law. Notably, in migration law asylum seekers are informed of the next step that they must take if they decide to appeal a decision that adversely affects their position. Prior to proceedings being commenced in the Workers Compensation Commission the bill will require the insurer to carry out a review of the decision to ensure that the insurer can rely upon it in the proceedings.

Expedited assessments relate to disputes referred to in the commission that concern weekly compensation payments or medical expenses compensation. The Workers Compensation Commission's annual report indicates that during 2004 122 applications to resolve workplace injury management disputes were subject to expedited assessment. This compares with 94 applications received during the previous year—an increase of 30 per cent. Following expedited assessment, parties to workplace injury management disputes can request a determination by an arbitrator if they are dissatisfied with the recommendation issued. During 2004 one application for an arbitrator determination was lodged following the issuing of a recommendation. Under the bill the expedited assessment process will be expanded to allow interim payment directions of up to \$7,500 for medical expenses—the current figure allows for medical expenses up to only \$5,000—and final determinations for weekly payment claims of up to 12 weeks. At present payments are made only on an interim basis. The registrar will be given additional powers to determine these matters consistent with the powers of an arbitrator.

As I mentioned previously, the bill will filter out matters that are not in dispute. It will do so by requiring that applications for dispute resolution demonstrate that a claim has been made on the insurer, that the insurer has issued a decision or failed to determine the claim within the prescribed time, that all issues in dispute have been identified, and that all relevant reports have been exchanged and certification has been given as to the reasonable prospects of success. Most of these requirements are straightforward facts that must be established before the dispute process unfolds. However, the latter requirement may cause contention: a certification needs to be given as to the reasonable prospects of success. I assume that a matter with a reasonable prospect of success is one that has a greater than 50 per cent chance of succeeding. The Minister might care to address that point when he replies to the debate and assure the House in that regard.

Of course, bias can enter into this analysis, and certification as to the reasonable prospects of success is a heavy burden to place on the person making the certification. In the realm of law, clients will often want their solicitors to pursue a matter that their solicitors have deemed has little chance of getting up simply because the clients want to have their day in court. Solicitors are also subject to a great degree of pressure from clients who are "litigation happy". If the preconditions described above are not met the registrar will have the power to reject the application. Disputes about the level of permanent impairment will be identified when the application for dispute resolution is lodged at the commission and routed directly to an approved medical specialist agreed to by the parties. This will avoid the current delay in the referral of these matters as a consequence of their being

referred to an arbitrator first, as part of the standard dispute resolution process, and then referred by the arbitrator to an approved medical specialist.

The bill clarifies that if a party wishes to rely upon a report in the Workers Compensation Commission it must provide the report to the other party. The Government has indicated that supporting regulations will clarify that parties can submit to only one independent medical expert report per specialty. This report must be from a specialist of the type who has treated the worker. Parties will not be able to submit videotapes or non-medical investigation reports to an approved medical specialist for whole person impairment assessments. I was surprised to learn that videotapes or non-medical investigation reports could be relied upon when making a whole person impairment assessment as, to my mind, there should simply be a clinical assessment of the worker. One issue that may arise in this context is that if only one independent medical expert report is allowed per specialty, there will be no scope for contrasting that expert's findings with the findings of another expert in the same field. Human error will always factor into assessments in workers compensation insurance and perhaps insufficient scope will be given to the possibility of error in this scenario.

Under the bill, the registrar will have the capacity to refer matters back to an approved medical specialist, medical appeal panel or arbitrator for reconsideration or review. The approved medical specialist and medical appeal panel will be given the power to carry out such a review or reconsideration, and the registrar will be given a similar power to reconsider registrar's decisions. For example, the registrar will be able to reconsider a decision not to accept a dispute or appeal application. A time limit of two months from the referral being made will be placed on the reconsideration. Affording decision makers the ability to review a decision not to accept a dispute or reconsider an appeal is of the utmost importance to an injured worker who has a legitimate grievance.

Another important amendment introduced by the bill relates to commutations. A commutation is an injured worker's entitlement to workers compensation benefits paid out as a lump sum of money and is only available in specific circumstances. Included among those circumstances is the requirement that the injured worker must have a permanent impairment, that is, at least a 15 whole person impairment. Under the bill, the legal practitioner assisting a worker in an application for a commutation will be required to certify that he or she has advised the worker of the desirability of obtaining independent financial advice. That is very sound policy. I have witnessed and read of many instances where individuals have gained a financial windfall, only to fritter it away in a short span of time. It can be generally said that it is human nature for a person who receives a large amount of money to spend it without regard for future financial commitments or possible vicissitudes of life. That is the social and financial climate in which many of our constituents live.

I have established and overseen an entity known as Creditline in my capacity as Superintendent of Wesley Mission, and in that position I have dealt with numerous scenarios in which independent financial advice would have served its purpose well in helping an injured worker who has a serious impairment or injury that will impact on that worker negatively for the rest of the worker's life. I will refer to that in a few moments when I make reference to spinal injuries. Currently, parties may register a permanent impairment and pain and suffering settlement with the commission. Approximately half such settlements are not registered. The bill removes the registration provision and requires an insurer to be satisfied that a worker obtains independent legal advice prior to accepting a lump sum payment from the insurer. This will not affect a worker's legal representative's entitlement to costs. Regulations will be developed to ensure access to records and certification by insurers as to details of complying agreements.

The Government has indicated that the cost provisions of the Workers Compensation Regulation 2003 will be revised, in consultation with the legal profession, to support the above changes and provide appropriate payment for legal practitioners. The bill provides effective cost sanctions where proceedings are commenced or defended without reasonable prospect of success or costs are unreasonably incurred. That is another interesting and important development that will be tested as years go by.

I now refer to the reforms of former justice, the Hon. Dr James Macken. In relation to the reforms brought about by his recommendations, it is worthy of noting that the report makes five recommendations to improve the system: first, it provides more certainty on the current base definition of worker, but not in a way that would limit the common law test; second, it gives WorkCover the ability to issue prospective determinations on worker status to employers; third, it enhances WorkCover's education and support to assist business, particularly small business, when determining worker status; fourth, it reviews premium wage audit and related penalty arrangements; and, fifth, it clarifies outworker and on-hire deeming provisions.

The debate in the Legislative Assembly is illustrative of the types of problems that have been faced by small businesses in relation to the definition of "worker" within the body of law. I will not go into any depth on

those issues, suffice it to say that the definition of "worker" is the key to the workers compensation legislation, as it determines who is covered by the legislation and eligible to receive workers compensation benefits in the event of a workplace injury. The bill will include a new provision concerning contractors under labour hire service arrangements confirming that a labour hire agency is the employer of labour hire workers, even if they have signed a contract for service, unless they are conducting a genuine business or trade. Honourable members will be aware of a number of court cases on that issue in the past few years. That is to cover what is known as the Odco-type arrangement, which has been promoted as a means of reclassifying workers as independent contractors.

A person's status as an independent contractor is quite often favourable to an employer. That is because the employer does not have to supply the same range of benefits that he or she would have if the independent contractor were engaged as an employee. The other important aspect of the bill is to confirm protection of outworkers if they get assistance to complete work that has been assigned to them. For example, a person working in the clothing industry from home altering garments, perhaps in an adapted garage, who gets family members or friends to complete part of the work under contract and does not earn a profit from this work sharing arrangement, will continue to be deemed a worker. That is significant, because otherwise outworkers would have no hope of workers compensation benefits if they have a serious injury associated with their workers' status, such as being injured by a sewing machine.

The Government has indicated that WorkCover has already introduced a number of improvements to its wage audit arrangements, including a new wage auditor panel that commenced in March 2005 and a reduction of the wage audit period to three years, from seven years, where no serious non-compliance issues are identified. It is proposed to stipulate these arrangements in the legislation and make further improvements to WorkCover's wage audit and late payment fee arrangements to make them fairer to employers. For example, the bill will introduce amendments to give WorkCover the discretion to waive some or all of the late payment fees where an employer has understated wages if circumstances warrant waiver—for example, where the employer voluntarily discloses an error made in a wages declaration. Guidelines will be developed regarding appropriate circumstances for the exercise of this discretion in consultation with the WorkCover Advisory Council.

A vast range of examples were given in the Legislative Assembly of deficiencies in the wage audit system. One such example was a small business, mum and dad firm in Dorriggo that employed a husband and wife, their son and a couple of casual employees. WorkCover inspected the business and went through the books of the business. The business owners went to their accountant and solicitor and provided all the information that WorkCover required. In the end the WorkCover inspectors complemented the business owners on the good job they had done and on the good order of their books. But it cost the business owners nearly \$2,000 in legal and accounting fees to provide that information. WorkCover then gave them an audit fee of \$350 to \$400 on top of the other fees. So it cost these people \$2,500 to comply with the inspection procedures of WorkCover. It was suggested that was a huge cost for no good reason for a small business in a town of 1,200 or 1,500 people.

I turn now to the third area of reform. On 9 November 2005, Premier Iemma, in one of his early announcements, announced an across-the-board reduction in New South Wales workers compensation premiums and an increase in benefits for workers who suffer serious spinal injuries. This bill realises that announcement. The practical effect of changes proposed in relation to New South Wales workers compensation premiums will mean, for example, that a Sydney leagues club with a wages bill of \$12 million will save \$72,477 on its premium, a Sydney glazier with a \$770,000 wages bill will save \$28,000, and a Granville auto repairer with \$154,000 wages bill will save \$292. We appreciate the Government acting in this way to allow various employers to save on their compensation premium.

The bill will increase, by an additional 5 per cent lump sum in dollar terms, the benefit payable to workers who sustain spinal injuries that result in permanent impairment. I particularly welcome that increase. It will apply to all injuries sustained on or after 1 January 2006. On a practical basis, this amendment will mean that a person with a 5 per cent impairment to their back—for example, disc herniation and pain—would receive a lump sum of \$6,562, in addition to weekly benefits, medical care and return to work assistance. A person with 16 per cent impairment to their back—for example disc herniation, surgery and associated pain—would receive \$22,575, in addition to a pain and suffering payment and other entitlements.

I am particularly concerned about this matter from a practical perspective. In 1988 I set up a very expensive Spinal Injuries Unit at the Lottie Stewart Hospital in Dundas. It is not really the task of a church or charity to undertake caring for people with severe long-term spinal injuries.

But neither is long-term care for people with spinal injuries the task of a high-tech, high-cost hospital, such as Westmead. People with spinal injuries need a low-tech, high-care spinal unit for long-term care. That is precisely why I set up the spinal unit at Lottie Stewart Hospital. I have a great deal of concern for those who, for the rest of their lives, will be known as paraplegics or quadriplegics because of accidents. They probably will never get back to work. Better funding from the Government is required for organisations that care for workers who are injured in such catastrophic circumstances. The Christian Democratic Party supports the bill.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.10 p.m.]: It is difficult for me to assess a bill at short notice at this time of year, particularly this bill, as I no longer practice in workers compensation. I started off in workers compensation believing that my medical excellence would sort out for me who were the bludgers and who were genuine. That model is, of course, quite wrong, but it is the model used by insurance companies and some doctors. Generally, people do not feign injury. Those who exaggerate the seriousness of their injuries do so for sound reasons, such as their inability to meet increasing demands and their inability to continue in the job as they age. They prefer to take some sort of medical exit, but financially they are unable to. My opinion is that far fewer than 5 per cent of people feign injury or even exaggerate it. Generally speaking, they want to get back to work. The model of workers compensation as a financial inconvenience, an insurance difficulty and a levy on employers, is a completely wrong frame of reference.

My memory of workers compensation is that claims management was appalling, prevention was very poor and there were a large number of hangers-on in the legal profession, particularly those who represented defendants. As much money was spent on videotaping people in the hope that they would be proved to be frauds as was ever spent on doctors, but that was not evident in the way the statistics were collected. Some years ago the American Medical Association Guidelines were adapted by WorkCover to quantify injury as a percentage to determine a consistent level of injury. I spoke against the adoption of the guidelines because they are farcical. If you do not know something, you should say so, and you should not pretend that a ridiculous percentage system can quantify injury. The problem is that in the human body the symptom—that is what is felt by the patient—is not necessarily clear from the signs, which can be observed objectively. The concept of the American Medical Association Guidelines for the Assessment of Permanent Disabilities is that one can observe the degree of injury by signs—looking at people or moving them—and thus quantify the percentage of injury.

In most cases it is pain, which cannot be quantified, that limits people going back to work. Therefore the basic premise on which the guidelines are based is a farce. But the industry grew and doctors were able to undertake a course set by the American Association of Disability Evaluating Physicians. The association made money from that course. Once doctors had completed the expensive course they could conduct expensive medicals—a great incentive for those doctors. As a result, doctors who did not complete the course were excluded. Eventually a list of preferred doctors determined who were able to perform the medicals and who made money. It all went very smoothly for those who were paying. The American Medical Association Guidelines for the Assessment of Permanent Disabilities neglected to take into account the difference between an impairment and a disability. An impairment is not necessarily a disability. If I have poor vision I am impaired, but if I put on my glasses I have no disability. The extent to which physical limitations can be worked around or the task adapted to maintain or improve income must be considered.

I remember a worker who injured his back while working in a trench. He was a very intelligent man but he had never really performed to the extent of his intelligence, perhaps because he came to Australia from middle Europe. He spoke English quite well and he became a teacher after his injury. He made far more money as a teacher than he had ever made in the trenches. Intelligent adaptation of a disability can result in an increase in income if the case is well managed. But the American Medical Association Guidelines for the Assessment of Permanent Disabilities deals only with the impairment. It is farcical to suggest that examining someone without cognisance of their pain can result in an objective measure of their degree of disability. Many people who morally were entitled to compensation under the new scheme were excluded. I spoke against it a number of times but lost the vote in this House. I was disappointed to hear Reverend the Hon. Dr Gordon Moyes suggest that people are "litigation happy". It is a complete nonsense to think that people litigate for fun in the hope of manna from heaven. Injured people who litigate are those who perhaps did not do well under the American Medical Association Guidelines and who have appealed to the courts as some sort of arbiter. It is an appeal for justice. Their plea is, "Surely this is the mechanism through which I can get justice." Sadly, they are often disappointed and disillusioned.

The bill restricts the number of disputes, which means that people are ineligible to appeal to the courts. Everybody saves money and those who are injured get no money. It is appalling. As I have said previously, public liability and the change to the Motor Accidents Authority payments are a farce similar to the workers

compensation farce. Initially, those who were injured in the Glenfield train crash were going to get only a small amount of money because of legislation that was passed just prior to the train crash. But it was a very high-profile incident and, clearly, the victims of the Glenfield train crash were innocent of any negligence. They received considerable sympathy, and a special deal was worked out for them. However, nothing was done for victims of similar but lower-profile cases in which there was no media interest. Individuals injured in accidents through no fault of their own got a much worse deal. I understand that the Australian Victims Alliance, which petered out, was unsuccessful in seeking justice through reform of workers compensation and the motor accidents legislation.

The farcical American Medical Association Guidelines, which have transmogrified into the WorkCover guidelines, are quite arbitrary, but if a person is injured at work, he or she will receive some form of workers compensation. I recall when I was a doctor at Sydney Water assessing people for workers compensation a man telling me that he had injured his back quite badly at home on a weekend when he attempted to lift a bathtub. Because he injured his back at home he was entitled only to his normal three weeks sick leave. Had he injured his back at work, he would have been entitled to compensation for a long time and then a settlement. He would have been unable to work and he would have been retired on medical grounds. Australia has a welfare-type system that minimises costs. It is in no way universal. Our workers compensation system, which has incredible overheads in terms of the small percentage of money paid into it that flows through to workers, is quite poor and it is not getting any better.

The use of labour hire as a device to reduce premiums by changing classifications is a very poor industrial relations practice and I am pleased that this bill will address that issue. The other aspect that needs to be considered is preventive measures. Australia has quite a poor record of injury statistics compared to those of other developed countries. The Howard Government's abolition of Worksafe Australia must stand as a pillar of its lack of understanding and its indifference.

I was interested to note the comments made by Reverend the Hon. Dr Gordon Moyes in relation to the spinal unit he set up at the Lottie Stewart Hospital in response to an obvious need for spinal units. John Grant, who is one of the great men I have met in my life, set up a spinal unit in the Royal North Shore Hospital because he realised that while everyone was waiting for the miracle cure that never came, many people with spinal injuries died either of urinary infections or bedsores. My experience of working in paraplegic and quadriplegic medicine was that only a very small percentage of those injuries were work related. Many related to accidents involving motorbikes, sporting injuries and particularly diving injuries suffered by people who broke their backs in swimming pools. The provision by the Government of a tiny fraction of additional funding for injured workers enables the Government to beat its chest, but I do not think it really addresses the problems. I do not profess to know the minutiae of the courts system, but I suspect that this bill has not touched the essence of the problems with workers compensation. While I support the bill, I damn it with faint praise.

Ms LEE RHIANNON [5.21 p.m.]: The Greens do not oppose this bill, but I cannot say that we support it, because we have been given very little time to give it the consideration it requires. The bill only appeared on the Parliament's web site late yesterday. The speed with which the Government is trying to push through this legislation, while allowing so little time for debate, was demonstrated just half an hour ago when the Minister did not even have his folder containing his running orders and his speech—what an extraordinary situation—and had to refer to the minutiae of the courts system, but I suspect that this bill has not touched the essence of the problems with workers compensation. While I support the bill, I damn it with faint praise.

The Government has had a chequered history on the whole issue of workers compensation: 1987 was a bad year for this Government, and we all know what happened in 1988. In 1987 there was a great deal of disquiet, anger and huge protests about the Government's backflip in relation to fair workers compensation, and this is another example of that. The Greens understand that the bill is reasonable and will do the right thing by workers, but the Government should do the right thing by workers' rights and democratic process by providing adequate time for consideration of the bill.

The Hon. ERIC ROOZENDAAL (Minister for Ports and Waterways) [5.23 p.m.], in reply: I thank honourable members for their contribution to the debate on this bill. I will respond to a comment made by Reverend the Hon. Dr Gordon Moyes relating to reasonable prospects. Reasonable prospect of success is a test used in civil liability legislation. It requires practitioners to be satisfied there is an arguable case. This is consistent with the Legal Profession Act in relation to civil liability disputes. I hope those comments clarify the matter for the honourable member. This bill will achieve many worthwhile reforms to workers compensation benefits and procedures and to premium compliance arrangements. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

TERRORISM (POLICE POWERS) AMENDMENT (PREVENTATIVE DETENTION) BILL**Bill received.****First Reading****The Hon. ERIC ROOZENDAAL** (Minister for Ports and Waterways) [5.25 p.m.]: I move:

That this bill be now read a first time and printed.

The House divided.**Ayes, 25**

Ms Burnswoods	Ms Griffin	Mr Roozendaal
Mr Catanzariti	Mr Kelly	Mr Ryan
Mr Clarke	Mr Lynn	Ms Sharpe
Mr Colless	Reverend Dr Moyes	Mr Tsang
Mr Donnelly	Reverend Nile	Mr West
Ms Fazio	Mr Oldfield	
Mrs Forsythe	Mrs Pavey	<i>Tellers,</i>
Miss Gardiner	Mr Pearce	Mr Harwin
Mr Gay	Ms Robertson	Mr Primrose

Noes, 5

Dr Chesterfield-Evans
 Ms Hale
 Ms Rhiannon
Tellers,
 Mr Cohen
 Dr Wong

Question resolved in the affirmative.**Motion agreed to.****Bill read a first time and printed.****Suspension of Standing and Sessional Orders****The Hon. ERIC ROOZENDAAL** (Minister for Ports and Waterways) [5.31 p.m.]: I move:

That standing and sessional orders be suspended to allow the passing of the bill through all its remaining stages during the present or any one sitting of the House.

Ms LEE RHIANNON [5.32 p.m.]: This bill is a momentous piece of legislation that is not worthy of debate. What it will do is overturn 800 years of legal principle. We have an extraordinary situation. The entire legal community is united against this bill, and that is little wonder when one considers what it will do. That is why I believe we should not go to the second reading of this bill. That is clearly an unusual move for this House, but we have taken this position because of the seriousness of the law and the need to reject it at the first stage. The key legal principles that are ignored in this bill are that there can be detention without any judicial authorisation. Police have the power to detain people if they are suspicious and nothing more. Another key legal right that is ignored is that people who witness terrorist attacks can be detained. Just for witnessing a terrorist attack any person in our community could be detained—

The Hon. Don Harwin: Point of order: The only issue we are debating is whether standing and sessional orders should be suspended to allow the bill to pass through all stages. The honourable member is now trespassing into the substance of the bill, which should be part of the second reading debate.

Ms LEE RHIANNON: Point of order: My argument as to why this matter should not proceed to the second reading is the momentous nature of the bill in overturning 800 legal years of history and I was

illustrating that fact by stating what the bill does. Therefore it is clearly relevant to my argument as to why this bill should not proceed to all stages.

The PRESIDENT: Order! President Hay ruled that a member may refer to a bill to illustrate his or her argument in support of a motion to suspend standing orders to expedite its passage. Accordingly, I rule that the member may refer to the bill to illustrate her argument but she is not permitted to traverse the subject matter of the bill.

Ms LEE RHIANNON: This is an extraordinary situation and I find it most distressing that so many members actually take this debate lightly.

The Hon. Charlie Lynn: We are anti-terrorists.

Ms LEE RHIANNON: We are also anti-terrorists. We already have enormous powers at a State and Federal level to allow the security forces and the police to deal with terrorist threats. That was shown clearly with the raids that have just been carried out by the police. What we have here is legislation that will overturn that most important aspect of our history of 800 years of legal principle. The fact is that lawyers from the Bar Association right across the board to Amnesty International, the Council for Civil Liberties and various other legal groups are united in their concern about this legislation. They have pointed out that the bill will stop a solicitor telling people in their office anything that they have been told in a briefing from detainees.

Reverend the Hon. Fred Nile: Point of order: The honourable member is clearly debating the contents of the bill. She is making a pre-emptive strike against the bill, which is really a terrorist tactic.

Ms Lee Rhiannon: I ask the Hon. Fred Nile to withdraw his remark. The remark is disgusting, and I ask that it be withdrawn.

The PRESIDENT: I have ruled previously that as debate in this Chamber can be robust a remark is offensive only if it relates directly to a member rather than to a member's tactic or strategy. I remind members that I have ruled on several occasions that it is not out of order for a member to suggest that another member is behaving in an offensive manner but that it is out of order for a member to suggest that another member is offensive. Accordingly, I rule that the remark complained of is not offensive. I note that the member's time for speaking has expired.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.39 p.m.]: The Terrorism (Police Powers) Amendment (Preventative Detention) Bill is consequential to Federal legislation. That Federal legislation passed through the lower House with some amendments. I understand that there have been hasty redrafts of this bill as a consequence. Clearly, as the Federal legislation is debated in the Senate there will be further redrafting, and consequently this bill will need to be further modified. It is not the case that that legislation was rushed through Parliament. Under existing legislation, only a couple of weeks ago people were arrested, and there was a great deal of publicity and to-do about that. The routine use of contingent notice to debate an urgent matter is frequently abused. In this case that process has gone too far.

The Terrorism (Police Powers) Amendment (Preventative Detention) Bill should be considered far more seriously, and should not be rushed through the Chamber. The Federal legislation, upon which this bill is contingent, will be modified and will be implemented through the constitutional powers of the State. Given that the State has most of the powers for law and order in Australia, we need to know what we are dealing with at a Federal level before we debate this bill. We should not race through contingency as if it were routine. The bill should be debated at a later time. Therefore, we should not have contingency on this bill at this time.

Ms SYLVIA HALE [5.44 p.m.]: I support the remarks of my colleague Ms Lee Rhiannon. This bill is totally unworthy of this Parliament. It is obvious to everyone that there is no current clear and present danger to Australia and no specific threat. As Ms Lee Rhiannon said, it is incredibly important that we exercise caution, because what we are about to do is to undermine many legal principles, many safeguards, that have stood the community in good stead for hundreds of years. We are flippantly about to abandon those safeguards. We are doing so at the behest of two incorrigible liars, namely, John Howard and Philip Ruddock, who have been shown time and again to mislead.

The Hon. Rick Colless: Point of order: If Ms Sylvia Hale cares to make such comments about the Prime Minister and the Hon. Philip Ruddock, I suggest she do so by way of substantive motion, not by imputation.

The Hon. Duncan Gay: To the point of order: I request that Ms Sylvia Hale withdraw her unacceptable comments.

The Hon. Dr Arthur Chesterfield-Evans: To the point of order: The Prime Minister is not a member of this House and, therefore, reflections on him may be made at will. It is unfortunate that we live under such a man, and if someone says so, so be it. It is within their rights to do so.

The PRESIDENT: Order! It is true that standing orders state only that imputations and inferences must not be made against members of this Chamber or the other Chamber and there is no reference to members of other parliaments. However, I remind members that the word "liar" has been ruled as unparliamentary on many occasions.

Ms SYLVIA HALE: The difficulty that the Prime Minister and our current Attorney-General have with the truth is manifest for all to see. All one has to do is follow the newspapers over the past two years to know that neither the Prime Minister nor the former Minister for Immigration have any scruples when it comes to telling the truth. In fact, they will consistently—

The Hon. Duncan Gay: Point of order: Madam President, you requested the member to withdraw her comments. She has not withdrawn.

The PRESIDENT: Order! I did not ask her to withdraw.

The Hon. Duncan Gay: Madam President, you said that calling someone a liar in this Chamber is unparliamentary. By dint of your ruling, the fact that Ms Sylvia Hale called the Prime Minister and the Attorney-General of the Commonwealth liars is unparliamentary. I have not come into this House and called Bob Brown liar, but he is a liar.

The PRESIDENT: Order! The standing orders and conventions of this House are silent with regard to unparliamentary terms directed at members of other parliaments. I was merely reminding Ms Sylvia Hale that her language was unparliamentary. I cannot ask her to withdraw because we do not have a convention or a standing order that would make that necessary.

Ms SYLVIA HALE: Thank you, Madam President. I believe if I were to withdraw those remarks I would be telling an untruth. I would be somehow subscribing to a view in which I do not believe.

The Hon. Don Harwin: Point of order: This debate about the truthfulness or otherwise of public figures is not relevant to whether standing orders should be suspended.

The PRESIDENT: Order! The contribution of the member must be relevant to the question before the Chair.

Ms SYLVIA HALE: I point out that the bill we are about to debate, presumably, is a fundamental attack on our freedoms and liberties. It will redefine the rule of law and I think it is totally abhorrent that we should seek to rush through, in a matter of hours, something which will have such a substantial impact upon the freedoms of this country.

The Hon. Dr PETER WONG [5.47 p.m.]: I object to the Terrorism (Police Powers) Amendment (Preventative Detention) Bill being rushed through tonight. This bill is not urgent. As we have been informed by authorities in legal affairs, it has breached a United Nations convention on human rights. For that reason alone, the bill must go through careful consultation with the community before a decision is made. I regret that Ms Sylvia Hale called John Howard a liar. I would call him much worse.

Question—That the motion be agreed to—put.

The House divided.

Ayes, 25

Ms Burnswoods
Mr Catanzariti
Mr Clarke
Mr Colless
Mr Donnelly
Ms Fazio
Mrs Forsythe
Miss Gardiner
Mr Gay

Ms Griffin
Mr Kelly
Mr Lynn
Reverend Dr Moyes
Reverend Nile
Mr Oldfield
Mrs Pavey
Mr Pearce
Ms Robertson

Mr Roozendaal
Mr Ryan
Ms Sharpe
Mr Tsang
Mr West
Tellers,
Mr Harwin
Mr Primrose

Noes, 6

Mr Breen
Mr Cohen
Ms Rhiannon
Dr Wong
Tellers,
Dr Chesterfield-Evans
Ms Hale

Question resolved in the affirmative.

Motion agreed to.

The Hon. ERIC ROOZENDAAL (Minister for Ports and Waterways) [5.55 p.m.]: I move:

That the second reading of the bill stand an order of the day for a later hour of the sitting.

Ms LEE RHIANNON [5.56 p.m.]: I move:

That the question be amended by omitting the words "a later hour of the sitting" and inserting instead "the first sitting day in 2006".

Clearly, this is the only responsible way to deal with this bill. I urge members to consider the fact that our Victorian counterparts have done this very thing. They realised that this is serious legislation and they deferred it so that it can be fully considered. We must defer the debate because there are diverse opinions and concerns in the community about what would happen to the fabric of our society if this legislation were passed. The legal community is up in arms about this legislation. The Human Rights and Equal Opportunities Commission, Amnesty International, the Council for Civil Liberties, State bar associations and legal academics are all ranged against this piece of legislation.

If people followed the inquiry into national terror laws at a Federal level they would be aware that those bodies all spoke out against the legislation. Ranged against them on the other side were the Government and the Australian Federal Police, which I believe says a great deal. An interesting array of people expressed concern. I acknowledge that they were not always in total opposition to the legislation, but they have serious concerns. The Australian Broadcasting Commission and various Muslim groups expressed concern. Media owners such as News Ltd raised concerns. Many honourable members would be aware that that is reflected in its paper today. That is not surprising because what will happen as a result of this piece of legislation is extraordinary.

I acknowledge that many members of the Labor Party are concerned about this legislation. In fact, they vehemently oppose it. I congratulate them on their opposition to this bill. I understand that they are in a difficult position because their Premier and their party have made a decision. I put it to members of the Labor Party that some legislation is so momentous that a stand needs to be taken. One small point surely will bring home the hardship that will be caused by this bill. Because we have the extraordinary provision that people can be detained for a long period without being charged, legal aid will not apply.

Our society supports legal aid. Even a conservative government such as the Howard Government allocates money for legal aid. When people are detained and not charged they will no longer qualify for legal aid. People qualify for legal aid only if they have been charged. I am sure that all honourable members are concerned about the likelihood of that happening. I will refer to some of the other horrors that will be caused by this bill. If a detainee hears that his or her period of detention is to be extended, he or she still has no right to a lawyer. Some of the recommendations by the Federal inquiry attempt to remedy those problems.

Debate on this bill should be postponed until 2006 so we have time to consider the recommendations from the Federal inquiry. We need time to consider the changes announced late today by John Howard—changes that will be incorporated into the legislation. This legislation must not be rushed through at this late hour. Some of the recommendations from the inquiry relate to people who stand to have their detention extended. Those recommendations state that they should have the right to a lawyer, to see the evidence against them, and that there should be a ban on hearsay evidence. I still do not think that is good enough. Those people should have a right to a trial, but a halfway measure is being suggested by this inquiry. We must have time to

consider these measures or maybe even conduct our own inquiry. It is argued that we need this bill to ensure consistency between New South Wales and Commonwealth law. But how can that be when the relevant Federal legislation has not yet been passed?

The Hon. PETER BREEN [5.59 p.m.]: I support amending the motion to postpone the second reading of the Terrorism (Police Powers) Amendment (Preventative Detention) Bill until 2006. It seems to me that there is a divergence between the interest of the major parties in this legislation and that of the Independents and minor parties. During divisions in the other place the major parties were on one side of the House and the six Independents were on the other side. Community issues need to be considered. Muslim groups and people in the Vietnamese community are raising matters with me by the hour. They are expressing great concern at the infringement of their freedoms and liberties that this legislation represents.

The legislation is unprecedented. It is overturning 800 years of tradition in relation to habeas corpus that began with the Magna Carta. To do that in a rush and ahead of the very legislation that it is supposed to be modelled after—that is, the Federal legislation—seems to me to be putting the cart before the horse. Why does New South Wales have to take the initiative on this legislation that has been agreed to by the Commonwealth and State Attorneys General?

The Hon. Don Harwin: Point of order: I believe it is not appropriate to discuss the merits of a bill when debating a motion to postpone its second reading to a later hour. If Ms Lee Rhiannon's amendment is successful the debate will be postponed until the first sitting day of 2006. In this regard President Hay ruled on the second readings of the Animals Infectious Diseases Bill and the Workmen's Combination Laws Declaration Bill. On the latter, he said:

A motion to postpone the Order for the second reading of a Bill is a stage at which no debate on the Bill should take place.

I did not take this point of order before as there is obviously significant interest in the bill and I did want to constrain the discussion unduly. But if we are about to hear from all six crossbench members on this issue I ask you, Madam President, to rule that no debate can take place on the bill at all.

The Hon. PETER BREEN: To the point of order: I am not seeking to debate the merits of the bill. However, some aspects of it are relevant to the question as to whether its consideration should be postponed until 2006. That is the central issue. It is impossible to consider that issue without addressing, at least in some broad way, the implications of the bill. The bill is a significant departure from every conceivable legal principle of which I am aware in relation to habeas corpus. For that reason alone we should allow some time to pass before debating and voting on the bill. I urge support for amending the motion to allow consideration of the bill to be postponed until next year.

The PRESIDENT: Was that a speech to the point of order or was that the end of your contribution?

The Hon. PETER BREEN: It was a combination, Madam President.

The PRESIDENT: Order! I will rule on the point of order. President Hay certainly said:

It is not customary under ordinary circumstances to discuss the merits of a Bill on a motion to postpone its second reading

However, the Hon. Don Harwin misinterpreted the second ruling of President Hay to which he referred. President Hay said:

A motion to postpone the Order for the second reading of a Bill is a stage at which no debate on the Bill should take place.

I read that to mean that no debate on the bill should take place during debate on a motion to postpone the order for the second reading. President Hay was simply restating his original position that no debate on the merits of the bill should take place. I remind members speaking to this motion not to traverse the subject matter of the bill itself.

Reverend the Hon. FRED NILE [6.04 p.m.]: I oppose the amendment to postpone the second reading of the bill until the first sitting day of 2006 as I believe the Terrorism (Police Powers) Amendment (Preventative Detention) Bill is urgent. The Hon. Peter Breen said that Independent members in the other place support his stand. I put on record that I certainly do not agree with him, and I am a crossbench member. I believe we face an unprecedented threat that requires unprecedented legislation. I do not want the blood of Sydney citizens on my hands if a terrorist bombing occurs on a packed train at Town Hall station or another underground station in the coming months.

Mr IAN COHEN [6.05 p.m.]: I support my colleagues in calling for the postponement of the second reading of the Terrorism (Police Powers) Amendment (Preventative Detention) Bill. I felt somewhat unnerved as I sat in the Chamber this evening, listening to the debate and witnessing the joviality and the cheek of many on what is a very significant occasion. This is about our fundamental human rights. We should be given adequate time to debate the bill. We are witnesses to a process that chills me to the marrow. I have read in history about the ways that laws were changed to restrict the freedoms of individuals in society—freedoms that had built up over generations. And here we are tonight, playing a small but significant part in the attrition of basic human rights in a democracy.

The Hon. Duncan Gay: The right to live.

Mr IAN COHEN: I acknowledge the interjection. I have witnessed the accumulation of the substantial police powers that led to the arrest and detainment of individuals suspected of terrorist activities—

The Hon. Charlie Lynn: You don't support those arrests?

Mr IAN COHEN: I am not going to comment on those arrests; I am simply acknowledging that police power in our society is substantial already. We are now seeking to rush through in a single night legislation on fundamental issues. Many leading academics and civil liberties groups oppose proceeding with such haste. That is a valid position. Victoria has taken that stand. I think we should proceed a little slower. What is the haste? We can debate the substance of the bill when Parliament resumes next February. I believe this process is being rushed for political purposes. A society that is based on fear and paranoia will generate exactly that. I ask that members seriously consider postponing debate on the bill until next February, when Parliament resumes, to allow ongoing discussion and debate of these fundamental issues.

Ms SYLVIA HALE [6.08 p.m.]: My colleague Mr Ian Cohen hit the nail on the head when he asked, "What is the haste?" Why the rush? As the recent arrests of 16 people in Sydney and Melbourne demonstrated, the police have all the powers they need. The Victorian Government introduced similar legislation but chose to sit on it until next year to give the community an adequate opportunity to debate it. It seems no clear and present danger forcing it to push through the legislation in such an unconsidered and precipitate manner. These laws are deeply controversial. All legal and public interest advocates oppose them. Rushing through this legislation tramples on those concerns; it suggests that they have no validity when every thinking person knows that the matters raised in the bill are of deep consequence. When the Blair Government tried to push through similar laws in the United Kingdom Parliament an unprecedented 60 members of Parliament crossed the floor.

Federal Labor has complained bitterly and continuously about not being given enough time to debate the Federal Government's industrial relations legislation. It has consistently said that the community is being misled and that it has not had the chance to fully digest and appreciate the complexity of the laws and their implications on people's working lives. In fact, I suggest this bill has equally serious ramifications, yet Labor is denying honourable members and the community the privilege of having time to consider this legislation that is being pushed on us.

I suggest that open and participatory democracy requires public involvement. How can there be public involvement when the public has had virtually no opportunity to examine these laws? In fact, today the Government hastily amended the bill—it will have a second print—to make it consistent with the changes introduced in the Federal legislation. Who will have had the opportunity to examine those amendments and tease out their implications? In one or two days the Senate committee that is examining the Federal Government's legislation came up with about 60 amendments.

The Hon. Dr Arthur Chesterfield-Evans: It came up with 51.

Ms SYLVIA HALE: It came up with 51 amendments. I understand that the Prime Minister—I suppose by dint of the prospect of members of his party crossing the floor and refusing to support it—has seen fit to amend his legislation. If a committee can come up with 51 amendments, which have been described widely as only tinkering around the edges of the bill, in so short a time how many more amendments would be made in relation to safeguards to people's freedoms if it were given adequate time to peruse the bill? Open and participatory democracy requires public involvement. Rushing this legislation through is the very antithesis of public involvement. At the very least, if the House is serious about these issues it should defer the debate until 2006.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [6.12 p.m.]: I refer to the importance of habeas corpus for many hundreds of years, since the days of the Magna Carta. I have read about the history of Weimar, Germany—that bold experiment between the wars. I have read about the panic after the Reichstag fire, which allowed Hitler to get complete power in Germany and go towards totalitarianism. I have read Russian history when all power was to the Bolsheviks after the Russian revolution and the fall of Tsar. Theoretically, Italy is a democracy. However, there is a huge amount of corruption. Indeed, judges who try to move against corrupt politicians are killed. The struggle for democracy is a huge problem in Italy. We have always taken democracy for granted in Australia. We need to defend it.

Bullying has become part of the political process in Australia. We were hurried into the war in Iraq. The Federal Parliament was asked to examine terrorism legislation in a few days. Even with a Government majority on a committee, it came up with 51 recommendations for changing the Federal legislation. The bill went to the lower House. John Howard, that elected monarch, as he was described by one columnist—a man quite happy to take us to war without even consulting Parliament—has made some changes in the lower House, perhaps to shore up the fact that some of his troops might cross the floor. I gather the Federal bill passed through the lower House with some changes. I have followed its passage from moment to moment. The Federal Government is making changes that are supposed to last for centuries.

The bill will then go to the Senate, where the possibility of changes to the law exist, particularly with the numbers being less certain. New South Wales has power over the police under the Constitution. We follow the Federal Government, but we have the power to look after police and technically it does not. I do not understand why New South Wales Labor is following the Conservatives so slavishly as it does not need to. Many Government members do not approve of this appalling situation. The Federal Opposition has followed this rather weak-kneed me-too policy behind John Howard and has not taken a strong stance against the war in Iraq, which is the driving force that keeps the threat of terrorism going. In defence of the Premier, the New South Wales Government agreed to different parameters in the terrorism legislation that ended up being in the legislation. So John Howard—pygmy man—has effectively lied. He said he would give them one thing and he has brought in a different bill, and now he is changing it again.

The Hon. Amanda Fazio: Point of order: While I quite enjoy listening to the Hon. Dr Arthur Chesterfield-Evans insulting members of the Federal Government, I do not think it is relevant to the motion before the House, which is to defer consideration of this bill until a later hour. I ask you to remind the Hon. Dr Arthur Chesterfield-Evans of the need to be relevant in his comments to the deferment motion before the House.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: To the point of order: The framework in which this bill comes in here necessitates haste. This bill is consequential on what happens with Federal legislation. Therefore, my comments about what is happening federally are germane to whether we consider this bill tonight or at the beginning of 2006. That is the essence of what we are debating. To say that what happens in Canberra is not germane to this bill is simply a nonsense. My speech could not be more to the point.

The PRESIDENT: Order! I remind members that they can only debate the question before the Chair and not the substantive motion. The Hon. Dr Arthur Chesterfield-Evans may talk about what is happening politically but if he continues to make abusive comments I will rule him out of order.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I understand: I will stop calling Mr Howard "pygmy man", if that is helpful. The point is that the legislation is not settled in Canberra. I understand that the New South Wales legislation was amended this afternoon to take into account the changes that occurred in the lower House in Canberra. If that is the case, my office worked on a bill that has been amended. We need to take those amendments into account before we can contribute to the second reading debate. That is the extent to which we are rushing things today. It is absurd that we are drafting a bill to dovetail a bill that has not even gone through the Federal Parliament. The Victorian Parliament has, in its wisdom, decided to delay its bill until next year, which is very prudent. Therefore, I think it would be sensible for us to do the same. I urge honourable members to support the amendment to the motion and to postpone the bill until next year.

The Hon. Dr PETER WONG [6.18 p.m.]: I support the amendment moved by Ms Lee Rhiannon. As mentioned by the Hon. Dr Arthur Chesterfield-Evans, if it is good enough for another Labor Government to delay it until next year, it is good enough for the New South Wales Labor Government to delay it until next year. The New South Wales Labor Party should have the opportunity to review its policy. The Australian Labor Party policy to national security is based on three fundamental pillars. The first is an abiding commitment to the United Nations and a fair, rules-based international order to enhance Australia's long-term security and prosperity. The key phrase is "commitment to the UN".

I turn now to Federal Labor's 1998 election policy document, which speaks about human rights and Australian democracy. It stated that "on 10 December 1998, Human Rights Day, the world will celebrate the fiftieth anniversary of the adoption by the United Nations General Assembly of the Universal Declaration of Human Rights, which proclaims the inherent dignity and the equal and inalienable rights of all members of the human family". Labor considers foreign policy must advance more than self-interest. Australia's diplomacy must protect and promote our national interests, in other words other nations. Labor says that support for an active and consistent pro human rights stand is grounded firmly in fundamental Australian values—the products not only of our democratic traditions, but also of a history upholding a strong egalitarian culture.

Support for human rights reflects Australia's strength as a tolerant, outward looking, multicultural society. Labor says that Australians care deeply about human rights. In an age of instant communications, no country is too far away for Australians not to know immediately, and often to see in graphic detail, when human rights violations occur. Australians expect their Government to share their concerns and to respond in a principled and effective fashion. Labor says that the Howard Government promised to give human rights high priority in its foreign policy. In practice it has acted often to remove human rights from the public agenda of Australian diplomacy. Behind a facade of quiet diplomacy the Howard Government has pushed key human rights issues to the margins of Australia's foreign relations.

Labor says that respect for human rights brings benefits in higher standards of international behaviour and the contribution domestic peace and stability make to international security. Labor says that respect for human rights makes a country less inclined to engage in conflict, inhibits refugee flows and supports the alleviation of poverty and inequality, which can fuel violence and terrorism. On fundamental principles Labor considers all human rights to be universal, equal and indivisible. There is no hierarchy of human rights. The basic human rights to food, shelter, health care, economic security and education are preconditions for human survival, dignity and the enjoyment of civil and political rights—political rights! Equally, respect for civil and political rights is critical to advancing economic and other rights. I could keep reading. However, I remind the New South Wales Labor Party of what it stands for. The people of New South Wales look to the Labor party to protect their rights. I ask its members to consider what they have done to the people who supported them. The New South Wales Labor Party should look at itself and support what it preaches.

Question—That the amendment be agreed to—put.

The House divided.

Ayes, 6

Dr Chesterfield-Evans
Mr Cohen
Ms Hale
Dr Wong
Tellers,
Mr Breen
Ms Rhiannon

Noes, 19

Ms Burnswoods	Ms Griffin	Mr Ryan
Mr Catanzariti	Mr Kelly	Ms Sharpe
Mr Clarke	Mr Lynn	Mr West
Mr Colless	Reverend Dr Moyes	
Mr Donnelly	Reverend Nile	<i>Tellers,</i>
Ms Fazio	Ms Robertson	Mr Harwin
Mr Gay	Mr Roozendaal	Mr Primrose

Question resolved in the negated.

Amendment negated.

Motion agreed to.

Second reading ordered to stand as an order of the day.

[The President left the chair at 6.30 p.m. The House resumed at 8.00 p.m.]

TABLING OF PAPERS

The Hon. Tony Kelly tabled the following papers:

- (1) Annual Reports (Departments) Act 1985—Reports for the year ended 30 June 2005:
Department of State and Regional Development
Ministry of Transport
New South Wales Rural Fire Service.
- (2) Annual Reports (Statutory Bodies) Act 1984—Reports for the year ended 30 June 2005:
Casino Community Benefit Fund Trustees
Independent Transport Safety and Reliability Regulator
Internal Audit Bureau of New South Wales
Rail Corporation New South Wales
Rail Infrastructure Corporation
State Rail Authority of New South Wales
State Transit Authority of New South Wales
Tow Truck Authority.
- (3) Crimes Legislation Amendment (Penalty Notice Offences) Act 2002 and the Ombudsman Act 1974—Report entitled "On the Spot Justice? The Trial of Criminal Infringement Notices by NSW Police", dated April 2005.

Ordered to be printed.

YANGA STATION, BALRANALD

Production of Documents: Return to Order

The Clerk tabled, pursuant to the resolution of 16 November 2005, further documents relating to Yanga Station received on 30 November 2005 from the Director General of the Premier's Department, together with an indexed list of the documents.

Production of Documents: Claim of Privilege

The Clerk tabled a return identifying those of the documents that are claimed to be privileged and should not be tabled or made public. The Clerk advised that pursuant to standing orders the documents are available for inspection by members of the Legislative Council only.

LUNA PARK LEASE

Production of Documents: Return to Order

The Clerk tabled, pursuant to the resolution of 16 November 2005, documents relating to Luna Park leases and agreements received on 30 November 2005 from the Director General of the Premier's Department, together with an indexed list of the documents.

Production of Documents: Claim of Privilege

The Clerk tabled a return identifying those of the documents that are claimed to be privileged and should not be tabled or made public. The Clerk advised that pursuant to standing orders the documents are available for inspection by members of the Legislative Council only.

NSW OMBUDSMAN POLICE POWERS REVIEW

Production of Documents: Return to Order

The Clerk tabled, pursuant to the resolution of 16 November 2005, documents relating to Ombudsman review reports received on 30 November 2005 from the Director General of the Premier's Department, together with an indexed list of the documents.

WOMEN'S REFUGE MOVEMENT

Production of Documents: Return to Order

The Clerk tabled, pursuant to the resolution of 16 November 2005, documents relating to the Women's Refuge Movement received on 30 November 2005 from the Director General of the Premier's Department, together with an indexed list of the documents.

TERRORISM (POLICE POWERS) AMENDMENT (PREVENTATIVE DETENTION) BILL

Second Reading

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [8.03 p.m.], on behalf of the Hon. John Della Bosca: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Terrorism (Police Powers) Amendment (Preventative Detention) Bill amends the Terrorism (Police Powers) Act 2002 to implement a preventative detention scheme designed to detain persons in order to prevent a terrorist attack or preserve evidence following a terrorist attack. There is no doubt that these powers are extraordinary, but they are designed to be used only in extraordinary circumstances and are accompanied by strong safeguards and accountability measures. This scheme implements the agreement reached at the Council of Australian Governments [COAG] meeting of 27 September 2005 and will complement the preventative detention scheme introduced by the Commonwealth Government in the Anti-Terrorism Bill (No. 2) 2005. All States and Territories of Australia agreed to enact preventative detention legislation.

The New South Wales scheme replicates the Commonwealth provisions in that it provides for the detention of a person, thus incapacitating them; restrictions on communications, which is true of all arrested and detained persons; and the monitoring of the detained persons communications to ensure that there is no exchange of information between suspects or plans made to evade capture or destroy evidence. However, this bill differs in a number of important respects, namely, due to constitutional reasons the Commonwealth scheme can operate for only 48 hours. The New South Wales scheme operates for up to 14 days. The Commonwealth scheme is administrative. Initial orders are made by a senior police officer and they are later confirmed by judicial officers acting in their personal capacity.

The New South Wales scheme is judicial. Both the initial and final preventative detention orders are made only by judges of the New South Wales Supreme Court. The Commonwealth scheme at no time allows a hearing on the merits between the parties before the expiry of the detention. The New South Wales scheme permits an initial preventative detention order to be made in the absence of the subject person. However, at subsequent confirmation or revocation hearings the detained person will be permitted to be present and to contest the matter. The Commonwealth scheme contains a number of disclosure offences designed to keep the making of a preventative detention order secret.

The New South Wales scheme contains no such disclosure offences, but allows the Supreme Court to make non-publication orders in relation to the proceeding, as is usual for all criminal matters before the courts in New South Wales. A 14-day scheme where a person was arrested secretly and held incommunicado without access to the courts would offend not only fundamental principles, such as habeas corpus, but also basic commonsense. In the end the disclosure offences were not included in the New South Wales scheme as they are not effective in keeping a preventative detention order secret over a 14-day period. But their inclusion would have added greatly to the complexities of the bill. The bill implements a fairer scheme of preventative detention. This balance, sadly lacking in the Commonwealth bill, will mean the legislation can still operate effectively in preventing a terrorist attack and in preserving evidence of an attack, but ameliorates some of the more rigid and unreasonable aspects of the Commonwealth bill.

The principal features of the New South Wales preventative detention scheme are as follows. Police may apply to the Supreme Court for a preventative detention order under proposed section 26D to prevent an imminent terrorist act or to preserve evidence of terrorist acts that have occurred. Proposed section 26G sets out the matters that must be contained in an application for a preventative detention order. Urgent phone applications are available. Pursuant to proposed section 26H, the Supreme Court will be able to issue an interim preventative detention order of up to 48 hours in the absence of the subject person. After making an interim order the court will set a date and time for a hearing to make a final order and give directions that the subject person be notified of this hearing date. Within this 48 hours another hearing to confirm the order will be held—proposed section 26I. At this hearing the detained person can be represented and heard. A confirmed order can be made for a period of up to 14 days.

The matters that must be set out in a preventative detention order are listed at proposed section 26J. A police officer or the person detained may apply to the Supreme Court for the revocation of a preventative detention order at any stage as provided under proposed section 26M. During the hearings, material with national security implications will be protected by the National Security Information (Criminal and Civil Proceeding) Act 2004 and by appropriate public interest immunity applications. The maximum period under which a person may be detained under a final order is 14 days—proposed section 26K—and 48 hours for an interim order—proposed section 26L. The maximum of 14 days will include any period of detention under an interim order, or

other corresponding preventative detention order of a State, Territory or Commonwealth law for the same terrorist act. That is, including every order, whether from New South Wales or the Commonwealth, 14 days is the total maximum period for detention under this scheme.

The bill provides certain safeguards for young people. First, preventative detention orders may not be made in relation to persons under 16 years of age as provided by proposed section 26E. There are special safeguards for persons aged between 16 and 18 years of age, as well as persons incapable of managing their own affairs, such as the right to contact someone who is able to represent their interests, a guarantee of two hours contact a day with parents or guardians and limitations on the type of identification material that can be taken without a court order—proposed section 26AH. Pursuant to proposed section 26N the Supreme Court may make a prohibited contact order that prohibits a detained person from contacting specific people.

An order can be made where the Supreme Court is satisfied that this will assist in achieving the purposes of the preventative detention order. Proposed section 26AD provides that a person may be prevented from contacting another person unless they are entitled to under the Act. Proposed section 26AE entitles the detained person to limited contact with certain persons, including a family member, a person he or she lives with, an employee or an employer. Unlike the Commonwealth bill, the detainee will be entitled to disclose the fact if the person is detained under an order and the period of detention. Proposed section 26AG enables a person being detained to contact a lawyer, although any contact a detained person has can be monitored by a police officer—proposed section 26AI.

The police are prohibited, however, from disclosing any communication between the detained person and his or her lawyer where that communication has a proper basis—such as giving instructions to a lawyer regarding a final orders hearing. Breach of this condition will carry a maximum penalty of five years imprisonment and will prevent monitoring police from passing on communications that would otherwise have been private and privileged. These conversations between the detained person and his or her lawyer cannot be used in court proceedings. Proposed section 26AF entitles the person being detained to contact the Ombudsman and the Police Integrity Commission in order to lodge complaints about his or her detention or treatment. These communications will not be monitored by police.

Other safeguards in the bill include a requirement that the person be treated with humanity and respect for human dignity and must not be subjected to cruel, inhuman or degrading treatment—section 26AC. A person being detained cannot be questioned except for the purposes of establishing identity or ensuring his or her safety and wellbeing—proposed section 26AK. A senior police officer must be responsible for the exercise of functions under a preventative detention order—proposed section 26R. This is a role similar to a custody manager under part 10A of the Crimes Act 1900. That is, an officer independent of the investigation and not involved with the making of the order will oversee the exercise of the powers. Proposed sections 26Y, 26Z and 26AA require a police officer detaining a person under a preventative detention order to inform the person of certain matters, including the details of the order and any restrictions that apply; and the detained person's rights to contact certain people and have access to a lawyer. It is an offence to fail to inform a detained person of these details, carrying a maximum penalty of two years imprisonment.

Section 26AB requires the detained person to be given a copy of the order and a summary of the grounds on which the order is made. Section 26AN requires the Commissioner of Police to provide annual reports to the Attorney General and the Minister for Police in relation to the exercise of the powers, and these reports will be tabled in Parliament. The functions of the Ombudsman and the Police Integrity Commission under other Acts are not affected—proposed section 26AP. The scheme will be monitored by the Ombudsman for a period of five years, with an interim report at two years—proposed section 26AO. A sunset provision is included so that the scheme will expire in 10 years time—proposed section 26AS.

Other provisions of the bill include the following. Proposed section 26O provides that, as is the case with bail review hearings, the strict rules of evidence do not apply to proceedings before the court in connection with applications for the making or revocation of preventative detention orders or prohibited contact orders. Courts can take into account credible or trustworthy material and can give each piece different weight according to its nature. Proposed section 26P provides for any such proceedings to be heard in the absence of the public and for the making of suppression orders by the court. A disclosure in contravention of such a suppression order constitutes an offence punishable by imprisonment not exceeding five years. The police powers in relation to arrest and search are clearly set out in the bill. Proposed section 26Q enables any police officer to take a person who is the subject of a preventative detention order into custody and detain the person while the preventative detention order is in force.

Police have the same powers as if they were arresting a person for an alleged offence. Proposed section 26T enables a police officer to request a person to disclose his or her identity if the officer believes on reasonable grounds that the person may be able to assist in the execution of a preventative detention order. It is an offence under this provision not to comply with a request to disclose one's identity. Section 26U provides for a power to enter premises for the purposes of searching for a person who is the subject of a preventative detention order, and proposed section 26V provides for the carrying out of ordinary searches and frisk searches of a person who is the subject of a preventative detention order. There are specific provisions in relation to taking fingerprints, recording voice, taking samples of handwriting or photographs of a person being detained—proposed section 26AL.

Proposed section 26AM limits the purpose for which any such personal identification material relating to a detainee may be used and provides for its destruction. In terms of the intersection of these provisions with other legislation, proposed section 26W provides that a detainee may be released from detention under an order at any time, including for the purposes of being arrested and charged for an offence. The period during which a person may be detained under a preventative detention order continues to run while the person is released. Proposed section 26X makes provision in relation to arrangements for a person being detained under a preventative detention order to be detained at a correctional centre or if under 18 years at a juvenile detention or correctional centre. These extraordinary powers are invoked in the face of the threat of terrorism.

The Government has consistently proven that strong counter-terrorism laws can be crafted that include strict safeguards and effective oversight. Whilst being ever vigilant as to the security and safety of the citizens of New South Wales I also want to assure the public that the Government will always attend to the liberties and freedoms that are the mark of our democracy. I repeat the commitment of the then Premier Carr in introducing the Terrorism (Police Powers) Act in 2002, that we look forward to a time when these powers are no longer needed and can be removed from the statute books of New South Wales.

I commend the bill to the House.

The Hon. DAVID CLARKE [8.04 p.m.]: The Opposition does not oppose the Terrorism (Police Powers) Amendment (Preventative Detention) Bill, which is a further measure in the campaign to combat terrorism. International terrorism strikes at the very heart of democratic values and decency. In recent years it has taken the lives of many thousands of innocent men, women and children. It operates without mercy and seeks to inflict death and destruction in the most horrific manner on as many people as is possible, regardless of race, nationality, religion or age. It operates regardless of national borders and is constantly refining and streamlining its methods. It operates without any concerns for morality. If anybody should doubt that, I refer them to the *Sydney Morning Herald* of 2 February 2005, which details the case of terrorists in Iraqi using, as a human bomb, a 19-year-old mentally disabled man who had the mental age of four. They strapped explosives to his body and sent him to his death. Surely that is evil at its very darkest.

Although, thankfully, Australia has not suffered any terrorist acts within its borders, many Australians overseas have suffered death or injury as a result of acts of terrorism. On 1 November this year, in an article under the headline, "ASIO warns of attack risk", the *Australian* reported on the appearance of the head of the Australian Security Intelligence Organisation [ASIO], Mr Paul O'Sullivan, before a Senate inquiry. At the inquiry, he stated that Australia faces a genuine threat of terrorist attack that is "not abating." He went on to state:

We know that al-Qa'ida and like-minded groups have shown an intent to conduct attacks in Australia.... While it may be two decades since there has been an attack on Australian soil, the security threat that Australia faces today is nevertheless real and it is not abating.

The *Australian* report states that Mr O'Sullivan went on to emphasise that Australia had been in the strategic vision of Islamic extremists since before September 2001. So much for the argument advanced by some in the community that Australia faced a terrorist threat only as a result of our involvement in Iraq! On 2 November this year in an article headlined "ASIO fears terror cells among us", the *Australian* reported that ASIO's annual report continued to identify Australians who have undertaken terrorist training or have engaged in militant jihad. The report stated:

We must expect that Australia and its interests here and around the world will continue to be at threat from terrorist attacks, not only against diplomatic missions but also against a range of soft targets and critical infrastructure.

The *Australian* went on to report that ASIO held genuine concerns about an estimated 700 to 800 persons in Australia who have expressed support for politically motivated violence. I prefer to be guided by Australia's intelligence and security organisation on whether we face a substantial and real terrorist threat or not. The organisation exists for that purpose—that is its role. ASIO tells us that there is a substantial threat: I believe ASIO, so does the Federal Government, so does the New South Wales Government and so do the great majority of Australians.

The overwhelming majority of Australians, regardless of race, religion or political persuasion, are in favour of strong and decisive measures to combat terrorism. They have given strong support to the Prime Minister, John Howard, in his determination to put in place appropriate legislation and other measures to combat this evil phenomenon and to his encouragement of the States to likewise introduce appropriate measures. The New South Wales Government has co-operated in this matter. The Terrorism (Police Powers) Amendment (Preventative Detention) Bill implements a scheme that, among other things, provides for the detention of persons to prevent terrorist attacks. It implements a scheme that was devised at a meeting of the Council of Australian Governments on 27 September 2005. All Australian States and Territories have agreed in principle to enact legislation for the very same purpose.

The bill will amend the Terrorism (Police Powers) Act 2002, which proposes to introduce legislation on preventative detention of persons for up to 14 days to prevent terrorist acts or preserve evidence following a terrorist act to complement Commonwealth legislation that allows preventive detention for up to 48 hours. Preventive detention orders may be issued by the Supreme Court, on the application of a duly authorised police officer, in circumstances relating to preventing an imminent terrorist act or relating to preserving evidence of terrorist acts that have occurred.

Provision is made for phone applications or applications by other electronic communication means to be made in urgent circumstances, subject to the appropriate satisfaction of the Supreme Court. The Supreme Court will have power to issue interim detention orders lasting up to 48 hours in the absence of the subject person, and a hearing date will then be sent to consider a final order. At the hearing the detained person can be represented or heard, and material with national security implications will be protected by virtue of the National Security Information (Criminal and Civil Proceedings) Act 2004.

A person may be detained under a preventive detention order that is not an interim order for a maximum of 14 days after the person is first taken into custody but reducible by any period served under an interim order. Preventive detention orders may not be made in relation to persons under 16 years of age and there will be special safeguards for persons between the ages of 16 and 18, as well as appropriate provision for those incapable of managing their own affairs. The court will have the power in the issuing of a detention order to prohibit a detained person from contacting persons specified in the order. Subject to any prohibited contact order, the detained person is entitled to contact certain specified persons, including a family member, a person living with the detained person, the detained person's employer or lawyer, the Ombudsman or the Police Integrity Commission. A police officer or detained person may apply to the Supreme Court for revocation of a detention order.

The bill, which has a sunset clause of 10 years, provides that a detained person cannot be questioned except for the purpose of establishing identity or ensuring his or her safety and well-being. It provides that such a person must be treated with humanity, respect and dignity and must not be subjected to cruel, inhumane or degrading treatment. In this respect the Commissioner of Police is required to provide annual reports to the Attorney General and to the Minister for Police, which are to be tabled to Parliament regarding the exercise of power pursuant to the Act.

There are a number of substantial differences between the Commonwealth and State legislation. Under the New South Wales bill a preventive detention order may be issued for up to 14 days, whereas under the Commonwealth legislation the maximum period is 48 hours. The New South Wales scheme is judicial, under which initial and final preventive detention orders can only be made by a judge of the New South Wales Supreme Court. The Commonwealth legislation, in contrast, is administrative whereby an initial order is made by a senior police officer and later confirmed by a judicial officer. The Commonwealth scheme allows no hearing on the merits of the application before the expiry of detention, whereas the New South Wales scheme, while allowing an initial detention order to be made in the absence of the subject person, will permit a detained person to contest the order at subsequent confirmation or revocation hearings. The Commonwealth scheme contains disclosure offences to keep the making of a preventative detention order secret. The New South Wales scheme, however, has no such disclosure offences but allows the Supreme Court to make non-publication orders in relation to the proceedings.

This is an important bill because it will assist in a substantial way in the fight against terrorism. The people of New South Wales expect those who make the laws on their behalf to act decisively to protect them from acts of terrorism. There are those who fancy themselves as civil libertarians who will oppose this bill. They will say that it is draconian, that it is dictatorial and is repressive of civil liberties and basic freedoms. Those people are in a minority; they are mistaken and misguided and do not act in the best interests of Australia and the Australian people.

Terrorism is alive and thriving—it is a threat to each and every one of us. The fight against terrorism will be won. This scourge will be defeated and this bill is a weapon in that process. The bill sets a proper balance between the protection of the community as a whole, in the circumstances in which we find ourselves, and the rights of the individual. This bill contains reasonable and appropriate safeguards to protect those individual freedoms. The Government proposes a number of amendments as I understand it that will help safeguard individual freedom to an even greater extent than is already provided in this bill, and I can indicate that the Opposition will join with the Government to support the amendments. We live in difficult and critical times. A multiplicity of strong measures is needed to contain and defeat international terrorism. The bill is one of those measures and therefore has the full and strong support of the Opposition. Tonight we are moving decisively with this bill to respond to the threat of international terrorism and we do this for Australia, its democratic values and for each and every Australian.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [8.15 p.m.]: Sadly, western policy in the Middle East has been to divide and exploit since this was complained about by T. E. Lawrence during World War I. The latest manifestation of this poor policy has been the invasion of Iraq. It is not a declared war but a war none the less. It is a huge catalyst to the anger of Arab people that is, of course, tied to their religion.

The Iraq war has never been popular in Australia. Prior to the war there were huge marches and the polls indicated that 74 per cent of people did not want Australia involved in the Iraq war. John Howard ignored them and went ahead. Labor said, "Me too." John Howard then said, "Now we are at war, we cannot just cut and run." So the question was changed, in the same way that Howard changes things politically. No longer was the question, "Should we be in this war?" It became, "Are we cowards who leave when we are in a fight that is not

going well?" Of course at that stage no Australians had been killed, nor had any terrorist acts been committed. A Federal election was held and people wondered what Australians would do. Indeed, the people of Iraq were very interested.

Australia was having a financial boom. I am not sure why but I think it was because China and India were growing and in need of our commodities. We had preferentially treated real estate from a tax point of view and everyone was speculating in real estate and sinking their money into the housing boom. It may have been because we were selling off our major assets on the stock market and thus having an inflow of wealth, or it may have been that the world was doing well and we were riding on that boom. I think it was because we felt good that we re-elected John Howard—Howard, the aggressor.

Had we experienced a terrorist attack like that experienced by Spain just before the election, I wonder what would have happened? We would have had to acknowledge that we were the aggressors in war. We would have thought more about our belligerence and less about our bellies. Terrorists are not the mindless fools they are painted, but rather they are cunning warriors. They are becoming more fanatic because they have less power and they feel anger at the powerlessness they suffer against the might of Western armaments. Terrorists think they are at war and from their point of view they are right—people in their countries are being shot at and bombed.

In 2002 the Federal independent member for Calare, Peter Andren, tried to move a motion for the Federal Parliament to debate Australia's involvement in the invasion of Iraq. Mr Andren's motion was finally moved in the House of Representatives on 17 September 2002 after being gagged on two occasions when Labor voted with the Government not to allow a vote on the motion. His motion had to be read in question time, the only way he could get it on the record. It was read before a full public gallery and press gallery. In public view Labor then voted to allow a vote, knowing that the Government numbers would not let it pass. Labor is no opposition; it tamely says "Me too" when John Howard trashes democracy in Australia.

Honourable members may be aware that the official death toll since the invasion and subsequent occupation of Iraq, which began on 19 March 2003, is a tragic consequence of this futile and continuing folly. As at 29 November 2005 the number of American troops killed in Iraq is 2,110, the number of non-American coalition troops is 199, and the number of Iraqi citizen casualties to 19 March 2005 is calculated at 24,865. That is the effect of the policies of Mr Bush, Mr Blair and Mr Howard. One can understand why Mr Bush and Mr Blair sent troops to Iraq—they want to sew up oil, that diminishing commodity, for the future. Whether Mr Bush believes in manifest destiny—the doctrine that America has the right and the destiny to lead the world—or whether he has some religious superiority, I am not certain. The principle that America may have weapons of mass destruction with impunity but Iraq may not is one rule for the powerful and another for everyone else. As Jean de La Fontaine, the French writer of fables said, "The greater reason is always the better".

In about 1962, when I was about 12, I met Sir Howard Beale, a former Ambassador to the United States of America when he was introduced to my school as "a great old boy". I was concerned that our policies seemed to be to kowtow to the United States. I looked forward to hearing that great man explain the reasons for our policies. In he came, an unimpressive figure to a 12-year-old. He said that the central tenet of our policy was to be a reliable ally to the United States, to not stand on our own feet; to be nothing other than a reliable ally. Once again Australia is at war half a world away, in Iraq, with people to whom we sold wheat and wool. We are now supporting the army that bombs them for clear political reasons that we should have nothing to do with.

The analysis policy is, presumably, under the control of the Australian Secret Intelligence Service [ASIS] and the Australian Security Intelligence Organisation [ASIO], apart from the Office of National Security, which Andrew Wilkie has spoken about. If we looked at the history of that intelligence community and what it has done in the past, we would learn a salutary lesson. The book entitled *Secret State: Australia's Spy Industry* by Richard Hall, published by Cassell in Melbourne in 1978, contrasted statements by ASIO and ASIS with the editorials of the *Sydney Morning Herald* and the *Australian* newspapers during the Cold War. The rantings of the security networks, with their paranoid world view and their need for fear to justify their existence, contrasts with the editorials that were trying to say something sensible about future politics and the course of history from publicly known information. Guess who proved to have the sensible analysis in the long term? The editorials, of course. The self-serving nonsense of the intelligence networks was seen for the joke it was.

When I joined the anti-tobacco campaign, having seen the harm it did in my medical experience, I became involved in the Billboard-Utilising Graffitiists Against Unhealthy Promotions group, known as BUGA-

UP. We were trying to draw attention to the fact that it was illegal to spray the truth on an advertisement that was designed to sell more cigarettes, despite the fact that cigarettes killed 43 Australians a day, and more and more kids were becoming addicted. We started spraying in 1978 and were very active until about 1983. We had about 90 per cent of the population on side. We had Paul Landa, the New South Wales Attorney General, making approving noises in the early 1980s. But we did not get rid of tobacco advertising: that will happen in 2006 when the exemptions on sponsorship advertising of Formula One cars expires. Finally, our weak-willed governments will actually make the king of drug pushers, Bernie Ecclestone, give up his easy tobacco money.

So much for governments acting in the interests of their citizens. They are too cowardly and too bound to vested interests to do that. The main lesson of BUGA-UP in this context is the bumbling of the Special Branch, the so-called elite police unit, which sent a special agent to infiltrate and discover what BUGA-UP was doing. The choice of its classic 50-year-old private investigator from central casting—complete with pot gut, a closet smoker with no apparent commitment to any worthy cause or knowledge of any current issue—was an interesting one. Needless to say, he raised more amusement than fear. One Sunday he was noticed photographing the house of one of our activists. A neighbour mowing the lawn jotted down his car registration number, and asked the activist, "Who might be interested in photographing your house?"

It took a while to connect the man with his car, as it is not an aspect that troubles most people's thinking. When later challenged, our spy said, "It's a fair cop. Okay, you are not a bad mob of blokes. See you later." He was never seen again. When we eventually got the Special Branch files, it had been concluded that BUGA-UP was not a threat to the stability of the nation, but Special Branch was interested in a specific issue, to wit, the effect of advertising. BUGA-UP was not a membership organisation but a loose group of individuals with a common purpose. Brilliant stuff. It was hard to figure out whether they worked that out for themselves, or whether they read it from one of the leaflets we handed out. Perhaps their whole effort was to find out if we were what we said we were—a tough assignment.

ASIO is a worry. The bumbling ASIO smashed down the door of the Melbourne Hilton Hotel in a training exercise. If honourable members think that all this is in the past, they should look at the pathetic effort with the Baktihari family. The Department of Immigration, Multicultural and Indigenous Affairs was incapable of discovering that the family came from Afghanistan. It was incapable of finding Claudia Rau. It broke down the door of some Muslims in Sydney's northern beaches area because some months earlier a radical cleric from Indonesia had visited them. The Muslims who ran the mosque on the northern beaches had unsuccessfully tried to speak to ASIO. ASIO did not want to speak to the Muslim groups when it was approached. But months later it came back in the night and smashed down the door of a church official, needlessly terrifying his family.

The bill gives ASIO more power, but with less supervision. And the Government thinks that might be a good idea! What an absurd proposition. Honourable members might note that the Attorney General did not introduce this bill in the other place. One can only hope, and indeed I believe it is true, that that was an indication of his view of the bill. His counterpart, the Federal Attorney-General, has no shame. The Federal bill is shameful, as is this bill. The Federal bill has not been passed, and a report by a Senate committee, chaired and dominated by the Coalition, has recommended that some sections not be enacted and other sections be amended. It is a farce that this House is contemplating passing this bill before the final form of the Federal bill is known.

It is a farce also that this House is sticking to a Council of Australian Governments [COAG] pact to pass complementary legislation when Victoria has already broken the pact. The pact no longer exists; indeed, it was flawed when John Howard promised one thing but delivered different legislation. I understand that the new Premier is the person who is pushing this legislation through the House. There is no need for him to do so. The arrests that took place a few weeks ago were made under existing law. There is no need for this new law today and there is definitely no urgency to push the bill through the House today, or indeed this year. My position is that it should not be passed at all. This bill amends the Terrorism (Police Powers) Act 2002 to give effect to an agreement made on 27 September 2005 by the Council of Australian Governments that the States and Territories introduce legislation to hold a person in preventative detention for up to 14 days.

The Commonwealth's Anti-Terrorism Bill (No. 2) 2005 contains provisions for detention that is constitutionally restricted to 48 hours preventative detention. The attacks on the World Trade Center on September 11, 2001, prompted governments around the world to introduce new laws that it was hoped would lessen the threat of terrorism. Sadly, in the process human rights have been trampled on. Australia has thrown in its lot with the United States of America and the United Kingdom and it has embarked on the folly of invading and occupying Iraq. Despite the baseless bleatings of Downer, Ruddock, Howard and many in this House, Australia has become more of a terrorist target because of its involvement in Iraq.

However, being vigilant and being aware of possible terrorist threats does not mean that Australia has to become a police state like former Nazi Germany. It is well documented that laws that seek to lock up a section of the community on the suspicion that it might do something do not work. The evidence for that are the internment laws in the United Kingdom that were used against the Irish Republican Army. The fact remains that there are already adequate laws to deal with any type of criminal activity. We have had in this House a procession of laws giving police more power to deal with the terrorist threat. Those laws were unnecessary, as is this latest one.

I turn again to the Commonwealth legislation, which reveals two major areas of concern. These are the extension to the laws of sedition and the attack on the freedom of the press. They are related and have all the hallmarks of any number of totalitarian left-wing or right-wing regimes of history—the Roman Empire, the Ottoman empire, communist Russia, Ceausescu's Romania, Franco's Spain, Pinochet's Chile, Botha's Government in white South Africa and Ian Smith's Rhodesia. The list goes on. It is the same *modus operandi*: name a group, be it ethnic, religious, political or an enemy, and then set about suppressing that group and anyone who sympathises with it.

The press is implicit in that suppression because the only message to be conveyed by the press is that of the ruling junta, that is, the Howard Coalition. Honourable members should cast their minds back to the Roman Empire around 33AD. A man called Jesus had the temerity to challenge the State. What was he charged with? You guessed it—sedition! All his followers, Christians, were similarly labelled. Members in this House who profess to be Christians, and that includes Labor, the Coalition and members on the crossbenches, should bear that in mind when voting on this bill. On 5 November a good article on this point appeared in the *Sydney Morning Herald*—an article written by David Marr—entitled, "Christ would have little chance against the new sedition laws." That article states:

The stench that hangs around sedition cases goes back a long way, way back to the greatest trial in our history, the one that has loomed over our world for a couple of millennia. Christ was tried for sedition.

"Anyone who is relaxed and comfortable about the proposed anti-terrorism legislation might care to read Chapter 23 of Luke's Gospel," Canberra's auxiliary Catholic bishop, Pat Power, said this week.

"Jesus is dragged before Pilate accused of sedition. The trumped-up charges are laid but Pilate returns a "not guilty" verdict. The accusers become more insistent, so the cowardly Pilate orders a review, sending Jesus the Galilean off to be examined by Herod. The new trial simply shows up the shallowness of Herod's character.

"The upshot is Jesus's eventual crucifixion and two old enemies, Pilate and Herod, becoming good friends. It is amazing how anti-terrorism measures bring together unlikely allies!

Christ's trial had in spades elements that would emerge time and again through the squalid history of sedition: dodgy evidence, lies, duplicity, and a judge who goes with the mob knowing in his heart he's condemning an innocent—but troublesome—man.

The charge was clear. Dr Paul Barnett, the former Anglican bishop of North Sydney and ancient history lecturer at Macquarie University, says: "The gospels all agree, Christ was crucified as King of the Jews. So sedition and treason were the presenting cause for the Romans to crucify Jesus of Nazareth."

Note: the presenting cause. What makes Christ's the prototype of so many trials that followed was the use of sedition as a device for persecution. Christ was arrested and tried by the Sanhedrin on the night of April 6, AD30 (approx) for blasphemy. They wanted him dead, but as they explained to Pilate the next morning: "It is not lawful for us to put any man to death."

That's when they accused Christ of sedition, saying: "We found this fellow perverting the nation, and forbidding to give tribute to Caesar, saying that he himself is Christ, a king."

The accusation played on two Roman fears. The first was the fear of another tax revolt like one that erupted a few years after Christ's birth when Judea first became a Roman province. The second was a fear that this man was trying to displace the local king.

As Barnett explains: "It was Roman policy to set up client kings in the provinces they conquered. But the Romans decided who that would be and they took a very dim view of any local individual who made that claim for himself."

How would Christ fare in John Howard's Australia? The Government has promised to look at its new sedition provisions again, but as they stand, Christ could be charged under section 80.2(1) as a person who "urges another person to overthrow by force or violence (a) the Constitution; or (b) the Government of the Commonwealth, a State or a Territory; or (c) the lawful authority of the Government of the Commonwealth.

Violence isn't the key. Preaching is enough. The outcome is irrelevant. The Apostles would be in trouble too.

Section 30A(1) would see them charged as members of an unlawful "body of persons which advocates or encourages the carrying out of a seditious intention".

Again, there need be no violent outcome to the teaching of the Apostles. Sedition is merely the crime of urging. That perfect peace continues to reign in the nation is no defence to the charge. That's why sedition has always been the tyrant's friend.

No exchange between accused and judge is more famous than Christ's reply to Pilate's question: Art thou the King of the Jews?" He answered: "My kingdom is not of this world: if my kingdom were of this world, then would my servants fight, that I should not be delivered to the Jews: but now is my kingdom not from hence."

Convinced by this, Pilate went out to the crowd and declared: "I find in him no fault at all." But the crowd was not satisfied. Nor would the law be in Howard's Australia.

For the past few centuries, convictions for sedition have depended on proof of intention. Sedition had to be deliberate. Not under Howard's counter-terrorism proposals. What gives them their exceptional reach is the plan to convict preachers, say, for being reckless about the impact of their words. Penalty: prison for seven years.

The Hon. John Ryan: Point of order: One of the famous incidents in this Parliament was when a member made a speech and addressed the wrong bill. Tonight we just witnessed a member doing exactly that. Nothing in this bill relates to sedition. We have been very patient and have listened to 20 minutes on ancient history and the biblical acts of Jesus. However excellent and learned that is, it has nothing to do with the Terrorism (Police Powers) Amendment (Preventative Detention) Bill. I ask you to request the honourable member to address himself to the scope of the bill.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: To the point of order: The bill we are debating is similar to the Federal bill, which makes a reference to sedition. Under the Constitution the State has the power at a police level to enforce the Federal Government's will. The Federal bill is extremely important in this case. I am referring to an important analogy in the *Bible* about the effect of sedition law. I believe I am within the scope of this bill. Some honourable members have spoken about religion for extremely long periods, yea, even tiresomely, and for far longer than I will speak tonight. I should be able to finish quoting from the article written by David Marr, which links the religious aspect of sedition with Howard's legislation and then with this bill.

The Hon. Dr Peter Wong: To the point of order: The contribution by the Hon. Dr Arthur Chesterfield-Evans is extremely relevant. The advice from the Minister about the bill is that it is part of an integrated package of counter-terrorism powers designed to authorise preventative detention. The advice goes on to give other reasons why we are debating the bill tonight. The bill is part of a package that is linked to Commonwealth legislation. The Hon. Dr Arthur Chesterfield-Evans has every right to continue his remarks, as the bill is part of a package.

Reverend the Hon. Fred Nile: That is the Commonwealth bill.

The Hon. Dr Peter Wong: Reverend the Hon. Fred Nile may disagree but he should not interrupt. If he does so again, I will be very rude.

The DEPUTY-PRESIDENT (The Hon. Jennifer Gardiner): Order! The Hon. Dr Peter Wong will direct his remarks through the Chair and ignore interjections.

The Hon. Dr Peter Wong: I will. I ask the Chair to direct Reverend the Hon. Fred Nile not to interrupt.

The DEPUTY-PRESIDENT (The Hon. Jennifer Gardiner): Order! Interjections are disorderly at all times and the member with the call should ignore them.

The Hon. Dr Peter Wong: The Hon. Dr Arthur Chesterfield-Evans is highlighting what happened when trumped up charges were laid against Jesus Christ. His remarks are totally relevant. He is highlighting the fact that, under this bill, even Jesus Christ could be detained—

The Hon. Michael Costa: He's already dead.

The Hon. Dr Peter Wong: That is wonderful. I am sure all Christians will respect that comment.

The Hon. Michael Costa: He died: that is the whole point of the crucifixion.

The Hon. Dr Peter Wong: The Hon. Michael Costa thinks it is funny but I have missed the joke.

[Interruption]

The Hon. Dr Peter Wong: It will not worry the Hon. Charlie Lynn either. The Hon. Dr Arthur Chesterfield-Evans's remarks are totally relevant.

The Hon. Eric Roozendaal: This has descended into farce.

The Hon. Dr Peter Wong: I agree with the Minister: it is farcical.

The DEPUTY-PRESIDENT (The Hon. Jennifer Gardiner): Has the Hon. Dr Peter Wong concluded his point of order?

The Hon. Dr Peter Wong: I have not been given the chance to do so because members keep interrupting.

The Hon. Patricia Forsythe: I think you've made your point.

The Hon. Dr Peter Wong: I have.

The DEPUTY-PRESIDENT (The Hon. Jennifer Gardiner): Order! I remind the Hon. Dr Peter Wong that interjections are disorderly. He should direct his remarks through the Chair.

The Hon. Dr Peter Wong: The Hon. Dr Arthur Chesterfield-Evans's comments are totally relevant. This bill is linked to Federal legislation and to the story of Jesus Christ. Under this bill, Jesus Christ would not have a chance.

Ms Lee Rhiannon: To the point of order: Madam Deputy-President, I urge you to allow the Hon. Dr Arthur Chesterfield-Evans to continue. It would be a great tragedy if the debate were stifled at this point—which would illustrate one likely effect of the legislation. We all know that the State and Federal legislation are complementary, and I believe the Hon. Dr Arthur Chesterfield-Evans's contribution is entirely in order.

The Hon. John Ryan: Further to the point of order: Division 2 on page 4 of the bill describes and outlines the circumstances under which a preventative order may be made. It states that a preventative detention order may be made against a person if that person:

... will engage in a terrorist act... possesses a thing that is connected with the preparation for, or the engagement of a person in, a terrorist act

or has done something to prepare or plan a terrorist act. Nowhere does the bill refer to sedition. This bill is about giving NSW Police and the courts the power to make preventative detention orders. It may be part of a more comprehensive plan by the Commonwealth Government but that has nothing to do with the bill before Parliament. It is going to be a long night as many honourable members wish to speak in the debate. I think it is incumbent on honourable members to stick to the substance of the bill.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Further to the point of order: The conditions under which people may be charged under New South Wales law are somewhat more narrow than the circumstances that I am describing. But that is irrelevant because the same intelligence services will be responsible for having people arrested in this State. That is the critical point. The fact that it is going to be a long night is not germane to the question of whether my remarks are valid.

The DEPUTY-PRESIDENT (The Hon. Jennifer Gardiner): Order! It is convention that members make wide-ranging contributions to second reading debates. However, the Hon. Dr Arthur Chesterfield-Evans should not test the patience of the Chair or the House by referring to sedition provisions of Federal legislation that have not been included in the bill being debated. The Hon. Dr Arthur Chesterfield-Evans should confine his remarks to the subject matter of the bill before the House.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The article continued:

Several times, Pilate tried to release Christ, but each time, the crowd begged for his execution.

The Hon. Patricia Forsythe: Point of order: The Hon. Dr Arthur Chesterfield-Evans is now quoting at length from what I assume is a published document. Numerous Presidents' rulings advise that when a member

quotes at length from a document that is otherwise available to the House, although the member may refer to the document he or she should not quote at great length from it.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: To the point of order: I have almost finished the quote. I would like to conclude it the sake of completeness

The Hon. Michael Costa: It's Natasha's speech from Federal Parliament, isn't it?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If the Minister had been paying attention he would know that I am quoting from an article by David Marr that appeared in the *Sydney Morning Herald*. I will happily incorporate it in *Hansard* if I am given leave to do so. I will not table the document because people will be unable to refer to it when reading *Hansard*. David Marr makes some valuable points in the article. It is interesting to note that suppression of the press could start in this Chamber. It is not a promising start for this civil libertarian's apology of a bill. I am merely seeking to read the last few lines of the article. Honourable members quote religion endlessly in this House—my contribution is indeed modest compared with those that others have made on the subject of religion. I am attempting to make my point using a story by a respectable journalist about terrorism legislation in this county. I believe it is reasonable that I be allowed to finish the quote.

The Hon. Patricia Forsythe: Further to the point of order: The issue is that the Hon. Dr Arthur Chesterfield-Evans is quoting at length from a published document. It does not matter how interesting or otherwise it is; we have some very clear guidance from past Presidents on this issue. It is not a question of incorporating the material. If the Hon. Dr Arthur Chesterfield-Evans continues to quote at length he will be transgressing the rules of the House. He has identified the document and that should be sufficient guidance for the House regarding the direction of his speech. He does not need to quote from the article at length.

The DEPUTY-PRESIDENT (The Hon. Jennifer Gardiner): Order! I suggest that the Hon. Dr Arthur Chesterfield-Evans conclude on that note. Perhaps he can take some points from the document from which he is quoting and return to his speech.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Certainly it must be noted that Pilate, as the legal officer, buckled under pressure from the crowd. That is important as it illustrates the effect of public pressure on members of the judiciary. The crowd cried:

If thou let this man go, thou art not Caesar's friend: whosoever maketh himself a king speaketh against Caesar.

And Pilate buckled. Through the centuries sedition laws have delivered many martyrs.

[Interruption]

Ms Lee Rhiannon: Point of order: Madam Deputy-President, I draw your attention to standing order 95, "Interruption of speaker: points of order or privilege", which states:

A member may not interrupt another member speaking, except to call attention:

- (a) to a point of order or privilege, or
- (b) to the lack of a quorum.

I ask you to call the House to order as it is making this debate very difficult.

The DEPUTY-PRESIDENT (The Hon. Jennifer Gardiner): Order! I remind members that interjections are disorderly. The Hon. Dr Arthur Chesterfield-Evans has the call.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Down the centuries, sedition laws have delivered many martyrdoms. Daniel Defoe and Ben Jonson were imprisoned for sedition. Moliere's *Tartuffe* was banned for sedition. So rattled was he by threats of sedition that Robert Burns wrote his political verse under another name. The American rebels attached First Amendment guarantees of free speech to their new constitution to overcome the law of sedition.

Mahatma Gandhi spent years in the slammer for sedition. It was always Britain's favoured weapon against independence fighters. Joe McCarthy used sedition laws against the American left. Among the charges Nelson Mandela faced was sedition. The use of sedition laws in Australia has been just as political and just as

grubby. Peter Lalor and his followers at the Eureka Stockade were charged with sedition. The editor of the *Ballarat Times* was found guilty of sedition for praising the revolt and spent three months in prison.

Australia wheeled out sedition laws to break the Industrial Workers of the World—the Wobblies—in World War I and to imprison communist union officials such as Lance Sharkey after World War II. Sedition charges were even laid in Queensland against anti-Vietnam War demonstrators in the 1960s. Setting out this long and undignified story for arts leaders meeting in Canberra to protest against Howard's proposals, Chris Connolly, visiting fellow in law at the University of New South Wales, put it in a nutshell when he said:

The clear lesson from the history of sedition laws is that they are used routinely by oppressive regimes, or are used by more liberal regimes at times of great national stress.

Their use is nearly always the subject of considerable regret at a later date.

New South Wales is implicitly supporting the Federal laws, including the sedition aspect. The second arm of the sedition law regards freedom of the press. This is relevant because the Commonwealth legislation increases penalties for not passing on information or revealing sources, including gaol terms.

The Hon. John Ryan: Point of order: We have been very patient with the Hon. Dr Arthur Chesterfield-Evans, who is now making a further point about sedition. We have established that sedition has absolutely nothing to do with the legislation. If a background point had to be made it was fair to make it. He should be asked to draw his attention to the bill.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: To the point of order: I am speaking about freedom of the press. I am about to say a lot about freedom of the press and its history, for which I make no apologies as it is extremely important. It is extremely worrying if honourable members in this Chamber will not let me speak about freedom of the press when we are introducing laws that will supposedly have influence on what journalists do.

The DEPUTY-PRESIDENT (The Hon. Jennifer Gardiner): Order! I have advised the Hon. Dr Arthur Chesterfield-Evans not to test the patience of the House and he has chosen to ignore that advice. I strongly urge him to return to the subject matter of the bill before the House.

The Hon. Eric Roozendaal: Point of order: I am a strong supporter of freedom of the press but I do not believe reading out what has been published in the free press qualifies as discussing the freedom of press. I would love to hear some original ideas from the Hon. Dr Arthur Chesterfield-Evans, but rehashing what I read every day in the *Sydney Morning Herald*—not that I am necessarily a fan of Fairfax—does not qualify as discussing freedom of press.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: To the point of order: The Hon. Eric Roozendaal has no point of order. He does not like what I say, and that is certainly not a point of order. I am not quoting a document, but notes written by my staff and me that refer to some aspects of freedom of the press and the locking up journalists for doing things that may become illegal.

The DEPUTY-PRESIDENT (The Hon. Jennifer Gardiner): Order! It is not a requirement that the ideas expressed by a member be original. However, I do urge the Hon. Dr Arthur Chesterfield-Evans to speak to the bill before the House.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I modestly claim to have far more original ideas than the Minister for Ports and Waterways could ever dream of. At present two *Herald Sun* journalists, Michael Harvey and Gerald McManus, are before the Melbourne County Court. They face gaol for refusing to reveal their sources for an article in the *Herald Sun* in February 2004 that exposed the contents of a secret government document revealing plans to knock back a \$500 million boost to war veterans' pensions. In the preliminary hearing, McManus refused to answer questions, when asked if he knew the informant, on the grounds it could incriminate him. The prosecution granted the journalists immunity, which had the effect of setting them up for a charge of contempt of court. The journalists have continued to refuse to reveal their sources and now face the possibility of two years gaol. Christopher Warren, President of the International Federation of Journalists, said:

Both cases demonstrate the inappropriate use of the AFP and the criminal law to intimidate people from telling the truth. It is a cowardly attempt to stifle public debate.

True democracy relies on a government held accountable for its actions. A democratic government does not attempt to make journalists scapegoats to detract from and minimise the embarrassment caused by its own actions.

A journalist's obligation to protect the identity of their sources and their willingness to stick to the fundamental journalistic principle, regardless of the penalty, is critical if whistleblowers are to keep talking to journalists. Without that protection, journalists' access to information would be further restricted in what is an already tightly media-managed environment. They would have to rely on a stream of constant but shallow press releases, question time in Parliament and other political stunts for information. As a result, people would know less about what their elected leaders are doing in their name. Further, Mr Warren spoke to the Asian Journalists forum in October this year and said:

This comes on top of a whole raft of new legislation throughout the world in response to the War Against Terrorism that directly undermines the rights of journalists. Much of this legislation extends the powers of police or security authorities to coerce the identity of confidential sources. This challenge is not theoretical. It directly affects our colleagues around the world.

Finally, Mr Warren said:

True democracy relies on a government held accountable for its actions. A democratic government does not attempt to make journalists scapegoats to detract from and minimise the embarrassment caused by its own actions.

Technically we are not at war. The phrase "war on terror" does not equate to a declaration of war. However, as I said earlier, from the point of view of the people in Iraq we are having a war against them. Detention without trial or internment is most often used during times of war. It happened during the Second World War in Australia and the United States with the Japanese, and in Britain with Germans. In the United States 120,000 Japanese Americans were interned after the bombing of Pearl Harbour in 1941. That makes some sense when war has been declared. And indeed it is most important to note that the United States has not passed laws for detention without trial this time, even after the events of September 11. That is because its Bill of Rights forbids it unless it is a "time of war". There is the irony.

The United States, however, thinks it has found a way around that by labelling people it wants to intern as "enemy combatants". Following the September 11 attacks in 2001, at least two United States citizens, José Padilla and Yasser Esam Hamdi, have been detained without charge, trial or prisoner of war status by order of the President as "enemy combatants". Two Australians, David Hicks and Mamdouh Habib, were arrested in Pakistan on the same pretext and transferred to United States Camp Delta at Guantanamo Bay in Cuba. Habib has been released and is living in Lakemba. As we all know, Hicks is still in custody. He is presently challenging his detention on the grounds that it is illegal, and that he should be brought before a United States civil court. He is also trying to obtain British citizenship as, ironically, the Blair Government at least had the courage to tell President Bush to hand back its detained citizens. Even Mr Ruddock said if Mr Hicks were to return to Australia he could not be charged with anything. Far be it for anyone else to think that might mean he is innocent! I say that sarcastically, for the record.

Hundreds of other people are detained at Guantanamo Bay. They have all been denied prisoner of war status and most have yet to be charged with a crime. Human Rights Watch says they must legally be treated as prisoners of war since an independent tribunal has not ruled that any of them are unlawful combatants on an individual basis. Those who have been charged face military commissions rather than court martial or civilian federal courts, and that has been condemned by many as unfair. The majority of the detainees are suspected Afghan soldiers and Al Qaeda militants captured by United States troops in Afghanistan. However, several were kidnapped or illicitly transferred from other countries with which the United States is not at war. A British national was captured by the Central Intelligence Agency [CIA] in Pakistan, apparently with the collusion of security forces. His transfer was a violation of Pakistani law because he was not extradited. Several men were allegedly abducted by the CIA in Bosnia after a Human Rights Court, which had been set up with United States help in the aftermath of ethnic cleansing and war, ruled that the Americans must release them.

However, internment or detention without trial when no war is declared cannot be justified, does not work and becomes divisive, leading to more resentment and unrest. Once again no-one seems to have learnt the lessons of history. We need only to look at the situation in Northern Ireland. Detention without trial powers was introduced in Northern Ireland in 1922. The same power of internment was reactivated during the Northern Ireland troubles of 1956 to 1961. In 1971 the Prime Minister of Northern Ireland, Brian Faulkner, introduced a new law giving the authorities the power to indefinitely detain suspected terrorists without trial under the Civil Authorities (Special Powers) Act. Faulkner said Northern Ireland was "quite simply at war with the terrorist".

This statement was made in 1971. Does it sound familiar? More than 300 suspects were detained in a series of dawn raids. The decision to reactivate the powers went against the Convention for the Protection of Human Rights of the Council of Europe to which Great Britain signed up in November 1950, although a let-out

clause states the measures can be used if a state of war exists. The Good Friday Agreement finally repealed the laws in 1998, only seven years ago. That is another reference to Christianity that Christian members of the House should take note of. Let us examine how the Northern Ireland laws worked. Since the enactment of the new laws in 1971, 1,981 people were incarcerated, 1,974 of whom were Catholics. I wonder if the laws before the House will produce similar figures in identifying one particular religious group.

This year the Blair Government has introduced anti-terror detention laws, again on the same false pretext that a "war" exists. But then something interesting happened. When the new laws were proposed, politicians from Northern Ireland, including Labour, Conservative and the moderate Catholic Social Democrats defeated an initial Government proposal to hold suspects for 90 days without trial. This bipartisan bloc told the Blair Government that holding suspects for long periods without trial backfired during the years of the internment laws. Alasdair McDonnell, the Catholic Social Democrat and Labour Deputy Leader, said:

We have seen how the stain of internment in the North robbed many people of their rights, and only served to further alienate one section of the community.

It is shocking that this Government has not learned the lessons of the past.

In Northern Ireland the security forces widely abused the detention powers that were introduced in 1922, which allowed terror suspects to be held indefinitely without trial. Seized with panic when the conflict flared in the early 1970s, the autonomous Protestant-dominated Government convinced the Government in London to allow the internment of all those suspected of aiding the secessionist Catholics. In all, 1,981 people were incarcerated, some for more than a year. In reaction to the harsh detention measures, riots increased and many Catholics took part in a campaign of civil disobedience. The emergency measures finally were eliminated in 1976 and detention was limited to seven days, but it left deep scars on the Catholics. David Adams, a former Protestant paramilitary leader loyal to British rule in Northern Ireland, said long detentions without trial were counterproductive. He said:

The best way to create anger and resentment, and a potential support base for terrorist groups is to introduce measures like this and focus them on a particular minority within society.

With fundamentalist lunatics who are doing their best to convince Muslim youth that the State is biased towards them, all we need is a State that proves them right by throwing their co-religionists in jail for long periods of time without trial.

He echoed warnings by British politicians who voted against the 90-day detention plan, who expressed fears that the measure would isolate a Muslim community whose co-operation is needed to thwart terrorist plots. Kathleen Cavanaugh, a professor of Human Rights Law at the University of Galway in the Irish Republic, is quoted in Agence France-Presse on 10 November as saying:

The parallel with Northern Ireland is stark because the measures introduced by the State are aimed at a specific group within the community.

In Northern Ireland, politicization and particularly militarization of the Catholic youth developed during the internment period.

In deprived nationalist areas, young men joined the IRA by the dozens.

There is a similar danger with the new legislation in Britain. There is a clear risk that long periods of detention without trial aimed at the Muslim community may have a similar effect.

The final word on internment comes from Winston Churchill. A bit of history can always be instructive. This comes mainly from Wikipedia. In the 1920's in Britain there were two major political players: Winston Churchill and Sir Oswald Mosley. They had quite a lot in common. For a start they both changed parties. Winston Churchill went from the Liberals to the Conservatives and Sir Oswald Mosley went from the Conservatives to Labour. Within a few years of his leap Sir Oswald was serving in a Labour government. However, in 1931, frustrated by the Labour Government's unwillingness to listen to his economic theories, he jumped ship again and tried to establish the New Party with the help of William Morris, who had made a fortune building Morris and MG cars. This failed to get off the ground and a year later Mosley set up the British Union of Fascists [BUF], apparently believing that it was the only system that would prevent chaos and stop the rise of Communism.

For a couple of years Mosley's BUF was very successful, collecting 40,000 members, but as Hitler and Mussolini veered off into extremism, so too did Mosley. Violence at a meeting at Olympia in 1934 turned many away from the party and later Mosley's marches into the East End of London, designed to provoke the Jewish

communities, reduced the membership of his movement to just 5,000. When war broke out in 1939 Mosley was a spent force. He was interned, his name forever linked with fascist excess. The internment was under defence regulation 18B. As honourable members would appreciate, a great number of wartime regulations governed all facets of life in Britain—rationing, sending of children to the country, et cetera. Churchill took exception to the regulation, and in particular its application to Moseley and his wife, Lady Diana, who was interned also, with an 18-month-old baby. In relation to the legislation Churchill said:

The power of the executive to cast a man into prison without formulating any charge known to law, and particularly to deny him judgment by his peers for an indefinite period, is in the highest degree odious, and is the foundation of all totalitarian Governments ... Nothing can be more abhorrent to democracy than to imprison a person or keep him in prison because he is unpopular. This is really the test of civilization.

In correspondence to the Home Secretary in November 1943 concerning the Mosleys' release Churchill wrote:

I suspect you will be questioned about the release of the Mosleys. No doubt the pith of your case is health and humanity. You might however, consider whether you should not unfold as a background the great principle of habeas corpus and trial by jury, which are the supreme protection invented by the British people for ordinary individuals against the State.

John Winston Howard please take note! Churchill was wise enough to see that Mosley's power was gone. Muslims in Australia will become less fanatical as they see a friendly and conducive country. We are reversing that. The provisions of the bill have been analysed by both the New South Wales Law Society and the New South Wales Bar Association. Both bodies are opposed completely and fundamentally to the legislation. Both agree that the bill is draconian, runs counter to a democratic society and fundamentally undermines the principles of the rule of law. Both agree there are sufficient police powers already in existence to keep the citizenry of New South Wales safe. I will outline briefly the most abhorrent aspects of this bill, but I would restate my opposition to it as a whole. The period of detention provided in this bill is 14 days. The joke is that the Commonwealth is relying on the States to do its dirty work. Federal law limits detention to 48 hours, so the Howard regime has talked the States into making this period 14 days. The States are complicit in making this period unnecessarily long.

Even more concerning than this is the fact that under subsections (1) and (2) of section 26D, because of the Constitution in Australia, it is possible to make consecutive preventative detention orders, almost indefinitely extending the order for another 14 days, then another 14 days, et cetera. This could go on indefinitely. Another major concern is that the ordinary rules of evidence do not apply during proceedings for hearing and determining detention orders. All that section 26G requires is that any evidence in support of an application sets out the facts and other grounds. There is no requirement that the evidence be sworn. The Bar Association sees this as opening the possibility to false information being laid by maliciously motivated informants, and abuse of the detention order regime a real possibility. It is also of concern that the person detained is only allowed to see the summary of the grounds on which the order was made.

There is no requirement to supply any other document of evidence on which the decision was made. Therefore, neither the detainee nor his legal representative has any idea as to whether the evidence is factual or indeed totally fabricated or false. This severely impedes, if not makes impossible, a detainee's attempt to oppose an order or to have it revoked. The bill has a sunset provision of 10 years. Do not hold your breath waiting for the sunset. This is a ridiculously long period. My Federal colleagues are moving amendments to the Federal legislation to have a two-year sunset clause. I note that the Hon. Jon Jenkins will move an amendment for a five-year sunset clause, which is still too long, but, naturally, I will support it in the absence of a shorter one. For the benefit of honourable members who were not at the Bar Association briefing on the bill, another little bit of history is instructive.

In New South Wales in 1868 at Clontarf there was an assassination attempt by Henry James O'Farrell on Prince Albert. This was the first ever visit of a member of the Royal Family to Australia. O'Farrell shot Prince Albert, but he was not injured seriously. O'Farrell was rumoured to be a member of an Irish patriotic movement called the Fenians, which was formed in the middle of the nineteenth century in both the United States of America and Ireland. They took their name from ancient Irish warriors, and were dedicated to the overthrow of British rule in Ireland. After the assassination attempt New South Wales passed a law entitled, "An Act for the better security of the Crown and governance of the United Kingdom and the suppression and punishment of seditious practices and attempts". The bill is noteworthy for two reasons. First, it did not introduce detention without trial and, second, it had a two-year sunset clause. This followed not the threat of terrorism but an actual demonstration of it.

There is a long list of groups opposed to the bill: the New South Wales Bar Association, the New South Wales Law Society, the International Commission of Jurists, Human Rights and Equal Opportunity Commission President John Doussa, the New South Wales Council for Civil Liberties, the Media Entertainment and Arts Alliance, the Australian Lawyers Association and the Anti-War Coalition. The need for extra police powers and the destruction of habeas corpus, which is, of course, a fundamental cornerstone of liberal democracy, cannot be justified. Detention without charge, house arrest disappearance of people, and undefined and ambiguous offences are scarily close to the techniques used to suppress dissent by authoritarian regimes in Burma and China, and in Iraq under Saddam. It is clearly not appropriate for a country that calls itself a democracy.

Milton Orkopoulos—not the Attorney General—introduced this bill at 7.30 p.m. on 8 November, after the upper House had adjourned for the night. I believe the Government was trying to avoid the limelight. Copies of the bill, however, had been leaked to journalists in the press gallery before it was tabled. I urge members of the Government who do not agree with this bill—and I believe there are a considerable number of them, including Bob Debus, who obviously chose not to introduce his own bill—should vote with the crossbench and whoever else is willing to oppose this appalling bill. Honourable members may recall the arrests on 7 and 8 November of people who were allegedly terrorists. Those who crowed loudly about catching those people should remember that they still have a trial to conduct to determine if they are in fact guilty.

According to a story by Kara Lawrence and Simon Benson in the *Daily Telegraph* of 9 November, police from the New South Wales counter-terrorism command had been conducting a surveillance and intelligence investigation into the group for two years. The same article reported that the Commissioner of Police, Ken Moroney, phoned the Minister for Police, Carl Scully, "requesting that an urgent and special authorisation be invoked to use unprecedented arrest and search powers. A sealed satchel was rushed by two police officers to Governor Macquarie Tower, where they witnessed Mr Scully invoke the 2002 Terrorism (Police Powers) Act for the first time."

The irony of this report in relation to the debate is twofold. The detailed description of the events leading up to the Minister for Police issuing arrest and search powers under the 2002 Act has given any potential terrorist detailed information about the procedures between NSW Police and the Executive Government about the execution of anti-terrorist laws. It gave the venue, the commissioner's name and his important role in executing this law, and specified that only two police officers carried the important authorisation documentation from police headquarters to Governor Macquarie Tower. Is that a serious piece of terrorist information to pass to other terrorist cells that are planning some sort of retaliation?

As I said yesterday, the Senate Legal and Constitutional Affairs Committee inquiry into the Anti-Terrorism Bill (No. 2) 2005 tabled its report and even the Government-dominated committee made 51 recommendations on the Commonwealth legislation, which is still to be passed. I will quote briefly from Federal Democrats Senator Natasha Stott Despoja's dissenting report on the bill:

The Democrats believe that this bill as introduced will erode key legal rights and undermine crucial civil liberties. It is a fundamentally flawed piece of legislation and the Democrats remain opposed to the bill in its current form.

This bill epitomises the Government's approach to power. The method in which it attempted to pass this legislation is an affront to democracy and belies its commitment to the Australian public to act in a responsible and representative manner. The content of the bill has been appropriately described as draconian and arguably represents a disproportionate response to the terrorist threat Australia is facing. Convincing argument as to the inadequacy of existing laws in the corresponding necessity for such expansive new laws was absent during inquiry into this bill.

The Democrats raised a number of issues in relation to the treatment of children aged 16 to 18. We support the recommendations of the Committee that minors be separated from adults in detention.

The idea that the Government is attempting to legislate so that children as young as 16 may be subject to preventative detention and control orders, measures already of extreme concern in relation to their application to adults, is inexcusable. Firstly, the Democrats oppose the application of the bill to children aged 16 to 18. There are possibilities for breaches of the Convention on the Rights of the Child [CRC] under this bill. Most notably, article 37, which provides that States Parties shall ensure that:

- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrests, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and from the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner, which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interests not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

In addition, Amnesty International has asserted that the control order provisions in the bill potentially breach article 40 of the Convention on the Rights of the Child. Article 40 provides that a child is presumed innocent until proven guilty, yet the operation of control orders imposes a penalty without charge or the opportunity to answer a charge. Protection against threats to these rights could be guarded against by enshrining the convention in the bill as recommended above.

The Democrats note and support the comments of the Northern Beaches Civil Rights Forum in relation to child advocates. Child advocates should be provided for children subject to preventative orders and control orders; and for those affected by proximity to other individuals subject to such orders.

The Forum urges the Senate to ensure that all state and federal agencies dealing with counter-terrorism be required to have a protocol for protecting children caught in operational matters. This should take the form of an independent child protection officer who attends all raids. While it will not lessen the fear or trauma suffered by children caught in such accidents, it will provide a greater guarantee that the best interests of the child is served and that excesses are curbed.

Experience over many years with Immigration Department Compliance raids has amply demonstrated the damage that can be caused to children placed in such traumatic situations.

The Committee recommended that proposed section 74K (2) be amended as the Privacy Commissioner has suggested to ensure the protection of personal information obtained through the use of closed-circuit television [CCTV]. It also recommended that the resources of the office of the Federal Privacy Commissioner be increased, that the laws be analysed by the Federal Privacy Commissioner for the impact on the privacy of Australians, and that the report of the Senate Legal and Constitutional Affairs Committee be tabled in Federal Parliament.

The ability of the public to criticise the bill has been minimal. There has been failure to provide proper public debate. There has been a massive rush to pass these laws and they have been bullied through this House in a manner analogous to what has happened in Canberra. In the absence of discussion and scrutiny of the anti-terrorism measures it would be difficult for the Government to claim to have fulfilled a commitment of representing the interests of the New South Wales community. Control orders and preventative detention orders are inconsistent with the rule of law that should exist in a democracy. The bill shows an imbalance between the protection of national security and maintaining fundamental human rights, which Australia has been so enthusiastic to violate recently.

There is no evidence that the proposed bill will have any effect in preventing a terrorist attack; it will only prevent the existence of fundamental human rights. Racial profiling discrimination provisions contained within the proposed bill inevitably promote racial profiling through its discrimination against minority groups. There is a danger that these powers will be exercised in a fashion that will be discriminatory towards non-white Australian Muslims. That places an entire class of people under suspicion.

The Public Interest Advocacy Centre has commented to my office that the inclusion of the Supreme Court in a judicial capacity in both interim and final preventative detention orders, and also in issuing prohibited contacts, is preferable to the even more draconian Commonwealth legislation. The current aspects of the criminal justice system that will be under threat as a result of these laws include the presumption of innocence, the right of an accused person to a fair trial and the rules of evidence that are fair to all parties. The requirement that guilt be established beyond reasonable doubt is based on the balance of probability.

Detention orders will enable person to be secretly taken into custody and detained indefinitely. They would be placed in a position where they would not be able to properly challenge their detention. Free communication is restricted between lawyer and detainee. There is a penalty of five years gaol for telling someone, during the currency of the detention warrant, that a person is being detained. What is lacking in this current climate of fear is an informed and frank discussion of why Australia is at risk from terrorism. I question the Labor Government's "no war on Iraq" rhetoric that it conveniently trotted out just before the last State election. Certainly the Labor Party has been extremely weak about stopping the war in Iraq. Obviously that would take the heat out of terrorism to a greater degree than these repressive laws, which will make the Muslim community far angrier and more susceptible to the blandishments of the extremists within it.

The insensitivity of the Australian Government has been an embarrassment for quite some time. Two days before the Australian Federal election, former immigration Minister Ruddock claimed that asylum seekers had thrown their children overboard. It was later discovered that that was false. Minister Ruddock argued that if people have no proper basis for being in Australia, they should be detained. He felt that the Federal

Government's action is a powerful message and his effort to send a powerful message was exemplified in a kit released by the Department of Immigration and Multicultural and Indigenous Affairs in 2001. This consisted of a question and answer booklet which warned asylum seekers that their children would abandon their traditional ways in favour of more modern Western ways and that they would rebel and question their religion and paternal authority.

The Hon. John Ryan: Point of order: The Hon. Dr Arthur Chesterfield-Evans is testing the patience of the House. In the past 20 minutes we have endured what appears to me to be a speech addressing the issues of legislation which is before the Senate. On one occasion the honourable member referred to the Senate and used a numbering scheme for the bill which is not the numbering scheme of the bill before the House. It was in fact the numbering scheme of the bill before the Senate. The honourable member referred to preventative detention orders and their application to juveniles. That is not the impact of the bill before the House and has nothing to do with the bill that was debated in the Senate. This bill does not have those provisions. Having endured all of that, we are now having a discussion about asylum seekers and so on. The honourable member has been speaking for in excess of an hour and he has more than tested our patience. He must, in the remainder of his speech, more tightly constrain himself to the terms of this bill before the House.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: To the alleged point of order: Whether I am boring the member opposite is not germane to the argument at all. God knows the Opposition bores me rigid most of the time. The point is that what I am speaking about now is the climate of intimidation for Muslims and the effect that that climate will have on them. That is why I am also using some of the information from the Department of Immigration and Multicultural and Indigenous Affairs to show the poor way in which its booklets were constructed. I do so to emphasise the pressure that will be put on Muslims that will source its strength in the provisions of this legislation. I am talking about things that put pressure on the Muslims of our society. We are talking about the balance between civil rights and government powers, and that is what I am referring to.

The Hon. Michael Costa: To the point of order: Nowhere in this bill do I see references to anybody's religion. The honourable member is completely out of order when he tries to imply that the bill is aimed at one particular religious group. It is certainly not aimed at one particular religious group; it is aimed at terrorists. He is completely out of order in his line of argument at the moment. He has proved that he does not understand the bill. He has proved also that he is probably the most discriminatory person in the House by referring to one religious group in reference to the bill. The imputation against other honourable members is absurd. The Hon. Dr Arthur Chesterfield-Evans is completely out of order.

The Hon. Dr Peter Wong: To the point of order: I suggest that the Minister, the Hon. Michael Costa, has no point of order whatsoever. It is accepted, believe it or not, that often politicians mention fundamentalists. I presume that they are not Christian fundamentalists.

The Hon. Michael Costa: Oh!

The Hon. Dr Peter Wong: Yes, that is true. Politicians mention Islamic fundamentalists. Every second day, if not every day, newspapers mention Islamic fundamentalists. Let us not beat about the bush: the bill deals with so-called terrorists. By implication I do not think any of the people who are pushing to have this bill passed have any misconception of what they are talking about. Therefore, the Hon. Dr Arthur Chesterfield-Evans's remarks are totally relevant on this point.

The Hon. Peter Primrose: To the point of order: Without dragging this matter out, obviously I agree with the point made by the Minister: this is not an issue of race. This bill is not specifically directed at race. If it were, I would certainly not support it. But in relation to the first issue, my concern is that while it is traditional in this place to permit wide-ranging debate, that does not provide latitude for universal debate wherein members can drag in every matter and every issue that, on some sort of Freudian analysis, may allude to matters that honourable members wish to address. I urge you again, as you correctly were requested to do in the original point of order, to ask the honourable member to address the points in the bill.

The Hon. John Ryan: This bill.

The Hon. Peter Primrose: This bill. The bill allows wide latitude and I believe that wide latitude has been taken and given. But I certainly believe that we should discuss this bill.

Ms Lee Rhiannon: To the point of order: I believe that the mover fails to understand that the bill before us and the Federal bill it is linked with are already testing the patience of many people in Australia. Indeed, they will do that a great deal. With regard to the Minister, it is another example of him champing at the bit to cut off debate, which is extraordinary. If this point of order is upheld, it will stifle debate on legislation that is so far reaching that I do not think anybody understands the impact it will have on our society. Surely that is not going to start right now.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Further to the point of order: I point out that to simply say this bill has nothing to do with Muslims, as Minister Costa was trying to assert, is simply absurd. To contend that there is nothing about Muslims in the bill is also absurd and defies belief. The point I am making is that the people who will have the power behind the scenes, those who are unaccountable under this bill, are the people who have bad attitudes within the Department of Immigration and Multicultural and Indigenous Affairs. I am concerned about dark forces within the bureaucracy that are not accountable having more power. That is the essence of the point I am trying to make.

The Hon. Michael Costa: Further to the point of order: My remarks were specific. I referred to the fact that the honourable member was debating what appeared to be a completely different bill to the one before the House. His references to people's religion or race is not referred to anywhere within the bill. I challenge him to point to any provision of the bill that relates to any specific race or religion. His final comment in defending his point of order did not address my original objection to where he was heading with his remarks. I ask that you rule that he should stick to the bill that is before the House. It is a bill that is very clear. It is about terrorism and it applies to all terrorists, no matter what their religion, creed, race may be. All that matters is that the organisation they belong to has a terrorist nature, independent of their religion or race.

Ms Sylvia Hale: To the point of order: There can be no doubt that there is not one member of the Muslim or Islamic communities in this country who does not believe that this bill is directed towards them and their activities. For us to pretend otherwise is rank hypocrisy. It is appropriate in the context in which laws are being passed in Australia currently to refer to religion and to refer to communities. The Hon. Dr Arthur Chesterfield-Evans is spot-on when he refers to these matters because they are at the heart of the fears that are driving this bill.

The Hon. Henry Tsang: To the point of order. I hope you rule that that was not a point of order. That was a debating point.

The DEPUTY-PRESIDENT (The Hon. Jennifer Gardiner): Order! I uphold the point of order taken initially by the Hon. John Ryan and reinforced by the Deputy Leader of the Government. As interesting as the comments of the Hon. Dr Arthur Chesterfield-Evans are they are not relevant to the bill being debated. I ask the member again to return to the bill before the House.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The key essence of what I am concerned about is the racism of the Department of Immigration and Multicultural and Indigenous Affairs in its question and answers book, which sought to discourage Muslim people from coming to Australia. A fact sheet document further warned that they would "face racial hatred and violence" and "end up living in ghettos dependent on begging and crime to survive".

Interestingly, the Persian and Arabic versions of these documents were printed backwards, because the department had forgotten that Persian and Arabic scripts are read in the opposite direction to English scripts. This shows that the cross-cultural awareness of Philip Ruddock—who was at that time the immigration Minister but is now the Federal Attorney-General—is dangerously alarming. Other campaigns include advertisements in Middle Eastern and Arabic-speaking countries that were used by Ruddock as a deterrent. The ludicrous video showing snakes, sharks and crocodiles as representations of the journey to Australia insulted the intelligence of viewers. These perceptions towards Middle Eastern people are echoed in this antiterrorism legislation.

Immigration Minister Ruddock characterised asylum seekers as "cached up, queue-jumping illegals", in the hope of legitimising the harshness of the Government's detention policy. Most of the strange justifications contributed to the human rights violations that plague Australia's international reputation. The Federal Attorney-General has also dismissed suggestions that the Commonwealth's proposed counter-terrorism legislation contravenes human rights, which is another example of denial. The key point was made. Philip Ruddock said:

I often tell people that they should read some of the International Instruments. One of them is the universal declaration of human rights. In article 3 it specifies that governments have a responsibility to protect people's right to life, their safety and their security. It's not a right we often hear expounded. People often address these issues in the context of other rights but I think the right to safety and security is a particularly important one and one in which the terrorist threat that we face puts very much at the forefront because their target is very much innocent civilians—not combatants—but people who simply want to go about their normal lives.

If Philip Ruddock had continued to read other articles of the Universal Declaration of Human Rights, he would have found that article 7 says, "All are equal before the law and are entitled without any discrimination to equal protection of the law." Article 9 states, "No-one shall be subjected to arbitrary arrest, detention or exile." Article 10 states:

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Had the Attorney-General paid attention to the entire document, he would notice that the anti-terrorism law has breached the Universal Declaration of Human Rights.

I believe that applies both to this State's legislation and to the Federal legislation, and therefore both must be vigorously opposed. They are appalling pieces of legislation, they will do great harm to our country, and I believe they will worsen the situation with regard to terrorism because of their repressive, insensitive and foolish provisions.

The Hon. PENNY SHARPE [9.33 p.m.]: The last time Australia's security was threatened it was by a war waged by nations and fought by armies. Today the threat is violence waged by individuals against populations. We are not at war, but nor can we say that we are at peace. It is therefore necessary for our Government to take steps to protect our citizens against those who deliberately and maliciously wish them harm. We cannot defend ourselves with armies. We must defend ourselves with laws. The Government must do what is necessary, but since each necessary step will infringe the rights, liberties and freedoms of our citizens, the Government must do only what is necessary and no more. The debate about the bill has been about what is necessary, and what goes beyond necessity.

I do not wish to revisit every aspect of the debate as many of the issues have been well covered, but I do not think anyone will disagree when I say that the bill has raised real and agonising questions of conscience. What I find particularly difficult is that effect of the bill will be that our citizens can be arrested and detained with no charge. If someone is arrested and detained they will have no right to be free of self-incrimination. They cannot be free to consult with legal representatives without being monitored. These rights are the foundations of our democracy and our freedom. In the words of the New South Wales Council for Civil Liberties, "Many people died in order to obtain the rights this bill removes and many more have died in defending them." I particularly wish to record my concerns as they relate to the treatment of children. Article 37 (b) of the Convention on the Rights of the Child provides:

No child shall be deprived of his or her liberty, unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period on time.

Through this legislation we will grossly trespass these rights. I do not believe I have the right to sacrifice another person's liberty to purchase my safety. Nor do I believe that I have the right to demand that another person give their life to protect my freedoms. But these are the choices before us. It is not a decision any of us sought, but it is real, and it is here. Today we ask the people of New South Wales to consent to the surrender of some of their freedoms—knowing, as we ask, how precious those freedoms are—to secure the safety of strangers. Liberty is indivisible. When a right is denied to one, it is taken from all. Knowing that, still we ask.

My main concern is not about those who seek to harm the innocent. Rather, it is the innocent who may be harmed by laws such as these who must be our concern. I wish to acknowledge the safeguards provided in this bill that are not included in the Federal Government legislation. The New South Wales scheme is judicial. In New South Wales a detained person will be able to be present at the hearing to decide the merit of their detention. The New South Wales scheme sensibly allows people to inform those close to them that they are in custody. Young people will be able to have physical contact with family and will be held in juvenile detention facilities that meet the standards that conform with the Rights of the Child. These safeguards are important and go some way to dealing with the difficulties I have in supporting the bill.

We live in a dark and dangerous time, and none of us knows when it will end. I do, however, have faith that there will be an end. I have faith that tolerance will overcome hatred, that love of justice will defeat fear of difference, and that our greatest hope of victory lies in dealing honestly and justly with others. I have faith that there will be a time when we can once more say that we are at peace. On that day these laws will no longer be

necessary, and they will be laid aside. In the certain knowledge that that day will come, and in the earnest hope that it will come soon, I will support the bill.

Reverend the Hon. FRED NILE [9.37 p.m.]: The Christian Democratic Party supports the Terrorism (Police Powers) Amendment (Preventative Detention) Bill. I simply cannot imagine the climate in this House if we suddenly were to hear a radio news flash that tonight a terrorist bomb exploded at Town Hall railway station on a crowded train, or at Martin Place railway station, or at St James railway station, and it is estimated that 200 are dead and 500 are seriously injured. I wonder whether members would nitpick about this bill, as they have done tonight. That is the concern that many of us have about the necessity and importance of this bill. We must do all we can to prevent such a terrorist attack happening.

I acknowledge that it is unusual to have legislation such as this, because normally law and order legislation provides for punishment and increased penalties for drug trafficking and so on. The principle behind law and order legislation is that if a person is arrested, the appropriate penalty must be determined. This legislation is totally different. That is why some members, who I believe are from the Left of the political agenda, ideologically find it difficult to understand the legislation. It is preventative legislation.

The legislation is designed, as far as is humanly possible, to prevent a terrorist attack and to try to identify those planning a terrorist attack. The 18 individuals who were recently arrested were allegedly preparing some sort of attack. One does not accumulate chemicals, detonators and other items that are used in the manufacture of bombs as part of normal recreational activities. Those arrests have demonstrated the danger facing our States. I believe that Sydney and Melbourne are the two major potential terrorist targets in our nation, and within those cities there are icons that would be attractive to terrorists who want to cause maximum emotional damage, as opposed to physical damage, in the same way that the Twin Towers in New York were selected.

The Twin Towers were selected because the terrorists knew that a successful attack on them would have the greatest emotional impact on the American people. That is why other targets included the Pentagon, the defence headquarters, and perhaps either the Capitol Building or the White House. The passengers on the third plane succeeded in overtaking the terrorists and prevented them achieving their target by causing the plane to crash. This resulted in the passengers losing their lives, although it is likely that they would have died if those terrorists had been successful in achieving their object. That is the background to this legislation.

The Christian Democratic Party supports the provisions of the legislation. It will supplement the preventative detention orders [PDOs], which the Commonwealth will issue under its the Anti-Terrorism Bill (No. 2) 2005 and will allow detention for 48 hours. This bill allows for a preventative detention order to be issued on the same grounds as the Commonwealth orders, but for a maximum period of 14 days. The bill also provides that PDOs can be issued only by judges of the New South Wales Supreme Court when acting judicially. I believe that is adequate protection of people's human rights.

The New South Wales police may obtain a PDO, either as the first such order or after a person has been detained under Commonwealth law. The police can apply to the court initially for an interim PDO without the person being present, and such an order lasts for up to 48 hours. If the police want to detain a person for longer than 48 hours they will have to apply for a continuing PDO within the 48 hours. This will be heard afresh, with both parties present and able to be heard and legally represented.

If a PDO is sought after one has already been made under the Commonwealth provisions, either another interim order or a final order can be made under the New South Wales legislation. However, no person will be able to be detained under any combination of PDOs for a total of more than 14 days. The detained person or the police may apply to a judge of the Supreme Court for revocation at any stage. Hearings will be held in closed court. The information relied upon by the police in applying for a PDO will be available to the person, subject to any requirement under the National Security Information (Criminal and Civil Proceedings) Act for public interest immunity to withhold such information.

When considering applications the Supreme Court must take into account evidence or information that it considers reliable in the circumstances, and it will not be bound by the rules of evidence. A difference between the State and Commonwealth legislation is that it will not be an offence for a detained person to disclose to another person that he or she has been detained under a PDO. The police will monitor any contact,

including discussion with lawyers. However, the Supreme Court may make a non-contact order to prevent a detained person contacting specified persons if this will assist in achieving the purpose of the PDO.

PDOs will not be available against persons under 16, and special provisions will apply for persons between 16 and 18 years, including a guaranteed right of contact of two hours per day between a child and a parent or guardian. A person detained under a PDO is not able to be questioned, except to confirm their identity. I questioned the Government's advisers on that issue. It seems unusual that they should not be questioned, particularly as, if they were willing to co-operate, further information could be gained from them while they are being detained. In my opinion there is an imbalance there.

It will be an offence for anyone implementing a PDO to fail to treat the subject with humanity and dignity. The police will be subject to oversight by the Ombudsman and the Police Integrity Commission. The Attorney General and the Minister for Police will prepare a report annually, to be tabled in Parliament, on the operation of the provisions. We know that the police have already complained that they believe they are supervised without end. In many ways they regard that as extreme, compared with the supervision of police in other jurisdictions. We do have these protections within our State and within this legislation. The Ombudsman is also to monitor the legislation for five years and to report both two years and five years after the commencement of the Act. Finally, the bill has a sunset clause after 10 years.

This is a fair and balanced bill, but I acknowledge that some members of the Labor Left probably have reservations about it. We need this legislation after the tragic events that I have already referred to in New York, the bombings in Bali, where Australian tourists were targeted, the bomb explosion on the packed commuter trains in Madrid, the bomb explosion on the packed commuter trains in London involving young suicide terrorists and, more recently, the attacks in Muslim countries.

The Muslim leadership shares our concerns about terrorism. I was invited to attend a dinner at the Bankstown Trotting Club by Mr Keysar Trad to hear a Malaysian Government representative speak about terrorism and Islam. The guest speaker made it clear that a terrorist, or a person who carries out terrorist acts, cannot be a Muslim because they cease to be Muslims and ex-communicate themselves from the Muslim religion when they make the decision to become terrorists. He was very critical of terrorism. Other Muslim governments and countries hold the same position, whether it be Malaysia, Turkey or similar countries that are anti-terrorism and seek to control their small minority of terrorists. We must have legislation that prevents a terrorist attack, not after the event.

I also congratulate both the Commonwealth and State governments on their successful surveillance efforts and the recent arrests in Sydney and Melbourne. Listening to some of the speakers tonight, one would think we are a million miles away from any potential terrorist attack, but I believe that the arrest of those 18 individuals has prevented terrorist attacks occurring in Sydney and Melbourne.

The police have tabled statements in court outlining the equipment discovered with the suspects. The eight Sydney suspects had ordered and bought explosives, undergone terrorist training at two country stations outside Bourke, and had carried out surveillance on potential targets, possibly including the nuclear reactor at Lucas Heights. The police also listed the items they had confiscated from the custody of these eight individuals, which included chemicals and stockpiled weapons and materials to make explosives, particularly triacetone and triperoxide, which is nicknamed TAPT.

For the information of members who are critical of this legislation, that is exactly the same material as that which was used to make the bombs in London. The potential terrorists in Sydney and Melbourne were actually putting together bombs the same as those used in London. That is how close we were to a terrorist attack. They only had to put the material together, put it into a backpack, get on a train in Sydney and push the detonator so the bomb would explode in a crowded commuter train in Town Hall railway station, Martin Place station or St James station. It may have even killed some members of Parliament on their way to Macquarie Street.

This is not hearsay, it is not over the moon, it is right here on our doorstep. So I have no reservations about the necessity for the legislation. I know that it will be monitored in many ways, not simply in one direction. We know that some members of the Sydney group had accumulated large quantities of methylated spirits, hydrochloric acid, citric acid and glycerine, which can also be used to make bombs. One of the people who was apprehended fired a pistol at police, and the police fired back. These people were quite willing to use weapons. Some were found with up to 900 rounds of ammunition in just one location. They were not only

prepared to make bombs to be used against innocent civilians but also to use weapons if they were apprehended by police when they were about to carry out their deadly attack.

I have no fears about the legislation being oppressive, because I believe it contains sufficient protection. I will not go through all the other individuals who have been apprehended, but I will conclude with a note from an international terrorism expert. Dr Rohan Gunaratna, head of terrorism research at the Institute of Defence and Strategic Studies in Singapore, who recently visited Sydney. He said that an attack on Australian soil is inevitable, with home-grown extremists most likely responsible. That is what happened in London: they were young men who were brought up in London. Dr Gunaratna said:

Just like Britain the threat of home-grown terrorists in Australia is very real and an attack inevitable.

He estimates that there are as many as 300 potential terrorists who would support violent extremism. Another speaker in Canberra at the Australian Christian Lobby's National Conference was Dr Patrick Sookhdeo, whom I had the privilege of hearing speak on 28 and 29 October at the National Press Club in Canberra. Dr Sookhdeo is a member of the United Kingdom Counterterrorism Policy and Strategic Issues Group and a specialist in terrorism. He gave the same warnings as Dr Gunaratna. These gentlemen are not Anglo-Saxon, they are both from Asia, of Indian background. They understand other nations and other cultures, and they are warning us as a Western nation about these threats. These warnings are not coming from some rednecks in the southern States of America: They are coming from calm, rational, highly qualified experts on terrorism, warning us that a terrorist attack is inevitable. I therefore believe that this legislation is absolutely essential. I hope that all members—even those who have criticised it—will consider their position and support the passage of the bill so it can be passed unanimously by this House to protect the citizens of our nation.

Ms LEE RHIANNON [9.54 p.m.]: Australia is, by and large, a free country. Its citizens enjoy a wide degree of personal freedom. This is often taken for granted, but it did not happen by accident. We are free because over many centuries thousands of people fought, suffered and even died in the struggle against state tyranny. From Cromwell to William Smith O'Brien to Charles Perkins and the Freedom Riders, we have a rich heritage of struggle against state-perpetrated injustice and abuse. That heritage, the legacy that we enjoy, is something to be jealously guarded and defended. Rights are hard won but easily lost. We have an obligation to those who went before us to stand our ground and defend their gains. We, as members of Parliament, carry that burden even more heavily because the public has entrusted us to secure their interests.

It is a great irony that the Liberal Party, a party founded on the ideology of the supremacy of the individual, is now the champion of State power. The Greens believe in striking a balance between collective and individual needs. In Britain the Tories have just given Tony Blair a bloody nose by standing up for the rights of the individual. But here in Australia the Liberals have lost any sense of balance in their charge to strip away individual freedoms. The protection of freedom is the fight against terrorism. Terrorism, by definition, seeks to instil terror and thereby cower the population into submission. The objective of terrorism is to intimidate us into giving in, to literally terrify us into changing course.

Tragically, the Howard Government has rushed to run up the white flag. It has rushed to strip away long-held freedoms and thereby change the very nature of who we are as Australians. It is cowardly and disgraceful. The Greens say that we should combat terrorism by refusing to become less free. Terrorists will be discouraged if they do not believe that they can change the nature of Australian society through their actions. We must stand defiantly and say that we will not be panicked into becoming a lesser nation; we will not be panicked into yielding up rights that others have fought for.

Of course we need to prevent terrorism, and we need to empower and resource the police and other agencies to do so. The Greens will always support reasonable anti-terrorism measures and the prosecution of those who perpetrate terrorism. But whilst acting to prevent terrorism, we must maintain respect for the rule of law, for the legal tenets that have served us well: innocent until proven guilty, the right to be either charged or released, habeas corpus, and the right to a vigorous, fully informed and unhindered defence. These legal concepts may seem arcane, but they are essential limits on the arbitrary exercise of state power. They make us free.

Free speech also makes us free. The right to criticise the Government and express all sorts of opinions, including opinions that may well be stupid or wrong or offensive, is a hallmark of a democratic society. The sedition provisions in the Commonwealth legislation seek to criminalise non-violent organisations or individuals on the basis of their opinions. Those opinions, including praising terrorism, would be offensive to many of us. But that does not justify making it a criminal offence. The vague wording of the provisions may well lead to

abuse and the curtailment of legitimate protest. The tolerance of minority opinions is a litmus test for a democratic society. We do not have to agree with the opinions, but we must defend their right to be expressed, otherwise we all become a little less free.

We do not accept that the case has been made for these new laws. It is not sufficient for the Government to simply say that a new law is needed to combat terrorism. The Government must actually prove the case, and prove that it does not erode personal freedoms. As the recent raids on terror suspects demonstrated, the existing State legislation gives the authorities all the power they need to deal with threats as they arise.

The Terrorism (Police Powers) Act 2002 gave New South Wales police the power to raid those suspects and will give them the power to deal with such situations into the future. These recent raids also showed the abuse of powers we can expect if this bill is passed. When the raids against suspected terrorists occurred, Premier Iemma and Police Minister Scully made statements that could prejudice a fair trial and amount to contempt of court. Their statements certainly added support to a feeling that the raids were politically motivated, and that was largely because of the timing as well as the comments. Legal and other commentators reminded politicians of the need to act responsibly when it comes to commenting on the arrests.

It is essential that we fight terrorism and make our community safer without abusing people's rights along the way. Sadly, much of the public debate on anti-terrorism measures mirrors the law and order debates that occur at the State level across Australia. Both concern very serious issues, issues that destroy people's lives. Both are complex issues, requiring sophisticated and complex responses. But in both cases governments choose to engage with them at a level that is more about public relations than coming to grips with the issue. It is more about looking tough for the evening news and manoeuvring one's opponent into a tight spot than it is about meaningful action.

What makes this even worse is that the Howard Government has put Australia at far greater risk from terrorism by participating in the Iraq War. It is a monumental hypocrisy. We are at far greater risk because of the Government's actions, but now the Government uses that risk to justify removing freedoms. A far more rational course of action would be to reduce our risk by ceasing our participation in an illegal, immoral and unwinnable war, a war that is inciting anti-Western sentiment across the globe. In the United States of America movement is building for the troops to go home, not only amongst Democrats but also amongst Republicans. Withdrawing from this terrible war would reduce the threat of terrorism far more effectively than any legislation. Howard has put all Australians at greater risk by participating in the Iraq atrocity, and his continued refusal to acknowledge this obvious truth is obscene.

Although the Howard Government deserves to stand condemned for yielding up freedoms in the face of terrorism, sadly the Iemma Government is scarcely better. Premier Iemma has shown himself to be shamefully gutless, toadying up to the Prime Minister and effectively declaring to the media the guilt of those recently arrested. They are strong words, but they need to be said, particularly as we have a yardstick here with what happened with the Premiers in Victoria and Queensland. I certainly do not think they went far enough, but they did take a stand. Sadly, that stand was lacking with our own Premier. Premiers Bracks and Beattie made some noises about sedition and Mr Jon Stanhope in the Australian Capital Territory was very outspoken and courageous to have put the original legislation on his web site.

Reverend the Hon. Fred Nile: He broke his word.

Ms LEE RHIANNON: No, he did not break his word. He actually lived up to his conscience. But our Premier has not had the courage to make the argument in favour of freedom. The people of New South Wales deserve better, and those who put their trust in a Labor Government certainly deserve better. Premier Iemma has been shown up today by a number of Federal Coalition members who have spoken out against the sedition aspects of the law. I note the comments of Ms. Penny Sharpe, who believes that the New South Wales bill is better than the Federal bill because it provides judicial protection. However, she has misled the House in saying that. When I thought about her comments—and I was expecting more along the lines of those of Mr Paul Lynch today—I thought that she had perhaps been misled by her Labor colleagues who had told her that the New South Wales bill is better than the Federal bill.

I was left wondering about that. Let us remember that the bill we are debating has no judicial protection. It sets up a regime in which people can be detained without trial. That is the great wrong that is being perpetrated tonight as this bill is pushed through. I congratulate Mr Paul Lynch and those other Labor members who have criticised the bill, but I dispute the argument that Ms Penny Sharpe brought to the House tonight.

I had heard the argument that the New South Wales bill is an improvement on the Federal bill when it comes to the use of Supreme Court judges over the provisions of the Federal law. There is a slight improvement: the Federal bill will rely on retired judges and Administrative Appeal Tribunal members. Clearly the Supreme Court judge is a slight improvement, but it is only marginally better because the rules of evidence that apply in criminal trials will not operate when this State-based legislation is enacted. I repeat: The bill provides for detention without trial, and that is what needs to be opposed. It is tragic that more Government members are not speaking out about it, even if they are not willing to cross the floor. I encourage them to add their voices to the debate tonight.

We must be mindful of how Australia's Muslim communities, many people from non-English speaking backgrounds and people from Middle Eastern countries, will suffer when the bills are passed. There are many accounts of racist incidents increasing at an alarming rate. Tragically, many Australians now simply equate being a Muslim with being a terrorist. As community leaders, we have a responsibility to tackle this bigotry head on. It is essential that Muslim Australians and other Australians who are victimised do not become alienated from the mainstream, and it is incumbent upon us to promote understanding and tolerance. This is in no way inconsistent with preventing terrorism or prosecuting perpetrators. It is based on the idea that to judge someone based solely upon race or religion is inherently immoral. We must judge people on their actions, not their religion.

In an address to graduating University of Sydney law students Justice Greg Woods, QC, said that Federal and State parliamentarians who are voting on this legislation should be aware that it is offensive to important constitutional traditions. He said:

It may be justified, but the enactment of such laws should be approached with great caution, lest for the purpose of preventing one evil, a greater evil be perpetrated ...

I remember from a Sydney childhood in the 1950s that playground disputes would often involve one child indignantly declaring, "Yes I can, it's a free country, isn't it?"

Even though children may not have the slightest knowledge of Magna Carta or the statutes of habeas corpus, this notion of a free country is deeply ingrained in Australian life and attitudes.

Justice Woods cited remarks by Sir Winston Churchill, Britain's wartime Prime Minister, who said:

The power of the executive to cast a man into prison without formulating any charge known to the law, and particularly to deny him the judgment of his peers [that is, trial by jury], is in the highest degree odious and is the foundation of all totalitarian government whether Nazi or communist.

Justice Woods said:

Churchill's disapproval of such laws, it seems to me, is highly significant.

He had a deep understanding of the tradition of freedom and was instinctively uncomfortable with emergency legislation.

Even if compellingly necessary, he wished such laws to be repealed as soon as compelling necessity abated. Prudent legislators will, I suggest, provide a definite life—a short life—for any laws which detract from the civil freedoms we possess in the Anglo-Australian tradition of law and government.

I move:

That this debate be adjourned until the first sitting day of 2006.

The House divided.

Ayes, 6

Mr Breen
Mr Cohen
Ms Hale
Dr Wong
Tellers,
Dr Chesterfield-Evans
Ms Rhiannon

Noes, 24

Ms Burnswoods	Ms Griffin	Mr Roozendaal
Mr Catanzariti	Mr Kelly	Ms Sharpe
Mr Clarke	Mr Lynn	Mr Tsang
Mr Colless	Reverend Dr Moyes	Mr West
Mr Costa	Reverend Nile	
Mr Donnelly	Mr Oldfield	
Ms Fazio	Mrs Pavey	<i>Tellers,</i>
Mrs Forsythe	Mr Pearce	Mr Harwin
Mr Gay	Ms Robertson	Mr Primrose

Question resolved in the negative.

Motion for the adjournment of debate negated.

Ms LEE RHIANNON [10.17 p.m.]: The report of the Federal inquiry into the anti-terrorist laws draws attention to the impact of the legislation on "the presumption of innocence, freedom from unlawful and arbitrary detention, and the right to a fair trial". This is relevant to the debate because the State legislation will deny these rights. These concerns were noted but the inquiry ignored a number of key legal principles. It ignored detention without any judicial authorisation. Police will have the power to detain people they are suspicious of and nothing more. It also ignored the fact that people who witness terrorist attacks can be detained. It would be very traumatic to be in the wrong place at the wrong time and then be picked up. Detainees have no clear set of rights.

I turn now to the extraordinary section in the Federal bill that prevents solicitors from telling people in their office anything that they were told in a briefing with detainees whom they are representing. A solicitor in this position cannot even brief a barrister to assist in the case. That is not only ridiculous, it is ultimately very dangerous because the legislation forbids the unauthorised disclosure of security information. The inquiry also heard evidence that teenagers apprehended under new anti-terrorism control orders will be locked up with adult terrorist suspects. Evidence to the inquiry from the Australian Security Intelligence Organisation [ASIO] and the Federal police also revealed that teenagers detained under the orders could be released to ASIO for questioning without parental knowledge.

Anyone over the age of 16 can be locked up on suspicion of terrorist activity and detained without charge for up to two weeks. I know that we will hear from our State Government colleagues who will tell us there have been improvements to the State legislation, but we should remember this is a sick piece of legislation. The State legislation complements the Federal legislation, which will rob children of their childhood and lock them up with adults. One wonders how they would ever recover from such a terrible situation.

One of the biggest worries about this legislation is whom it will be used against. Politicians who seek to justify repressive legislation claim that they are responding to an unprecedented threat to public order. All politicians who cite such a threat draft measures in response, which can just as easily be used against democratic protest. I wanted to give some examples of how laws similar to what we are about to pass have been abused and misused against people who are just trying to exercise their fundamental rights.

In October this year six students and graduates at Lancaster University were convicted of aggravated trespass. Their crime was to have entered a lecture theatre and handed out leaflets to the audience. Staff members at that university were meeting people from BAE Systems, Rolls-Royce, Shell, the Carlyle Group, GlaxoSmithKline, DuPont, Unilever and Diageo to learn how to commercialise university research. The students were hoping to persuade the researchers not to sell their work. They were in the theatre for only three minutes. As the judge conceded, they tried neither to intimidate anyone nor to stop the conference from proceeding.

They were prosecuted under the 1994 Criminal Justice Act, which was passed when Mr Michael Howard was the British Conservative Home Secretary. But the university was able to use it only because Labour had amended the Act in 2003 to ensure it could be applied anywhere rather than just in the open air. The law we are about to pass will be abused and ordinary people will suffer. Another example is the Protection From Harassment Act 1997, which is also a law in Britain. It was argued at the time that it would give protection to women from stalkers, but the first people to be arrested were three peaceful protesters. Since then it has been

used by arms manufacturer EDO MBM Technologies Ltd to keep demonstrators away from its factory gates, and by Kent police to arrest a woman who sent an executive at a drugs company two polite emails begging him not to test his products on animals.

Clearly, we have a really big problem in this legislation. I predict that these laws will be abused and misused, as has been so much of the law and order legislation that exists in this State. I turn now to the details of the New South Wales legislation. The full extent of New South Wales Labor's capitulation becomes clear when we see the law in detail. Preventative detention means the incarceration of those who committed no crime. It overturns a fundamental legal principle of being innocent until proven guilty. It places enormous power and discretion in the hands of Australia's intelligence and security agencies, with limited accountability.

I again urge Legislative Council member Penny Sharpe to look closely at the bill. I am sure she will realise she has made a mistake. As I said earlier, maybe she was conned by some of her colleagues because I do not believe she would have said there is greater protection in this bill if she had looked at it closely. The checks and balances are not there. As we have seen, terrible mistakes are made all too often. I have just given graphic examples of what happened in Britain under similar law and order legislation. We were told that Iraq had weapons of mass destruction. We were told that asylum seekers threw their children overboard. The immigration department keeps detaining or deporting Australian citizens. Clearly, it would be a terrible mistake to give our security agencies the kind of unfettered and unaccountable power that this bill offers.

On a more general level, it is remarkable and illogical that we are debating this bill before the Commonwealth legislation has been passed in the Senate. The purpose of this bill is to complement Commonwealth legislation, but that legislation does not yet exist in its final form and we have no way of knowing what its final content will be. There is no sound reason why the New South Wales Government could not have waited until the Commonwealth legislation was finalised. That demonstrates just how keen New South Wales Labor is to be complicit in the Liberal agenda.

It should be remembered that there is a connection between the terror laws and the industrial relations legislation—the other obsession of the Howard Government. We must highlight that connection which further shows Labor's appalling stance on terror laws. The attack on workers' economic security and the threat to our external national security are linked. A divided society is a breeding ground of extremism. The Prime Minister's industrial relations legislation will make our societies less cohesive. They will bring division and hardship—the very problems we should address to reduce the threat of terrorism.

The terror legislation and the industrial relations legislation will remake Australia in a way we could not imagine but clearly in a way that the Prime Minister dreams about. It is tragic that the New South Wales Labor Government has been so co-operative with the Prime Minister's anti-terrorism laws. This legislation does nothing to address the causes of terrorism. It is a smokescreen to hide the fact that the Howard Government is doing nothing to address the causes of terrorism. One of the major causes of terrorism is injustice, in particular, the injustice that plays out in the Middle East—injustice that Australia, the United States of America and Britain are perpetrating.

The bill is also a tragedy for future generations. I believe that each generation should work to safeguard the achievements of our forebears. Our legal rights should be treasured and improved on, not sacrificed, which is what this legislation will do. In August this year my second grandchild, Kira O'Brien, was born. I was incredibly fortunate to have been present at the birth near her parents Kilty and Peter. That birth epitomised, as I believe all births epitomise, the wonder and beauty of life. When I was preparing for this debate my thoughts were with Kira and my grandson Jack and with his little kindy friends who greet him with such delight.

Young families like Peter, Kilty, Jack and Kira should be able to look forward to the future with confidence, but this bill and its Federal counterpart have dashed their hopes. Removing our rights in the name of fighting terrorism is another of John Howard's lies. I am indebted to the Public Interest Advocacy Centre [PIAC], which undertook an excellent and thorough analysis of the bill. The PIAC identified approximately 30 points of weakness. I will be moving amendments in the Committee stage to ingest some of these concerns. Although the Greens believe that this bill should be defeated—it is unnecessary, undemocratic and dangerous—we will take the responsible path of attempting to improve it, where possible. I move:

That the question be amended by omitting all words after "That" and inserting instead:

this House declines to give a second reading to this bill because:

- (a) there has been inadequate time to give thorough consideration to all of the implications of the bill for Australian society,

- (b) it is a mistake to attempt to pass legislation to complement Commonwealth legislation before the Commonwealth legislation has finally been passed by the Parliament of Australia,
- (c) the bill would have the effect of restricting fundamental individual freedoms without sound justification, and
- (d) the bill would not be effective in meeting its stated aim of preventing terrorism.

The DEPUTY-PRESIDENT (The Hon. Jennifer Gardiner) Order! That question will be put at the conclusion of the second reading debate.

Ms SYLVIA HALE [10:28 p.m.]: This bill, with its attack on fundamental legal rights that have long been enshrined in habeas corpus, its engendering of alarmism and fear-mongering, its pandering to those elements of Hansonism that still exist, is an appalling example of how rights that Australians have long taken for granted are to be undermined and whittled away, all in the name of advancing national security. In being asked to support this legislation, members of this House have been asked to agree to something that goes against the grain of Australia's past history, against the urgings of legal experts and human rights advocates, and against the views of all those who still respect individual freedoms in Australia.

If we support this bill we will be following the paths of some of the worst abusers of individual rights in humankind's history. And all at the behest of someone who has proved himself, as one of his colleagues put it, to be a "lying rodent"—the man who asserted that children had been thrown overboard, who gave us the *Tampa* episode, who told us there would never be a GST, and who took us into an unjust invasion of another sovereign state on what were clearly lies, lies and more lies. We should not be lulled into a false sense of security by those who argue that the Government does not plan to misuse these laws. As we see today, an atmosphere of fear and mistrust can so easily be generated. Yet Australia has a long history of pursuing and supporting the rights of the individual. From the 1880s and in the decades following, a socioeconomic system emerged in Australia that was admired by the rest of the world.

Responsible and representative government was established, women were given the vote, the secular education Acts were passed, and a range of legislation protecting workers' rights and providing for a basic wage and enforceable working conditions were set in place. As John Howard and Philip Ruddock ramp up the rhetoric and fear-mongering, as they introduce legislation that criminalises anyone who advances policies that they might consider threaten Australia, it is important to remember that there have been other periods in our history when national leaders have similarly manipulated fear to serve narrowly partisan ends. This bill will allow the Government to lock up Australian citizens alleged to be involved in terrorist activities. They can be arrested and detained for up to 14 days without trial. The question we must ask is: What sort of country will Australia be in the future if we pass these laws?

To answer this, we should look at what has happened elsewhere when these sorts of laws have been introduced. I defy any member of this House to name a country where the government has given itself the power to incarcerate its citizens without trial and that power has not been abused. I ask every member to name a country where the government's power to lock up its citizens based only on suspicion has led to a safer, more tolerant, cohesive and unified society.

The Hon. Charlie Lynn: Iraq, Korea, Cuba and North Vietnam.

Ms SYLVIA HALE: That is my point. I asked members to name a country where these laws have been introduced and have not been abused. Did giving the Government the power to lock up its citizens without trial make Pinochet's Chile a better country, or Soeharto's Indonesia, or apartheid South Africa? Are these the sorts of societies we want to emulate? Supporters of this bill say that we should not worry because only a small number of terror suspects will be incarcerated. I ask those people: How many of our citizens is it acceptable to lock up without trial? Will it be 10, 50, 100 or 1,000? How many is too many? One thing I find most disturbing about this legislation and other legislation emerging from the Commonwealth Parliament in recent weeks is that it is so similar to legislation we have seen elsewhere.

In this context, it is worth exploring the link between the Federal Government's new industrial relations laws and its terrorism laws. The passing of these two pieces of legislation draws to mind the way the apartheid Government of South Africa used a combination of amendments to the South African Industrial Conciliation Act, the introduction of the Terrorism Act in 1965 and amendments to the Criminal Procedures Act to impose the oppressive police state that inflicted ongoing human rights abuses on thousands of its citizens. The introduction in South Africa of the Riotous Assemblies Act in 1956 and amendments to the Industrial Conciliation Act in 1959 and 1966 gave the South African Government the power to outlaw certain forms of industrial action and to fine or gaol trade unionists involved in such unlawful actions.

Amendments to the general and criminal laws in 1962, 1964, 1965 and 1966 allowed for the gaoling for 12 months of anyone refusing to give evidence in a terrorism trial, the detention without trial of alleged terrorists for 14 days and the placing of alleged terrorists under house arrest. The introduction of the Unlawful Organisations Act in 1960 empowered the Government to ban a certain organisation. Does any of this sound familiar to members of this House? It should because all the steps I have outlined which were introduced by the apartheid Government of South Africa over a period of seven years have been introduced by the Howard Government over a period of two weeks. Why is the Iemma Labor Government not shouting about this from the rafters? Why is the Beazley Opposition so craven in its support for Howard?

In raising legitimate concerns about these laws, I and other members of the Greens are accused of being soft on terrorism. I am not soft on terrorism. I do not condone the taking of innocent lives in the name of political or religious causes. I believe that the citizens of this country should be able to walk the streets without fear of being murdered by political or religious zealots. I believe that those who plan or commit acts of terrorism should be dealt with but under the existing criminal laws of this country. But unlike members supporting this legislation, I am also not soft on state-sanctioned terrorism against its own citizens. The citizens of this country should be able to walk the streets without fear of being disappeared by their Government, without being arrested and detained without trial, without the right to protest their detention and without the opportunity to have their rights upheld by the courts of this country. Indeed, any moves that encroach on our civil liberties could give our foes exactly the kind of encouragement these laws are meant to forestall.

But there is another reason we should be exercising great caution. Despite being one of the most successful examples of a peaceful multicultural society in today's world, we live in a period when various ethnic and cultural communities are being demonised, being tarred by the hideous actions of tiny minorities. The confusion, mistrust and fear that is being deliberately whipped up by the Federal Government is undermining years of peaceful and prosperous growth, co-operation and co-existence with the Arab and Muslim worlds. By invading Iraq on the flimsiest of excuses, we have created the probability of destroying decades of long-established good relations with a region that will be of increasing relevance and importance to Australia, both demographically and economically.

In Australia we have only to look at the way in which those of the Muslim persuasion or Arabic background are facing rising levels of violence and harassment to see the way in which an important underlying principle of our society is being undermined. Yet people of an Arabic or Muslim background have long been part of our culture and have made significant contributions to Australia's economy and society. To the hundreds of thousands of peace-loving Arab and Muslim Australians, the Greens would like to say: Thank you for choosing to make Australia your home. You are welcome. We would like to add that this country will continue to defend your rights and liberties. But, sadly, with this bill we cannot give you that assurance. Therefore, it is incumbent upon those Australians who believe in defending a peaceful multicultural society to speak out in support of Australians of Arabic or Muslim backgrounds.

It is incumbent on us to show leadership on this most critical issue, one that underpins the sort of society that has already emerged in Australia, one that will gradually emerge around the world. If we fail to do this we will bear a heavy burden, one for which future generations may not forgive us. Most of us in this Parliament, however diverse our views may be, subscribe to a set of beliefs or principles. We also believe that the most effective way to see those principles converted into meaningful action is to join a political party.

In doing so we all know that we will have to compromise on occasion—accept something that is less than perfect, show loyalty to our colleagues or abide by a caucus decision. But there must come a time when we say that the decision of the party is so offensive to our principles or beliefs that we cannot accept it. We cannot rely on the mantras of party discipline or collegiate loyalty to exonerate us from acting in accord with our consciences. And on those occasions people of principle cross the floor. Indeed, today in Federal Parliament Labor, Australian Democrat and Greens members called on Government senators to cross the floor and vote against the sedition provisions in the Federal legislation. It is hardly an unheard of action. As a recent report by the Federal Parliamentary Library indicates:

Between 1950 and 2004 245 MPs, (87 senators, 154 members and four who served in both houses) crossed the floor. This represents 24% of all MPs who sat in Parliament during this period.

In the New South Wales Parliament in the past 20 years there have been several important examples of members sticking to their principles and voting as their consciences dictated. In 1992 Liberal MLC Dr Brian Pezzutti crossed the floor in a vote on swimming pool safety regulations. He noted in his swansong speech 10 years later:

I crossed the floor on the swimming pool legislation without criticism from my party. The vote took place close to preselection, but my crossing the floor did not have an impact on my preselection because it was something I believed in passionately.

In late 1993 Liberal MLC Ted Pickering crossed the floor to vote with the Labor Opposition and the Australian Democrats to bring on debate on Clover Moore's Anti-Discrimination (Homosexual Vilification) Amendment Bill. More recently, on 21 May 2003 National Party MP Russell Turner spoke in Parliament about his adult son's homosexuality in a bid to explain his decision to defy his party and support changes to age of consent laws. I congratulate Mr Turner on his principled stance. As a newspaper noted at the time:

... the NSW lower house became an arena for a rare kind of political debate—one unfettered by pre-ordained party positions, with speakers guided principally by their consciences.

Liberal MLA and former Speaker Kevin Rozzoli, who crossed the floor over the heroin injecting room trials, put his finger on this issue in an article he wrote on 15 February 2002. He said:

While "crossing the floor" may not affect the result where a government has a comfortable majority, the problem in Australia is that "crossing the floor" or opposing one's own party is portrayed by the media as an act of treachery on the part of the individual or a sign of weakness within the party or its leadership. In reality, it is a sign of healthy democracy, the encouragement of which would lead to stronger government and a better democratic process.

I acknowledge that not everyone escapes unscathed when they cross the floor. In 1987 George Petersen, the Labor member for Kembla, crossed the floor to vote against the Unsworth Government's workers compensation legislation. He was expelled from the Australian Labor Party [ALP] and saw out the rest of his term as an Independent. Notably in the context of the current legislation, which will permit people to be imprisoned without charge, George used Parliament to expose the frame-up of Tim Anderson, Ross Dunn and Paul Alister, who were sentenced to 20 years prison in 1978 on trumped-up attempted murder charges. This played a major part in their release in 1985.

Today we have only to look to the United Kingdom, where recently more than 60 members of the Labour Party crossed the floor to vote against Tony Blair's terrorism bill—a bill that contained draconian provisions similar to those in this legislation and a bill that violated British citizens' human rights and habeas corpus protections. To me, standing up to be counted, remaining true to core values and refusing to be dictated to by those whose poll-driven fears have set the agenda are paramount. The time for mouthing platitudes and uttering fine sentiments but doing nothing when it really counts has passed. Now is the time to stand up and be counted.

I address my remarks particularly to members of this House who are aligned with the Left of the Labor Party: Jan Burnswoods, Penny Sharpe, Ian West, Peter Primrose, Ian Macdonald and Meredith Burgmann. I ask them how, in good conscience, they can vote for this bill. It is, as Paul Lynch said in the lower House today, a bill that is bad; a bill whereby this State will do the dirty work that the Australian Constitution prevents the Federal Government from doing. It is not enough to deplore this legislation in private; it is time to give some substance to protestations and misgivings. After all, if all six members crossed the floor there is a snowflake's chance in hell that they would be expelled from the party. Or will those members emulate the craven behaviour of their Federal factional colleagues? I note that the media release issued this morning by Project SafeCom, a Western Australian human rights action and lobby group, poses a few salient questions. It states:

WA Human Rights action and lobby group Project SafeCom Inc. called this morning for an explanation by ALP backbenchers and dissenters with the Anti-terrorism Bill No 2 (2005) which passed through the House last night without a division being called.

Apart from the Member for Calare (IND), Mr Peter Andren, who called on the Speaker to note his disagreement with the Bill, the only other MP to do the same was Tasmanian ALP MP Mr Harry Quick who asked to go on the record to have his disagreement noted.

"Reports were received by us", [Project SafeCom] spokesman Jack H Smit said, "that Dr Carmen Lawrence had absented herself from Parliament. What I would like to know," Mr Smit continued, "is what happened to other MPs who clearly are in dissent in ALP ranks over this and other Bills which are always supported by the Parliamentary Labor Party?"

"Where are MPs such as Mr Anthony Albanese, Ms Tanya Plibersek, Mr Lindsey Tanner and the others who would have disagreed with the Bill if they had been independent MPs?"

Why have they given all Australians the impression that Harry Quick is the only one who dissents with the Bill, and even more importantly, why are they consciously contributing with the current state of affairs where the House Speaker gets away with not having to call for a Division in the House, thus avoiding a record in Hansard and in the public eye a listing of the names of those who voted against the Bill?"

What we are debating tonight is no ordinary matter. It is a bill that strikes at the very heart of the right to dissent, the right not to be imprisoned arbitrarily and the right to due process of law. This bill, if enacted, will effectively suspend law. It imposes a regime whereby the ordinary application of law is excluded from certain situations. This bill will allow people to be locked up without trial. It will ignore the principle of habeas corpus and permit a judge to make an order for preventive detention in a person's absence.

What is really deplorable is the role of State and Territory governments. Without their assistance these provisions could not be enacted because they are contrary to chapter 3 of the Australian Constitution. The States and Territories have agreed to do the bidding of the Howard Government. None was less backward in coming forward to take orders than our own Premier, Morris Iemma. It is true that the bill has some slightly ameliorative measures, such as allowing a person to see a lawyer and contact family members, but the core of the bill is deplorable. Many people and groups oppose these laws—or, should I say, this suspension of law? The Australian Law Society summed it up well:

Persons not charged with or found guilty of a criminal offence should not be imprisoned by the State without trial.

It is as simple as that and, as such, the Greens resolutely oppose the bill. It imposes a regime that goes beyond what is acceptable. It does away with so much that is fundamental to our freedoms: the presumption of innocence, the requirement to be formally arrested, the requirement to appear before a court, the requirement to state the nature of the charges, the protections against self-incrimination, the requirement for a person to be imprisoned only as a result of breaking a specific law, and the requirement that the trial be open to the public.

Gaoing people not for what they have done but for what someone thinks they may do but has insufficient evidence to sustain a charge is the sort of justification or pretext that George Bush used to invade Iraq. Bush claimed that Saddam might have had weapons of mass destruction, that Saddam might have used them. Bush, Blair and our own coalition of the willing acolyte, John Howard, attempted to justify their actions by arguing that there was evidence, no matter how weak that evidence looked to everyone else. On that flimsy pretext, and despite this being contrary to international law, Bush launched a so-called pre-emptive strike, an act that has led to the killing of tens of thousands of people.

Similarly, the bill contravenes the fundamental principles that underlie Australian law, not to mention the United Nations covenants to which we are a signatory. It is pre-emptive imprisonment of persons who may—or may not—have committed a crime, where there is insufficient evidence that they have done so, but someone thinks they might do something. If this bill is passed, Australia and New South Wales can count themselves amongst some of the most oppressive regimes worldwide whose human rights records are appalling—Rwanda, British India, South Africa during the apartheid era, Northern Ireland and the former Soviet Union—because we will have something in common with all those regimes: preventative detention, which is imprisonment without charge or trial.

It is instructive to look at how preventative detention has been used, and by whom. Monarchs have in the past exercised absolute power. A sovereign could arrest subjects, throw them into a dungeon or gaol, with or without trial, and assassinate or execute those classed as enemies of the State. All power and law were invested in the person of the monarch. Untrammelled monarchical regimes illustrate the hazards of absolute power, free of any judicial supervision or restraint. In many ways, that is what this bill harks back to, because the Government, via the police, is able to detain a person in the first instance without consulting the judiciary.

The first legal statutes to specifically provide for preventative detention were the East India Company Act 1784 and the East India Company Act 1793. Those laws remained in place until India's independence in 1947. I earlier referred to the use of preventative detention under the apartheid regime in South Africa. The Nobel Laureate for Literature, J. M. Coetzee, himself a South African, when noting the current spate of anti-terrorism bills, recently commented:

I used to think that the people who created [South Africa's] laws that effectively suspended the rule of law were moral barbarians. Now I know they were just pioneers ahead of their time.

In Malaysia the Emergency Act 1948 provided for detention without trial. In August 1960 the Internal Security Act was enacted to provide for the internal security, preventative detention, the prevention of subversion, and the suppression of organised violence to persons and property in specified areas of Malaysia. Since then thousands of people of all races, religions and walks of life have been detained under the Act, which allows for detention without trial. Every Malaysian Prime Minister since the Act's passage has used that Act. It was used in the sixties against the labour movement and political opposition, and in the 1970s against trade unionists,

political activists, and active student movements. In the 1980s, under the codename "Operasi Lalland", the Act was used against opposition leaders, academics, and religious, social, and environmental activists. In the 1990s it was used on the Al-Argam movement and on the "Reformasi" movement that was calling for political reform in Malaysia.

Northern Ireland provides another salient example of the use of preventative detention. The 1973 Northern Ireland (Emergency Provisions) Act provided for indefinite detention. To be extended, the initial period of detention of an individual needed to be reviewed only by an administrative officer. The Act was allowed to lapse in 1980, when British law lord, Lord Diplock, reacted to a legally murky use of police power, which he termed "imprisonment at the arbitrary Diktat of the Executive Government." Britain has new laws that allow preventative detention for up to 14 days. The New South Wales bill has been represented as being similar to British provisions for preventative detention, but, as Ben Saul from the University of New South Wales Centre for Public Law notes:

Police in the UK can detain terrorist suspects for up to 14 days in exceptional cases, but they have no power of preventative detention in a more general "terrorist situation", and certainly no power to detain non-suspects.

What is also conveniently ignored is that Britain has a Bill of Rights. In Australia, with the honourable exception of the Australian Capital Territory, no State or Territory has such a safeguard. Indeed, in 2002 the Prime Minister rejected the need for such a bill. This proposed law—or, rather, suspension of law—has much in common with that island of exception to any law, Guantanamo Bay. There the ordinary laws of the United States and the Geneva Convention do not apply. Those incarcerated at Guantanamo Bay have no access to a trial, fair or otherwise. No rules of evidence are applied to the military commission process. The war is a war on terror, which is apparently endless. Those who enter into that vortex are extracted only with great difficulty, or through the intervention of a government. David Hicks continues to exist in this illegal twilight zone, held indefinitely without trial.

Yet another example, in our own backyard, is the treatment of asylum seekers in Australian detention centres. As we can see from the Rau and Alvarez cases, we are already wrongfully detaining our own citizens—or deporting them. We know that mistakes can be made—and they will continue to be made if this bill passes. For those whose cases cannot be determined one way or another—that is, they are deemed non-citizens of Australia but cannot be returned to their country of origin or elsewhere—there is the prospect of indefinite imprisonment. That is not because they have committed a crime—it is not a crime to seek asylum, no matter how someone manages to come to Australia. However, there is a pretence that these people are not prisoners. Here we see the emergence of Orwellian language: they are detainees, as if what they are called materially alters the reality of what they experience. They are still behind razor wire.

But language is important. The Prime Minister is expert in the use of doublespeak. We already know of his core and non-core promises. Orwellian language tries to disguise what a thing is, usually by calling it the opposite. To take but one example, WorkChoices is the name the Federal Government has given to its industrial relations legislation. Another is the phrase "preventative detention". The word "preventative" implies that a person is being prevented from doing something. The presumption is that he or she is guilty, so why bother about evidence or facts.

The word "detention" aims to mask the fact that the person is imprisoned. As with asylum seekers, they are not prisoners, merely detainees. Even though this bill will be subject to a vote by members of this Parliament and, therefore, ostensibly an expression of the people's will, this legislation effectively suspends normal conceptions of justice and the right to a fair trial. Is it wrong to lock up someone without a trial? That is the question we are debating today. Is it true that current laws are not up to the task of dealing with potential terrorist acts in this State? That is another question we must ask. It is impossible to maintain that innocent people will not be locked up or that it will not happen in New South Wales, or Australia. If this bill is passed it can and it will happen, as the case of the Daye family makes abundantly clear. It is worth looking at what happened to this family. On 28 October 2005 Tom Allard wrote in the *Age*:

... Mr Daye will take Mr O'Sullivan [ASIO Director-General] and the Commonwealth Government to the NSW District Court, seeking damages of up to \$750,000 for a bungled swoop by ASIO agents and heavily armed police on his home at Mascot.

It is a story that anyone interested in the subject should read now. Under the proposed antiterrorism laws, stories like Mr Daye's could not be told.

For Mr Daye, it is an opportunity to seek redress for an incident that he says traumatised him and his family and sullied his reputation in the community. It is also a cautionary tale about how intelligence on terrorism suspects can be wrong and how security authorities can make the most elementary mistakes.

By coincidence, the case will be heard on the day the Federal Government had slated to introduce legislation for new anti-terrorism measures, including control orders and preventive detention based only on intelligence, as well as the secrecy provisions that could prevent such stories being reported.

Mr Daye's home was raided weeks after the September 11, 2001, attacks. He was in bed with his wife, Fatma, who had arrived in Australia from Lebanon only four days earlier.

As he scrambled to get dressed, Mr Daye heard agents demand he open his bedroom door or "we're going to blow it off", according to his statement of claim. When he came out, guns were pointed at his head. He was told to join other family members in the living room, kneel and turn around.

His wife was refused permission to get dressed in the modest fashion that is the tradition for Muslim women in the presence of strangers, Mr Daye claims.

"I thought it was a joke at first. I thought it was a dream, it couldn't be real. It turned out it was real and a nightmare," he said.

As family members cowered and complained, an ASIO "technical team" began to film the premises and take photographs.

According to an account of the incident by the then Inspector-General of Intelligence and Security, Bill Blick, the senior ASIO officer then realised he had made a "serious" error.

He had the wrong address on the search-and-seizure warrant. That should have been patently obvious because ASIO and police had earlier gone to the actual address on the warrant—Mr Daye's father's grocery shop—about 100 metres down the road.

Mr Daye says the event took an hour. ASIO says it was less than 10 minutes before they realised their mistake.

It will be difficult for the court to determine. ASIO immediately destroyed the only evidence of the incident, the video and photos, when the officer in charge realised the raid was unlawful.

Two months later, federal police officers returned with a proper warrant and "spent six hours going through the whole house from front to end", Mr Daye said. His wife claims the stress of this second raid triggered a miscarriage.

Four years after the raids, Mr Daye has no idea what he was supposed to have done wrong, although he believes authorities had fingered him as a terrorist "sleeper".

Mr Daye, who was born in Australia, strictly observes Islam. He visited Pakistan a year or so before the raids, a month-long stopover on his way back from making the Haj pilgrimage to Islam's holiest sites in Mecca and Medina in Saudi Arabia.

"I went to mosques, I went to a few restaurants," he said. "I got sick there on the curries. I threw up a lot and I couldn't wait to get back home."

He denies emphatically that he attended a terrorist training camp. ASIO yesterday declined to comment, as did the federal police.

Nevertheless, ASIO returned Mr Daye's passport to him more than two years ago, an indication that its intelligence was off-beam.

It is believed ASIO has offered compensation to Mr Daye, although the offer clearly did not satisfy him or his lawyer, Stephen Hopper.

Mr Hopper said the incident could have been a lot worse had it occurred under the proposed anti-terror laws. "He could have been taken away and detained for a couple of weeks and no one could have told his wife and family what was going on," he said. "An innocent man caught up in innuendo, suspicion and hearsay."

Moreover, journalists would have been unable to report it.

How long will it be before a completely innocent person is imprisoned under this law? It will certainly happen once these provisions are enacted. This legislation is wrong, anti-legal, and unnecessary. It breaks with hundreds of years of legal tradition and effectively establishes a twilight zone where people are exempted from the rule of law. Even the citizens of the United States are not subjected to laws such as this. They at least have the protection of a Bill of Rights. This law is not essential to the apprehending of any persons who may be conspiring to commit a terrorist act. The police and ASIO already have the necessary powers of surveillance, search, and arrest, provided they can gain the necessary warrants to do so. Recently we have seen the police use the provisions of the Crimes Act to arrest 16 people in New South Wales and Victoria.

The next question to ask is: Does preventative detention even work? Suicide bombers are usually undetected prior to their acts of violence. If they are detected, or if there is any evidence that an attack is planned, current laws allow for them to be arrested. Jack Roche was arrested as a result of evidence to show that he had an intention to bomb the Israeli Embassy. Unfortunately, there is little that can be done to stop a determined person, someone who is willing to die, someone who is prepared to blow up himself or herself or a

vehicle in a crowded area. Take the case of the London tube bombers. They were caught on one of the hundreds of closed circuit television cameras that are installed across London. The cameras subsequently assisted in their identification and the arrest of some of their associates. But neither the cameras, nor laws of this type, could do anything to prevent those bombings. Australia is starting to remind me, and many others, of the time prior to the rise of Hitler and Mussolini. Here I will quote from a paper "The State of Emergency" by the eminent Italian philosopher Giorgio Agamben:

Let us look at the case of Nazi Germany. Just after Hitler came to power (or, to be more precise, just after he was offered power) he proclaimed on 28 February 1933 the Decree for the Protection of the People and the State. This decree suspends all the articles of the Weimar Constitution maintaining individual liberties. Since this decree was never revoked, we can say that the entire Third Reich from a legal point of view was a twelve-year long state of emergency. And in this sense we can define modern totalitarianism as the institution, by way of a state of emergency, of a legal civil war that permits the elimination not only of political adversaries, but whole categories of the population that resist being integrated into the political system.

Thus the intentional creation of a permanent state of emergency has become one of the most important measures of contemporary States, democracies included. And furthermore, it is not necessary that a state of emergency be declared in the technical sense of the term.

We hear a lot today about a war on terrorism. This is the war being used to justify the erosion of civil liberties, to promote a permanent state of emergency. Howard, and now lemma, says that extraordinary times call for extraordinary measures. For them, it is no longer "reds under the beds"; it is "terrorists under the biqua"! The Greens reject that argument: it is a justification for increasing State power over the lives of individuals. We do not want to trade off civil liberties. The State Government is succumbing to the politics of fear. The Greens reject those politics. We will not compromise our hard-won freedoms by endorsing an arbitrary power that operates outside the traditions of Australian law. Presumably the Attorney was too ashamed to introduce this bill in the lower House. It was left to Milton Orkopoulos to do that. Ironically, he is titled Minister Assisting the Premier on Citizenship. He used many of the Howard Government's stock arguments to justify this bill. He said that the Government would "implement a preventative detention scheme designed to detain persons in order to prevent a terrorist attack or preserve evidence following a terrorist attack".

I ask the Government to give us some evidence of where preventative detention has actually done this. Mr Orkopoulos also said that "there is no doubt that these powers are extraordinary, but they are designed to be used only in extraordinary circumstances"—an argument that we have heard before to justify the suspension of the rule of law. Are there extraordinary circumstances? Is there a state of emergency? Why then is Australia still on medium-level alert? Why has the Government not upgraded the threat level, if the people recently arrested, as Minister Scully claimed, were in the last stages of planning for a serious terrorist attack? What is really going on here is that a supposed state of emergency or state of "extraordinariness" has become the justification for suspending the law and increasing police and state power. People who are detained under such powers are, as Professor Agamben says, "neither prisoners nor accused, they are simply detainees, they are subjected to pure de facto sovereignty; to a detention that is indefinite not only in its temporal sense, but also in its nature, since it is outside of the law". It is worth considering Franz Kafka's *The Trial* or George Orwell's *1984* or his *Animal Farm*. They show how democracies begin the slide into repressive regimes.

And it is always more innocuously than we would expect. The Fascist and Nazi regimes operated without cancelling their respective constitutions. Legally, formal democracy still prevailed. But, bit by bit, "extra" laws "excepting" from the law certain people or groups of people or operations crept in. There were always references to an evil "other", whether it be the Jew or the gypsy or, in contemporary times, the Muslim terrorist. This shadowy figure stalks and haunts and engenders fear. The fear is then used to entrench State power. Someone gave Mussolini and Hitler their power. In Mussolini's case it was King Victor Emmanuel III. Mussolini was expert at blending the legal and illegal. Hitler was offered the chancellorship of Germany. An element of legitimacy always accompanies the rise of a fascist leader.

Australians elected John Howard. While the Federal Government clearly is not fascist, it has embarked upon a path of instituting increasingly authoritarian measures, thanks to its control of both Houses of Federal Parliament. The bill is just one instance of this growing authoritarianism. Others include: laws banning workers from choosing to be represented collectively; laws penalising people if they quit their job; laws forcing people to accept jobs at the lowest level of wages and conditions; and laws allowing for asylum seekers to be detained indefinitely. The suspension of law originates in the legal domain, that is, right here in this legislature. The people of New South Wales are acquiescing because of fear. No-one wants to be blown up. The Greens understand that. But the fear of this happening is disproportionate to its likelihood. And, of course, in succumbing to fear, we erode our own laws and civil liberties. I move:

That the question be amended by omitting the word "now" and inserting at the end "this day six months".

Mr IAN COHEN [11.16 p.m.]: I support my colleagues Ms Lee Rhiannon and Ms Sylvia Hale in speaking against the Terrorism (Police Powers) Amendment (Preventative Detention) Bill. As others have indicated, this is a draconian bill. There is certainly strong feeling by a minority in this House, and it is that minority that is of interest to me.

The Hon. Charlie Lynn: And outside the House.

Mr IAN COHEN: I note the interjection suggesting that I represent a minority. There is a very important tradition of representing minorities in society both inside this House and outside it. When the honourable member makes such comments we should consider the results of the recent by-election and the Opposition's "Pittwaterloo". The Coalition should acknowledge the fact that it failed miserably in that by-election. So who is in the minority? Who is here with some sort of sacrosanct majority support on this issue?

Reverend the Hon. Fred Nile: The Christian Democratic Party beat the Greens in that by-election. We got more votes than the Greens.

Mr IAN COHEN: Here we have the bleating of the extreme right, a Christian Democrat Party former mayor. That is a true minority. This House promulgates laws about the rule of the State that are not supported by a majority. There is considerable concern in the general community about the direction that this House is taking. Significant elements in the community, thinking people and organisations including legal organisations, are extremely opposed to and very concerned about the direction of the Federal Government and this Government. Other members have expressed extreme concern about the bill. People feel powerless to act because those whom they have entrusted with immense power are now abusing that power.

I have been in a minority in many aspects of my life. I was born a member of a minority in this society. I have been in the alternative movement and have been ridiculed for it often. I was a student activist, alternative hippie, greeny and protester—always in the minority. The House is perhaps fortunate that I did not bring with me my thick Special Branch file, which I gained some years ago. I could have read out some of the absolute rubbish that was put on paper in that file in the so-called surveillance of my activities over a period of years. My innocent visits to friends who happened to live across the road from where a police officer lived were diligently reported—when my car arrived and when I left, and so on.

I have been a part of so many protests at which the Special Branch was present, and there were no special laws. But that is the type of abuse that can be experienced by an ordinary person in Australian society. We have heard many other examples of abuse in countries that have repressive legislation. I remember being involved in a squatter's demonstration in Glebe Point Road when police officers with sledgehammers vigorously and viciously smashed in the front door of a house to remove squatters. But they had the wrong address. They smashed in the door of someone's very nice middle-class home next door to the squat. They had made a mistake. That is what can happen in our society and we must guard against it. Ms Sylvia Hale referred in quite some detail to harassment experienced recently by Muslim Australians, prior to the introduction of the legislation.

The passage of the bill should be deferred until the Federal legislation—the Anti-Terrorism Bill No. 2—has been passed. As stated in the explanatory note, the New South Wales bill is being enacted to "complement Commonwealth legislation for preventative detention for up to 48 hours", as a result of a decision of the Council of Australian Governments. I urge the Government to follow in the footsteps of its Victorian counterpart. Victorian Premier Steve Bracks second read his bill and then adjourned further debate on it until February 2006 to allow time for community examination of its provisions. Why is it that the Victorian Labor Government is able to delay its version of terrorism legislation until the Commonwealth legislation is available, but the New South Wales Labor Government is insistent on ramming through its bill in this rushed manner?

It is a shame that in the present political climate we do not have legitimate opposition. Australian Labor Party [ALP] Premiers are kowtowing to a Liberal Prime Minister. It is a regrettable lack of real democracy. We keep hearing that desperate times call for desperate measures, but these measures are not necessary. ASIO has the power already to secretly detain for a week anyone it believes has information it needs about terrorism. Recently we heard of police action against suspected terrorists. We heard of people being rounded up and the effectiveness of police without this new law. New South Wales police have the necessary powers to deal with terrorist suspects.

Reverend the Hon. Fred Nile: ASIO and the police have asked for the laws.

Mr IAN COHEN: I acknowledge the obvious interjection of Reverend the Hon. Fred Nile, who has such a close affinity with the Police Force that he wants to give away absolute power. He is on the record in this House time and time again stating exactly that. That is not very Christian at all. The laws reflect the attitude of Reverend the Hon. Fred Nile and many others. We are moving towards a narrow-minded and bigoted society. Legislation dealing with police powers in the context of terrorism was enacted in 2002. The very nature of the legislation, which allows a preventative detention order to be made against a person without charging the person with a criminal offence, is reprehensible. The New South Wales Bar Association—that radical Communist group of lawyers, so Reverend the Hon. Fred Nile would say—has noted:

The provision is Draconian and unique except in times of declared war. It represents a significant incursion on civil liberties in the community and has the potential for itself to be a source of discontent.

Reverend the Hon. Fred Nile: War on terrorism.

Mr IAN COHEN: Now we have Reverend the Hon. Fred Nile with George W. Bush and a few others saying it is a war on terrorism. That is the very statement that got us into this mess and caused this problem in the first place. Insecurity and hate and the creation of an enemy resulted in the President of the United States of America making a fundamental mistake to go into Iraq. He has ignored completely the backlash in Iraq.

Reverend the Hon. Fred Nile: He liberated the people.

Mr IAN COHEN: The honourable member talks about liberating the people, but, tragically and unfortunately, atrocities are happening in Iraq today that are as bad as the atrocities that were committed under Saddam Hussein.

Reverend the Hon. Fred Nile: Nowhere near as bad.

Mr IAN COHEN: The very tragedy of this is that atrocities are occurring today that are as bad as the atrocities that occurred under Saddam Hussein. The honourable member should read the newspapers. Mark my words, in the long term the direction society is taking will not resolve terrorism. I reiterate: It has the potential for itself to be a source of discontent. That is precisely the society that those who push these laws are helping to create. Debate on this bill cannot be separate from debate on the Commonwealth legislation. The two go hand in hand. In the Senate the Greens will move to make the Commonwealth terrorism bill conform to international human rights law when the Senate considers the legislation tomorrow. Debate in this House is taking place before the Federal legislation is debated in the Senate, and that strikes me, as the Hon. Dr Peter Wong said, as a bit ridiculous. It is an interesting concept that supporting State legislation will be passed before the parent legislation is dealt with at the Federal level. The Greens amendment, based on the United Kingdom Human Rights Act, would require courts to interpret the Commonwealth Anti-Terrorism Bill in line with the International Covenant on Civil and Political Rights. Greens Senator Bob Brown said:

The Government says the terror bill does not breach international law. So it should not have a problem with this amendment.

This is a test for the Senate. Will Senators ensure our international obligations are upheld?

Numerous submissions to the Senate inquiry, including the Human Rights and Equal Opportunity Commission, criticised the bill because it breaches our international obligations. This change will allow courts to declare the breach and make the law conform.

If we had an Australian Bill of Rights this would not be necessary.

The Federal Human Rights and Equal Opportunity Commission President, John Von Doussa, said that the proposed counterterrorism laws are the first step towards a police state. He said:

The defining characteristic of a police state is that the police exercise power on behalf of the executive and the conduct of police cannot be effectively challenged and regrettably that is exactly what these laws are proposing.

He also said that the Government is seeking to enact extraordinary powers to deprive people of their dignity, while asking to be trusted not to abuse that authority. He went on to say:

The difficulty of that approach is as experience has shown that not only in places like South Africa but here in Australia is that reality turns out otherwise. Revelation of the Palmer report demonstrates how abuses of power can occur where there is no acceptable and realistic way that people can question what is happening to them."

Sadly, I do not believe that our governments, at either the Commonwealth or State level, can be trusted to exercise appropriately so much power over our civil liberties. The deportation of United States peace activist, Scott Parkin, shows a sinister side to anti-terror provisions. They open the door to removing our democratic right to protest. Legitimate opposition to government policy will be silenced. For example, activists and environmentalists will be in fear of voicing legitimate dissent.

Although I acknowledge that the New South Wales bill has included safeguards that are not included in the Federal bill, they do not go far enough. Unlike the Commonwealth bill, the New South Wales legislation does not make it an offence for the detained person to disclose to another person that he or she is detained under a preventative detention order. This is of little comfort. Under the Federal legislation the sentence, "I am safe but cannot be contacted" will simply become code for "I am being held under secret preventative detention." On the issue of detention, I have been arrested on some 30 or 40 occasions and it can be a frightening situation for many people. I have been through that.

The Hon. Henry Tsang: Any convictions?

Mr IAN COHEN: A number of convictions, relating to misdemeanours. It does not make me eligible for ejection from the House. I have checked that out. Do not worry about it.

Reverend the Hon. Fred Nile: We will check it out for you.

Mr IAN COHEN: I am sure Reverend the Hon. Fred Nile would do so if he could. He would stand in his pompous pulpit and say, "This person is not worthy to be in this House." Yet his lies and deceit can make him feel "holier-than-thou" in this place. That is the sort of hypocrisy that makes me sick about this House. I have been in those situations and have seen first hand different police officers and how they operate. I have to say that on many, many occasions they acted in a reasonable, proper and decent manner, but there is always that element that will abuse the situation.

When the law is so powerful and gives individuals such security, we hear about the Abu Ghraib and Guantanamo Bay abuses. In Australia dissenters and indigenous people are abused to the point where people die. That is the sort of thing that occurs when authorities have so much power. This Parliament and the Federal Parliament are sending the very strong message to police that they have a right to abuse people. I think this Parliament is taking a very dangerous step.

The Ombudsman is to monitor the legislation for a period of five years and to provide a report two years and five years after the commencement of the Act. That is not adequate. If legislation impacts so drastically upon the civil liberties of the community, it must be monitored far more vigilantly than that. The potential abuse of provisions that allow for rolling over or repeat preventative detention orders for the same person are also of concern. This could occur, for example, simply if the date of the suspected terrorist act is different to that originally thought. I want to quote very briefly from the dissenting report of the Senate inquiry into the provisions of the Anti-Terrorism Bill (No. 2) 2005 by Greens senators Bob Brown and Kerry Nettle. They state in part:

The bill undermines fundamental rights and freedoms intrinsic to democracy.

There is no adequate case for the introduction of these laws. The bill breaches Australia's commitment to the International Covenant on Civil and Political Rights.

The bill creates a parallel criminal system of law without existing safeguards.

With regard to control orders and preventative detention orders the dissenting report stated:

The Greens Senators believe that detention for reasons other than the prosecution and penalty for a criminal offence cannot be justified except for extraordinary reasons. The government is yet to make the case that such a situation in Australia exists at this time.

The experience of immigration detention in Australia has highlighted the dangers of detaining people without a requirement to prove before a court that the person may have committed a crime.

Evidence from the legal community, in particular the Law Council of Australia, strongly asserted that preventative detention and control orders should not be enacted.

The Law Council made the following important points which emphasise there is no case for the new powers:

The 17 arrests made in a joint task force of federal and state police and ASIO, which have resulted in charges being laid for terrorist related offences, demonstrate the effectiveness of existing law to anticipate alleged terrorist acts;

The current ASIO powers to detain and question suspects up to 7 days have not been used to date;

Dennis Richardson (Former Head of ASIO) commented in May 2005 to the Parliamentary Committee reviewing ASIO's questioning and detention powers that the laws which were enacted have worked well;

The 7 July 2005 London bombings occurred despite the existence of preventative detention orders and control orders;

Comments by Head of Police, for example, Commissioner Moroney (NSW Police) that the lessons learned from Bali, Madrid and London that government effort should focus on ensuring that the Law enforcement agencies and intelligence authorities are properly resourced and organised to deal with terrorist activity.

That is the message the Greens see as being appropriate in this day and age. I move:

That the question be amended by omitting the words "now read a second time" and inserting instead "referred to the Standing Committee on Law and Justice for inquiry and report."

The risk of terrorism is greater today in our society because of Howard involving us in the Iraq war. Terrorism must be looked at in the sense of cause and effect, history and the attitudes that exist with leadership in our society. It does not just start at one point in history. We have to go back and recognise the real roots of terrorism and the problems that have arisen, in many cases, as a result of misuse and abuse by those in power. I, together with other Greens and a small number of people in this House, strongly oppose the bill.

The Hon. ERIC ROOZENDAAL (Minister for Ports and Waterways) [11.36 p.m.]: I have listened quite intently to a number of the contributions to the debate. I sense a genuine belief and fear about the legislation that I want to canvass. What I have found disappointing about the debate is that some speakers have chosen to turn the debate from terrorism and the need for the bill to prevent terrorist acts, the planning of terrorist acts or the disposal of evidence after a terrorist act, to a debate on the Iraq war, the policies of the Australian Federal Government on the Iraq war, or the policies of the American Government on the Iraq war.

What worries me about that particular angle—particularly in relation to what Mr Ian Cohen said—is this notion of cause and effect: if fundamental extremists choose to commit the most heinous of crimes and create maximum carnage, they must be doing it because of the Iraq war; that if we were not involved in that war we would somehow insulate ourselves from the activities of these terrorists. There was quite an instructive documentary recently on the whole history of suicide bombing, where it emerged, and how it has developed as a political and religious strategy. There seems to be a lack of knowledge about this and I am happy to inform the House about it.

What I found interesting was that the original development of suicide bombing occurred when Iranians used suicide bombers against the Iraqis during the course of the Iran-Iraq war. It was interesting to note that the first Iranian martyr was a 13-year-old boy who is said to have taken a bomb and thrown himself under an Iraqi tank and blown it up. The Iranians then issued every schoolchild in the country with a backpack, similar to the backpack many Australian schoolchildren have, bearing a picture of this martyr and glorifying his action.

When the makers of a documentary interviewed the young boy's family they refused to even acknowledge the notion of suicide bomber. They did not believe it was an act of suicide. In their minds, suicide is an act of desperation or the act of a sick mind. The family said that he was a martyr and had committed the greatest act he could commit for his honour and that of his family. I am not sure of the term, but they believed he had gone to—

Reverend the Hon. Fred Nile: Paradise.

The Hon. ERIC ROOZENDAAL: Paradise, or the place they described where there were 70 virgins. More importantly, because of his act 70 members of his family would also be allowed to enter Paradise. He did not do it because of a feeling of powerlessness or because he was being a warrior. He was committing a religious act, and from that a whole new religious movement was built around the notions of martyrdom. From that act of jihad, the movement spread to other areas of the Middle East such as Lebanon and most certainly Israel, and it has certainly spread throughout the rest of the world.

It strikes me as worrying that some members of this House are saying that the bill is all about the Iraq War and that Australia is a more significant target now because of our involvement in the Iraq War. I will not comment on the Iraq War: I have my own views about it and I do not think this is the place to express them.

However, I will say that it is not as simple as some honourable members have suggested. If honourable members examine the background and events that occurred twice in Bali, and in Spain and London, and the events that could have occurred in this country, they will not say that they were about squaring up with John Howard, George Bush or Tony Blair over the Iraq War. It was a religious strategy to take over Western democracy and Western traditions and replace them with an Islamic state. That is what it was about.

I find it offensive that crossbenchers say that this legislation is a slur on the whole Muslim community. I have a fair bit to do with the Muslim community, strange though that may sound to some. I understand that there are a lot of people in the Muslim community and in the broader Arab community who are quite disgusted with the antics of some fundamental extremists, and they are just as relieved as people in the broader community to see action taken against those people. I think we need to be realistic about that. The Hon. Dr Arthur Chesterfield-Evans also blamed it all on the Iraq War. His argument was based on the simple cause and effect notion, which fails to take into account the basic motivation of jihad and what it is all about.

The Hon. Dr Arthur Chesterfield-Evans described people engaged in jihad as warriors, as people who are acting against power, as people who feel powerless. That is a complete fantasy. It disturbs me that he takes that stand when we are discussing such serious matters. This bill is really about a fundamental defence of Western democracy. It does not please me that the laws we are passing are very rigid, very tough, and very worrying in some respects. These are extraordinary times—absolutely extraordinary times. In the history of this country we have never had a group of people among us who have been dedicated to mass destruction and to bringing down our whole society. We have never had that experience in this country and I think it is naive to think that we can just handle this process.

There are 18 people now in custody who were allegedly planning to do some pretty bad things. There were 450 police officers involved in their arrest. The point I make about that police operation is that it was preceded by 18 months of surveillance. What I find most ironic about the criticism of surveillance that some members of this House may or may not have suffered is that it seems that it is a badge of honour for a member to have a Special Branch file, so I must inquire whether I have one, if they still exist—but the point is that nothing happened to other members who were investigated. They were declared not to be malignant—not to be a worry to society. However, when the individuals who are in custody were investigated, there was a worry—18 months worth of worry and millions of dollars worth of investigation led to their arrest.

I will let due process take its course and not comment any further on their arrest, but I will comment on the deliberate misrepresentation of the legislation and what it is all about. The maximum time that someone can be detained is 14 days; the legislation makes that absolutely clear. The period of detention is not 14 weeks, 14 months, or indefinite. It is not what applies in Britain and it is not what Blair was proposing. This is not South Africa or Northern Ireland. The maximum period of detention is 14 days. The legislation states that after the first 48 hours, the case must go before a Supreme Court judge to have the detention order ratified, and the first 48 hours counts as part of the 14 days detention. Those issues have not been canvassed in this Chamber.

The debate has centred largely on the legislation being a great conspiracy by the authorities. I think the safeguards in the legislation ought to be clarified. People under 16 years of age have additional protections and they are able to have access to their lawyer. It has not been discussed that while people are in detention they will have access to their lawyer, but that the police will be there. That is very unusual, but we are dealing with imminent threats of terrorism.

The legislation is about imminent threats, not about a peace activist or an environmental activist committing a misdemeanour. I acknowledge up front that sometimes the authorities get it wrong, but if that happens we will read about it in the *Age* and in the *Sydney Morning Herald*, and those affronted will go to court to seek compensation. Of course people get things wrong, because human beings are involved in the decisions, but what is overwhelmingly important is to maintain the values that all members of the Parliament uphold: our Western values and our Western democracy. That is what this legislation is all about.

Given the times in which we now live, the background of what happened in Spain, London and Bali, and the provision for judicial review after 48 hours detention, surely it is not unreasonable for the authorities to detain a person whom they believe to be involved in an imminent terrorist attack. I want to be clear that the legislation states expressly that those detained will not be shackled against a wall and fed bread and water. They are simply detained. They cannot be questioned during their period of detention. The legislation provides penalties for breaches of those provisions. People may be detained to prevent an imminent terrorist attack and to stop them from destroying evidence of a terrorist attack or evidence associated with it. I think it is absolutely imperative to take those matters into account.

The Ombudsman will be involved in a review of this legislation after five years. The Police Integrity Commission will also be involved. A number of safeguards have been put in place by this Government in a legitimate effort to temper a very tough situation with some sensible balances and checks. That needs to be acknowledged by everybody. I will not allow this debate to be hijacked by people who are quoting Mussolini, Hitler and other fascist regimes and saying that the legislation is the first step toward fascism. What is the alternative that many of the crossbenchers talk about? The alternative is to not pass this legislation.

Let us be clear that the real strategy for a number of crossbenchers is to attack the United States of America, to attack the Iraq War—which I do not wish to debate—and to attack the authorities. At the end of the day the crossbenchers have a massive mistrust of authorities and security services. I have to say that the very people they criticise and who sometimes get it wrong have just got it right. They have just arrested 18 people, including one who chose to shoot it out with the police.

When was the last time in the memory of honourable members that there was a shoot-out between police and somebody they were arresting? That does not happen every day. The average criminal who breaks into a house, steals a car or robs a newsagency does not get involved in shoot-outs with the police. The people who will be the subject of this legislation are not the average people who wander down the street committing misdemeanour crimes. They are serious characters.

I will not stand by in this House and allow the whole process that this Government has undertaken to be denigrated. Obviously the legislation has been a difficult process for the Labor Party, because some members within the Labor Party have very strong views on this subject. I respect those views because the Labor Party is a democratic organisation, as are the other major political parties. We are democratic organisations and we have thoroughly debated this matter, but there is an overwhelming responsibility to get this legislation right.

I am sick of hearing that this debate is all about protecting people's freedoms. My family and other families in New South Wales have the right to a secure life in this State. They have a right to go about their business without the threat of terrorism, and they have a right to expect that the security services of this State will secure people's lives and keep them safe.

Reverend the Hon. Fred Nile: They are not even listening to you.

The Hon. ERIC ROOZENDAAL: That is typical. I congratulate the NSW Police, their Federal colleagues, ASIO and the Crime Commission on their dedicated work that resulted in the arrest of some of the numerous terrorist suspects who have been referred to during this debate. I thank those front-line officers for the very dangerous job they undertook in apprehending those suspects. That was another example of the NSW Police displaying tremendous bravery as they go about their everyday duties. Those raids are a timely reminder that this is not just an esoteric debate about civil liberties. There are people who are well known within communities in this country who are planning to commit crimes against civilians, if they are given the opportunity. It is extremely important that we do not pretend to legitimise their planned violence by believing that it is simply politically motivated or that it arises from a sense of powerlessness.

September 11 marked the beginning of the war on terrorism. It irks me that the victims and potential victims are those who stand accused by some of the crossbench members of this House. It irks me that the Australian public, and the public of New South Wales, are being blamed for being forced to take acts to defend themselves and protect their freedom. It is unreasonable and unfair. Some of the crossbench members should be honest. If they want to have a debate on foreign affairs they should go to the Federal Parliament. If they want to debate the Iraq war, they should go to the Federal Parliament. But they should not display in this place their hatred of George Bush. I am not a great fan of George Bush, and I certainly am not a fan of John Howard. Crossbench members of this place should not use their dislike of those politicians as an excuse to denigrate important legislation that protects our population.

I remind the House, as I did on another occasion, that I am the only member of this House who drops his children off at a school that has armed guards. No other member of this House does that. There is not one armed guard standing outside any other school in this State other than the schools my children attend. That is because they are Jewish schools. That is my children's daily experience. It is not an esoteric experience for them; it is an expensive experience for which the community must pay. During the period of heightened security regarding an imminent terrorist attack, the number of security guards at the school had to be doubled, for the protection of six-year-olds, seven-year-olds and eight-year-olds. That is the reality of people living with the threat of terrorism. I commend the bill to the House. I believe it is a very important bill and we should treat it that way during this debate.

The Hon. Dr PETER WONG [11.51 p.m.]: Earlier during this debate it was said that this legislation has nothing to do with Muslims or fundamentalism. However, I thank the Minister for Ports and Waterways for alerting me to his earlier comments about fundamentalists, religious wars, martyrs, jihads, and Islamic fundamentalists. Indeed, some of his sentiments were extremely emotional. I share the honourable member's sadness at having to have a guard at the schools his children attend. I hope he shares the feeling of many people of Arabic-speaking backgrounds or Islamic faith who tonight may have the same uneasy feeling about the passing of this law. They also need police protection because they have lost some of the freedom that we Australians value so much. Premier Bracks said in his second reading speech in the Victorian Legislative Assembly:

This Bill I am second-reading today will be debated when Parliament resumes in February 2006.

This will allow the Victorian community time to examine the provisions.

The Senate is currently holding a public inquiry into the related commonwealth bill, which federal Parliament is expected to pass by Christmas.

The government will give consideration to the Senate inquiry report, the final form of the commonwealth legislation, and any issues that arise out of the public consultation process.

Any further improvements that may be required to the Victorian bill will be made as house amendments in February.

Victoria is a multi-cultural, multi-faith community with a proud tradition of tolerance and diversity, and Victoria is determined to remain a tolerant and diverse community.

Regardless of what version of the bill will be passed by the Victorian Government, these are indeed words of wisdom. I wish Victoria well. At the same time, the feeling expressed tonight by many members, particularly crossbench members, is that the normal consideration be given to bringing the bill back after Christmas, perhaps on the first sitting day of the Parliament. I have no doubt that many members received a media release from the Public Interest Advocacy Centre, which reads:

The Public Interest Advocacy Centre (PIAC) is calling on the premier of NSW, Morris Iemma, to delay debate of the controversial NSW preventative detention Bill, which was tabled in State Parliament just over ten days ago.

The Bill—Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2005—is due to be debated in Parliament this week and, unless the Premier delays the debate, is likely to be passed before the end of the week.

Robin Banks, Chief Executive Officer of PIAC, today called on the Premier to delay the Bill:

There is no national urgency for this Bill. The Victorian government has given the community until February 2006 to consider the equivalent Victorian Bill, and the Federal Bill, which the NSW Bill is to work with, is not yet passed and may well be amended this week as a result of the Senate Committee Inquiry Report.

Indeed, we are passing a bill before minor legislation has been passed by the Senate—which sounds a little ridiculous. I also wish to quote a letter addressed to crossbench members from the New South Wales Bar Association. I understand, and I have no doubt that the House trusts, that the New South Wales Bar Association has a better understanding of the law than the Minister for Ports and Waterways. The Bar association wrote:

The New South Wales Bar Association is fundamentally opposed to this legislation.

The Bill creates preventative detention orders. The very nature of such an order is that it is made against a person who is not charged with a criminal offence and is not to be dealt with for any criminal offence under this Bill.

The provision is draconian—

I hope the Minister for Ports and Waterways understands what the word "draconian" means—

and unique except in times of declared war.

I presume that is what the Minister for Ports and Waterways implied: that we are at war. The Bar Association continued:

It represents a significant incursion on civil liberties in the community and has the potential for itself to be a source of discontent.

That is exactly what many members have said in this debate. They are not fear-generating people; they are simply stating the truth based on advice from the New South Wales Bar Association. The New South Wales Bar Association also said:

The orders are effectively not capable of being tested

The legislation provides for a person who is subject to such an order to be given a copy of the order and a 'summary of the grounds'. The summary of the grounds will be merely that and will not provide the underlying evidence which bases the order.

In fact, the Bar Association believes that prior to any application being made to a judge of the Supreme Court the information ought to be sworn by the officer seeking the order. The submission states also:

The legislation also effectively reverses what one would anticipate should be the proper scheme, namely by presuming that information founding the application will not be made available. Prime facie, the material which is produced to a judge for the purpose of the application ought to be made available to the detainee and/or his/her lawyer. If that is not to be the case, then an application ought to be made to the judge for either the material to be restricted or refused to the detainee and/or his lawyer. Further, if the proceedings before the Supreme Court are to be closed, that order should be the subject of an application by those who seek such an order. In each case the police should have to advance persuasive reasons which could be tested.

The orders are capable of in effect indefinite duration

Although the bill is said to provide only for 14 days detention, one has only to change the expected date of the anticipated terrorist act to permit open ended rolling preventive detention orders.

Obviously the Minister for Ports and Waterways did not receive any good legal advice. I hesitate to add, neither did the New South Wales Government. The Bar Association said also:

It seems somewhat incongruous that this Bill is being processed with such haste. The Senate's Legal and Constitutional Legislation Committee reported only yesterday, 28 November 2005, on the *Anti-Terrorism Bill (No. 2) 2005*. Leaving aside the parts of that Committee's report which deal with the question of sedition, there were very substantial recommendations made in relation to the substantive parts of the Commonwealth legislation which reflect directly upon this Bill. One of the recommendations of the Senate's Committee is that the sunset clause be 5 rather than 10 years.

New South Wales was one step ahead of the Commonwealth. And what happened then? The Commonwealth accepted the Senate recommendation to reduce the sunset clause to five years. The Bar Association concluded:

The Victorian Bill is not to be debated in Parliament until February 2006 to allow for public debate.

There should be a reasonable opportunity for community debate about the Bill, given the grave subtraction of human rights it is to effect. No time has been allowed so far. There has been no debate.

In the event that the Government, the Labor Party or the Opposition believe this is not really important legal advice, I would like to discuss in more detail the draft report of the Legislation Review Committee. That committee, chaired by a Labor chairman, is usually very good in commending bills—as we all agree. It says:

The bill trespasses on the following rights, each of which is addressed in detail below:

- the right to liberty;
- the right to be free from arbitrary arrest and detention;
- the right to a fair trial, including the right to be heard, the right to present evidence and call witnesses in defence;
- the right to be presumed innocent until proven guilty beyond reasonable doubt;
- the right not to be compelled to incriminate oneself;
- the right to legal representation and to legal counsel of one's own choosing; and
- the right to confidential communications with legal counsel (the protection of legal professional privilege).

That is a mouthful. This committee of experts, which this Parliament has trusted for many years, has expressed many, many concerns about this bill. It says:

Freedom from arbitrary arrest and detention is a fundamental human right ... of the International Covenant on Civil and Political Rights.

Article 9 (1) of the International Covenant on Civil and Political Rights [ICCPR] states that:

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

The ICCPR also states that persons should be permitted to challenge the lawfulness of their detention before the courts and order release without delay—article 9 (4). Lawful detention may be arbitrary if it is unreasonable. The United Nations Human Rights Committee has stated that detention is considered unreasonable if it is unnecessary or disproportionate to the legitimate end being sought. I note that Australia is signatory to the United Nations Convention. The ICCPR also says the report is a low standard of proof. It says in Part 3 that the judicial oversight is weakened in a number of ways. And that is why earlier the Minister for Ports and Waterways mentioned judicial oversight. For some reason or other they forgot to read the legislation review. It says:

However, this judicial oversight is weakened in a number of ways and so arguably provides insufficient protection of these fundamental rights. For instance, the making of an interim or final PDO is based on the Court being satisfied that the police have "reasonable grounds to suspect" that the specified conditions in the section exist.

This threshold is very low given that, on the basis of such suspicion, a person can be deprived of their liberty without charge for an extended period and with a very limited right to be heard. Providing for higher standards such as a reasonable belief as the standard required for an application for an interim preventative detention order [IPDO] or a preventative detention order [PDO] would lessen the trespass on the right not to be arbitrarily detained. What does that mean? Our experts said that a reasonable suspicion and a reasonable belief are different standards. The Supreme Court of New South Wales, in considering the meaning of reasonable suspicion in the stop and search powers contained in section 357E of the Crimes Act 1900, reduced the test of reasonable suspicion to three propositions, and stated:

- (a) A reasonable suspicion involves less than a reasonable belief but more than a possibility. There must be something which would create in the mind of a reasonable person an apprehension or fear of one of the state of affairs covered by s 357E. A reason to suspect that a fact exist is more than a reason to consider or look into to the possibility of its existence.
- (b) Reasonable suspicion is not arbitrary. Some factual basis for the suspicion must be shown. A suspicion may be based on hearsay material or materials which may be inadmissible in evidence. The materials must have some probative value.
- (c) What is important is the information in the mind of the police officer stopping the person or the vehicle or making the arrest at the time he did so. Having ascertained that information the question is whether that information afforded reasonable grounds for the suspicion which the police officer formed. In answering that question regard must be had to the source of the information and its content, seen in the light of the whole of the surrounding circumstances.

I now come to the point. The Minister for Ports and Waterways assured the House that the crossbenchers are creating rumours, the crossbenchers spoke emotive words, the crossbenchers know nothing about law, the crossbenchers have no idea about 14 days.

Reverend the Hon. Fred Nile: Only some crossbenchers.

The Hon. Dr PETER WONG: I am glad it is only some crossbenchers who have backbone, the rest are too slimy to be mentioned. Proposed section 26K provides that more than one PDO may be made against a person in relation to the same terrorist act following a further application for an order. This allows a person to be detained for successive periods of 14 days. Subject to ongoing judicial approval, this could lead to the person being detained for an indefinite and lengthy period without charge under what is intended to be a temporary and preventative measure. Therefore, the Minister for Ports and Waterways is totally wrong. The New South Wales Bar Association told him that he is wrong and our own expert committee, chaired by a very good Labor member, told him that he is absolutely wrong.

The review mentioned that, similarly, a person also may be detained under successive interim PDOs, each not exceeding 48 hours, albeit in relation to different terrorist acts. Proposed section 26K provides that a terrorist act ceases to be the same terrorist act if there is a change in the date on which the act is expected to occur. This could allow a person to be subject to successive periods of detention under an order that has been made without a hearing and which is meant to be interim. An interim period could be a very long period indeed. The committee came to the view that without highly compelling public interest justifications, that maximum period is excessive and is a significant trespass on what are generally considered to be the most fundamental human rights.

I again remind the House that the committee is chaired by a very talented, able, Labor Party member, who remarked that that interim period is unjust, unfair, and too much. The committee is of the view that the right to liberty and the freedom from arbitrary detention are fundamental human rights and as such should not be derogated from except in extraordinary circumstances warranted by compelling public interest considerations and only to the extent necessary to meet those public interest objectives. The committee is also of the view that

where legislation provides for derogation from these rights, it should also provide safeguards to minimise the trespass on those rights. The committee noted that judicial oversight of the PDO regime in the bill is an important safeguard. However, the committee has written to the Attorney General for advice in relation to certain matters.

Those matters are: Why is the threshold for granting an interim and final PDO reasonable suspicion and not reasonable belief? Why does the bill not prescribe a maximum number of orders that can be made in relation to the same person in order to prevent them from being detained for an indefinite period under a PDO or an IPDO? I hope that the Government will answer those questions. The committee wants to know the justification for setting 14 days, rather than a lesser period, as a maximum period a person may be detained under a PDO. The committee refers to Parliament the question as to whether the PDO regime unduly trespasses on the fundamental right of a person not to be detained arbitrarily. Why did the committee make such a comment? Usually the committee tries not to upset the Government. The committee is not quite happy with that provision.

The committee noted that prohibited contact orders impose significant restraints on a person's enjoyment of their fundamental rights, not that they would be very well looked after as mentioned by the Minister for Ports and Waterways—maybe with a movie or a video. But that is not what the committee believes. The committee noted that the bill provides that the detained person may ask the court to revoke a prohibited contact order. However, the committee also noted that the person may not be able to enforce that right as the bill does not require them to be notified either of the making of the order or of its contents, but expressly provides that they do not need to be so be informed when they are arrested under the PDO to which the prohibited contact order relates.

The committee has written to the Attorney General for advice as to why a detained person need not be informed of a prohibited contact order. I note with interest that many crossbenchers have mentioned that the Attorney General did not introduce this bill in the other House; I think his conscience must have worried him a bit.

The Hon. Charlie Lynn: At least he has one to worry with.

The Hon. Dr PETER WONG: Whereas you have none. The committee refers to Parliament the question of whether the prohibited contact order regime unduly trespasses on personal rights and liberties. I am merely quoting the important ones and making brief comments as I go along. The committee further states:

The Committee notes that a lack of hearing process before a court for authorising any form of preventative detention significantly aggravates the trespass on the right to freedom from arbitrary detention and the right to a fair trial.

To provide greater protection against a possible trespass of rights caused by the lack of a hearing, the Committee is of the view that the Bill should expressly provide that the Supreme Court must be satisfied that there are urgent circumstances warranting the granting of an interim preventative detention order before it makes such an order.

The Committee has written to the Attorney General for advice as to why the Bill does not so expressly provide.

The Committee refers to the Parliament the question as to whether the lack of a hearing of an application for an interim PDO is a undue trespass on personal rights and liberties.

I ask how the Minister and his party colleagues could possibly introduce such a terrible bill. The committee further states:

The Committee is of the view that, for hearings to comply with the right to a fair trial, the Bill should provide that the burden of proof lies on that the applicant who, consistent with serious consequences for the subject of a PDO, must meet the higher criminal standard of "beyond reasonable doubt".

The Committee has written to the Attorney General for advice as to why this Bill does not so provide.

The Committee notes that the privilege against self-incrimination is an important rule of law principle and a fundamental human right.

The Committee also notes that the Bill does not protect this right against certain significant intrusions.

The Committee has written to the Attorney General for advice as to why, consistent with the preventative purpose at the Bill, the Bill does not protect this right by:

- (a) providing that any statements made by the detainee during preventative detention are inadmissible in subsequent proceedings; or

- (b) requiring the detaining officer to caution a detainee that anything they do say may be used against them in legal proceedings; and
- (c) expressly excluding questioning non-police officers.

The Committee refers to Parliament the question as to whether the failure of the Bill to so provide unduly trespasses on a person's fundamental right to silence.

I am sure that listening to these comments honourable members would be worried. If not, I do not think anything would change their minds. Finally, the digest states:

The Committee notes that the right to have legal counsel of one's own choosing is an important attribute of the right to a fair trial and a fundamental human right recognised under international law and the common law.

This right is of fundamental importance to a lawyer-client relationship that is well established in our legal system. There is a high degree of protection for communication between clients and their lawyers. The more I read these comments from the Legislation Review Digest, the more I become concerned. Indeed, if I had any doubt after listening to some of the speeches by crossbench members, that doubt has now been dispelled. This is an atrocious bill. At the outset I said that I would vote against the bill and that I would support the vast majority of amendments to it. The bill is draconian and badly drafted. Whatever message it intended to send, it does not achieve that aim. The bill will create more community disharmony. Indeed, as a Christian, I cannot support that message of community disharmony. The silent message simply says: "Look out, Muslims. We are building a whole new justice system just to deal with you. You will not be afforded simple safeguards; the norms that apply to all of us will no longer apply to you. We will now have a whole new set of rules to deal with you."

Simply put, the bill is an outrage, a travesty and a miscarriage of justice. Great leaders do not countenance a bill such as this. They never have to because they do not put forward a bill such as this. In the past, while hundreds of thousands of their fellow countrymen were killed in the fields of war, they resolutely said no to any suggestion of introducing draconian provisions like this. Yet here our so-called great leaders, huddled in their masses, pretend to defend democracy by ripping to pieces the fundamental structures that make democracy work. That is an outrage. However, what I find most galling is the slimy way that this legislation attempts to destroy almost every oversight possible concerning this legislation and the practices that will ensue under it. That is why I propose to delete section 30A of the bill, and I expect all honourable members to support that amendment.

Section 30A seeks to destroy any semblance of independence for two major agencies—the Independent Commission Against Corruption and the Police Integrity Commission. It is glaringly obvious that the Government expects abuses to occur because of this bill, and that it seeks to limit appropriate responses to those abuses by making those watchdog bodies party to the abuses. On this point alone the bill is a disgrace. There is absolutely no need for it. The system that exists presently is perfectly capable of dealing with the issues the bill purports to address. Police can simply charge people with acts of conspiracy. Terrorism usually involves killing people or inflicting grievous bodily harm, and that is all a conspiracy charge would require.

Our weak leaders have already overturned one of the great indicators of democracy: the provision for granting bail. With that change, the majority of people charged with such conspiracy would be held in custody immediately. We could make a few amendments to the Crimes Act, making penalties harsher or adding a new offence, if required. We could make some amendments to the various prisons Acts to cover certain aspects that this bill seeks to address, such as the isolation practices it envisages.

Effectively that isolation could be introduced without waiving accepted and upheld legal rights or, at worst, it could have only a minimal impact on such rights. That would be more appropriate in the circumstances. One other aspect about which I wish to speak regarding this bill is the responses that have been received from various organisations. They have virtually all decried the preventative custodial regime the bill will usher in as an affront to our democracy. As I said earlier, whatever spin Government and Opposition members seek to put on this legislation, it will clearly breach Australia's obligations under the International Covenant on Civil and Political Rights. I again draw the International Covenant on Civil and Political Rights to the attention of Coalition members and, surprisingly, to the attention of many Government members, whom I thought would have been well versed in article 9 of that covenant. I state again that it explicitly states:

1. Everyone has the right to liberty and security of the person. No one shall be subject to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of the charges against him.

Before I conclude I would also like to bring to the attention of all honourable members that better individuals than us have been tested on the issue of detention without charge or, as it has been called tonight, preventative detention. During the Second World War several leading fascists, including Oswald Mosley, were imprisoned without trial.

The Hon. Jennifer Gardiner: We have already heard that bit.

The Hon. Dr PETER WONG: I would like to place these facts on the record again if I am allowed to do so. In November 1943 Morrison controversially decided to order Mosley's release from prison. There were large-scale protests and even his sister-in-law, Jessica Mitford, described the decision as "a slap in the face of anti-fascists in every country and a direct betrayal of those who have died for the cause of anti-fascism". In 1945 Morrison was given responsibility for drafting the Labour Party manifesto that included the blueprints for the nationalisation and welfare programs. After the 1945 general election Labour victory, Morrison became Deputy Prime Minister and Leader of the House of Commons. In March 1951 Morrison became Foreign Secretary, a post he held until Labour's defeat at the 1951 general election. Morrison held that detention without charge was an anathema, a point that Sir Winston Churchill also held when in a telegram to Morrison he stated:

The power of the executive to cast a man in prison without formulating any charge known to the law and particularly to deny him the judgment of his peers is in the highest degree odious and is the foundation of all totalitarian government, whether Nazi or Communist.

Earlier the Hon. David Clarke said that terrorists want to undermine our standard of living and, more importantly, our democracy. They will achieve that if we pass this bill tonight. I hope that after listening to the arguments that have been presented by their peers in this Parliament all honourable members vote against this bill.

The Hon. PETER PRIMROSE [12.34 a.m.]: I have made it clear on a number of occasions that I do not support the Terrorism (Police Powers) Amendment (Preventative Detention) Bill, but I would like to commend the New South Wales Attorney General, the Hon. Bob Debus, for his ongoing efforts in seeking to maximise the safeguards in the legislation. The Anti-Terrorism Bill (No. 2) 2005, which was introduced by the Commonwealth Government, provides for the use of control orders for up to 12 months to restrict the movement of those who pose a terrorist risk to the community; preventative detention for up to 48 hours; stop, question and search powers in areas such as transport hubs and places of mass gathering; and the banning of organisations that advocate terrorism.

The New South Wales Government was very concerned about the safeguards in the proposed Commonwealth legislation and negotiated a legislative scheme to balance the dual imperatives of appropriate police powers and the protection of civil liberties. In negotiations with the Commonwealth, the New South Wales Government insisted on major safeguards for control and preventative detention orders in addition to a number of other matters that are reflected in the legislation we are considering this evening. Citizens of New South Wales have a right to expect that their homes, property and privacy will be protected from unjustified searches and interference by the State. On the other hand, individuals also expect police to be given appropriate law enforcement powers to detect, investigate and prevent acts of terrorism. I look forward to further safeguards being included in the Committee stage this evening through Government amendments and subsequently to the due deliberations of the appeal courts.

The Hon. CHARLIE LYNN [12.37 a.m.]: I support the Terrorism (Police Powers) Amendment (Preventative Detention) Bill. The bill has been well canvassed by my colleague the Hon. David Clarke, Reverend the Hon. Fred Nile and other speakers. I compliment the Hon. Eric Roozendaal on what I thought was the best speech he has made since becoming a member of Parliament. After the rantings and ravings of the conspiracy theorists that went before us, the Hon. Eric Roozendaal brought us back to ground and put the whole debate into perspective. This is preventative legislation.

As legislators we have a duty to ensure that we put in place provisions for the safety of our population. There is no doubt that we are fighting a new war. It is a declared war by terrorists but it is totally different from any war we have been involved in before. It is a war without borders and without rules. It is a war that is based on a fundamental hate of everything we have, everything we do and everything for which we have fought. It is a hate against our way of life. These people have no respect for us, for our families, for our children or for our

way of life. When I was in the Army for 21 years we were bound by the Geneva Convention. There were rules of war and rules that specified what we were to do if we captured a prisoner of war.

The Australian Army has a fine record of abiding by the rules of war. Our aid to the civil power established the Australian Army as a leader. We won the hearts and minds of the Vietnamese in that sort of warfare. We abided by the rules and by the Geneva Convention, but these people do not. As the Hon. Eric Roozendaal said, people are blaming the war in Iraq for this. As he pointed out, the war between Iraq and Iran is where the suicide bombing started, but it was around well before then. The terror and horror of events on September 11 brought it home. How long, how great and how terrible will this war be?

Much of the argument against the laws is driven by people in our society who have a fundamental hate for America and a venomous hate for John Howard. I am referring, in particular, to the Hon. Dr Peter Wong, who has in Chinese newspapers and in his circle made spiteful, venomous attacks on John Howard, whom I regard as the greatest Prime Minister we have ever had. Our relationship with America goes back to World War II. Prime Minister John Curtin, who was also a great war-time Prime Minister, realised that with the fall of Singapore and the sinking of the HMS *Prince of Wales* and the HMS *Repulse* we could no longer rely on the United Kingdom for our security—we are a small, isolated nation—and he forged a new alliance with America. That alliance saved this country from Japanese invasion in World War II. That is historical fact. Had it not been for the Battle of Midway, the Battle of the Coral Sea, and the might of America and its commitment to our freedom, we would have been invaded. Who knows how many hundreds of thousands of Australians would have lost their lives if we had been invaded?

The Hon. Tony Kelly: We wouldn't be here.

The Hon. CHARLIE LYNN: We would not be here or we would be speaking a different language, and steak and eggs would probably not be our staple diet. So we have a lot to thank America for. As a result of the alliance, we have supported America in other conflicts—in Korea, in Vietnam against the communist insurgencies, in Afghanistan and now in Iraq. We have two choices. Currently we spend about 2.9 per cent of our gross national product on defence. If we are fair dinkum and we must stand alone in this region without an alliance with America, we will have to raise that spending to about 5 per cent or 6 per cent. How many billions of dollars would we sacrifice from health, education and other services that allow us to live in the greatest country in the world, with the greatest freedom and opportunities in the world? We would have to make sacrifices we have never made before.

The Hon. Eddie Obeid: Israel spends 60 per cent.

The Hon. CHARLIE LYNN: Exactly! We would have to make huge sacrifices and commitments. We would also have to reconsider whether we could afford the freeloaders in this place. There would be only two major parties, which may not be a bad thing. However, it is a free ride for the Independents—all care and no responsibility. They will never be in government. Their researchers research every blogger, misfit and radical with a cause, put the research together and write a speech. They then lay it in front of the Hon. Dr Peter Wong and he spits it out.

The Hon. Jennifer Gardiner: More Independents.

The Hon. CHARLIE LYNN: They probably would not have the luxury of being able to do that. They may have to get a job—horror of horrors! Australia has a great alliance with America. The intelligence that led to the arrest of 18 terrorists on our soil a couple of weeks ago did not come from Australian sources; it was shared by American intelligence sources. The terrorists had been monitored for a couple of years with the most sophisticated intelligence systems. These people are difficult to infiltrate. They are very closed, tight communities. They can have isolated sleeper cells. If one of them cracks, they do not have the same rules. They do not have 14-day detention and they do not have to go to a judge within 48 hours. They simply go out and kill families.

Indeed, they raze entire villages. That sort of thing tends to keep their attention. They operate under different rules, but that is how they maintain discipline. They take advantage of the freedoms that our forefathers fought for. Indeed, they exploit those freedoms, and that is why we need such legislation. They know they can rely on their cheerleaders—the Greens, the Democrats, the Unity Party and so on—to help them exploit the freedom we give them. As Reverend the Hon. Fred Nile said, we must remind ourselves that the shared intelligence that led to the arrest of the 18 terrorists resulted from years of surveillance.

What did those terrorists have? They had stockpiled explosives. They had the same material as that used in the London bombings. They had trained in outback camps, and they had conducted surveillance on key installations, including Lucas Heights. What did they want to do? Their aim was to kill innocent Australian men, women and children, to strike psychological terror into the heart of our nation. That was, and will continue to be, their aim. The arrests prevented a terrorist attack on Australian soil. All the agencies involved in the exercise must be congratulated on their work in doing that, and on the work they must continue to do, with our support, to ensure that they keep these radical fundamentalists under surveillance.

I am sure that the general Muslim community in Australia also supports this legislation because it is heavily stigmatised. To say that we are anti-Muslim, or anything like that, simply fans the hatred of the terrorist cheerleaders in this place. Generally, the Muslims are heavily stigmatised as a result of terrorist activity. We do not deny that. They want to be able to go out and have the freedom to practise their faith, get good jobs and be part of our society. However, they are prevented from doing that in many ways because they are so heavily stigmatised.

Early last year I took a group of Muslim kids from Punchbowl Boys High School across the Kokoda Track. It was wonderful. These kids were heavily stigmatised during the rape trials and terrorist activities; their school had been written up as the worst school in Australia. Although their parents were still connected to Lebanon, they were first-generation Australians. All the boys had been born in Australia but they did not feel Australian; they felt that they were in no-man's-land. A young fellow by the name of Brett Murray said, "Let's put them together." He went and saw the teacher, who asked me to take them across the Kokoda Track, which I did. I remember that when we started the trek they said, "Look, we have to pray five times a day." I said, "That's fine. You just tell me where and when, and we'll stop and you go through your prayers. When you're finished, we'll move on."

On day one when we were having lunch beside the Goldie River, I asked, "Who's praying?" They all got up and went through their routine. Then we moved on and hit the hard stuff. We hit Ioribaiwa Ridge, went down the other side to Ofi Creek, then climbed up Maguli Range, where we had the next break. All the boys were lying on the ground absolutely exhausted. Someone said, "Who's praying?" They said, "Go away." They were simply too tired to pray. They connected to the story of Kokoda, not because it is about the fact that we defeated the Japanese—that is the historical part of it—but because it is about the ability of the human spirit to conquer adversity. That is the lesson we bring at various levels and various stages of the campaign. These young blokes connected to it. They spoke about it and they were interested. We had dialogue. We then returned to Australia.

At the next Victory in the Pacific parade at the walkway at Concord young Mohammad Kabaaita, who I think was a deputy prefect, was invited to read a poem at the service. He turned up in his Punchbowl Boys High School uniform, which he is now wearing with pride. His mother was there with a burqa on, his father was there, and his brothers and sisters were there. He stood up and proudly read the poem. When he finished I looked across and saw a great line of old veterans, all wearing their medals, waiting to shake his hand because he had walked the Kokoda Track. It was almost a rite of passage for him. I looked at his father, and his chest was out, his mother had a grin on her face and the kids were happy. It was like they had been accepted.

That is the story of Australian society: we take in people from any land, any culture and any religion, and we allow them the freedom to practise their cultural traditions and their faith—indeed, we encourage it. We give them the freedom to be Australian. But a group of hate-filled fundamentalists want to take that from us. So we must be proactive through legislation of this sort. Members would never be forgiven if a major terrorist attack occurred over Christmas because we did not have the intestinal fortitude to enact this legislation before we went on our break. We could not live with that.

Tomorrow I will have the great honour of hosting a lunch for Air Vice Marshall Georges Sada. He is a senior advisor to the National Security Council of Iraq in the Prime Minister's Office. He is Executive Secretary of the Iraqi Institute for Peace. He is a Director of World Compassion in Iraq. He is a Director of the International Centre for Reconciliation and Peace in Iraq. He is a Director of the Holy Land Trust in Iraq, and he was awarded the International Peace Prize of Coventry, England. Sada is Assyrian. During the first Iraq war Sada worked for Saddam Hussein. Air force Colonel David Eberly was shot down over Iraq in January 1991 and was captured by Qusai Hussein, who, as we know, was even worse than his father. Qusai demanded that Eberly and the other captured coalition pilots be classified as criminals of war and killed outright. Air Vice Marshall Georges Sada stood between Qusai Hussein and the captured Americans and represented them to save their lives. Eberly said of Sada:

To his personal credit, he saved my life and the lives of the other Americans and the Brits and the Kuwaiti.

Eberly was the highest-ranking prisoner-of-war [POW] of Desert Storm. He is now retired and living in Williamsburg. For his trouble, Air Vice Marshal Sada was put in prison. He suffered greatly for his actions. Air Vice Marshal Sada dismisses any talk of personal suffering. He is an earnest and devout Christian who wears a hefty cross of nails around his neck. When asked about having the guts to stand up to Saddam Hussein, he said:

It was not the courage from me ... but it was given to me by Jesus Christ.

Sada was born in 1940 to a "church family". He is a member of the indigenous Assyrians, who predate Arabs and Kurds in Iraq. He grew up near a British air base and learned to love flying. Being a minority Christian in a Muslim country has its obstacles but they were not enough to keep Sada from joining the military, training as a pilot, and rising to the rank of air vice marshal. When he refused to join Saddam's Ba'ath Party in 1986, he was forced to retire. Four years later, when Saddam invaded Kuwait, the first man he called back to service was Sada. For Sada, it was a deal with the devil. Sada said:

If he loves you, it's bad. If he hates you, it's bad. The Iraqi despot was more than crazy. He was a very dangerous man. Only God knows what he will do.

Saddam asked Sada what was the quickest way to end the war. Sada answered that the quickest way would be to turn the Iraqi troops around and bring them home. Saddam was not amused. "If you say that again," he told Sada, "your head will be separated from your body". When Iraq began shooting down coalition pilots, Saddam put Sada in charge of them. One by one, they were blindfolded and brought to him for interrogation, with intelligence agents sitting in. They did not have to get a judicial order within 48 hours. Sada said:

I did my best to keep the life of the pilots to the best of my ability ... I used my rank. I don't let them [mistreat them] in front of me, and Jesus knows I would be very angry about it.

That did not stop the abuse occurring when Sada was not there. Sada and Eberly met recently to compare notes on the time their paths crossed. Eberly believes Sada was the humane captor who stood out amongst the brutality. Eberly said:

At the time we first met, we were enemies. He was clearly the enemy ... He was the other side of the blindfold, like anyone else who had put a gun to my head or spit on me or any other level of mistreatment.

And yet in his mind, he personally viewed us differently. He viewed us as pilots who had protection under the Geneva Convention. He is a big man in the sense that he recognized what Iraq had signed up to, and it nearly cost him his life in trying to uphold that signature.

On 24 January Qusai first ordered the execution of POWs. When Sada balked, Qusai accused him of disobeying the orders of the President. Sada then tried to reason with Qusai, reminding him that even the Prophet Mohammed once said that if prisoners of war learned 10 verses of the *Koran* they could be set free. This only angered Qusai, who threatened to put the POWs in areas being bombed by American forces. Sada urged him not to use them as human shields. He kept turning to the Geneva Convention, which made Qusai angrier still. Sada thought this was the end, and he knew something was going to happen to him. He was right. Qusai pitched him into a cell in the same prison as the POWs and Sada wondered whether his head would be separated from his body at last. But even when locked up Sada still had his contacts check on the POW pilots to make sure they were still alive. After 12 days Sada finally found a way to reach Qusai. He made the war personal. He told him:

If you kill the pilots, you will have a new war between America and your family. They'll come and kill your father, your brother ...

And he proceeded to tick off Hussein family members. Sada said:

After that, he was changed. He thought twice.

Sada was finally released from prison. The war ended a few weeks later, and Eberly and the other POWs were released. Battered physically and mentally, they returned home in early March. Eberly recently got a call from the office of American Defense Secretary Donald Rumsfeld saying there was an Iraqi general working with the State Department who recalled Eberly from his POW stint and the impressive way he conducted himself. Sada now says of Eberly:

He was very calm, very confident, very brave and very clever.

Today Sada is spokesman and adviser to the Iraqi Prime Minister, helping to shepherd his country towards democracy. He shrugs off recent accounts of more violence in Iraq and claims that the insurgency is losing power. He is proud of January elections, when Iraqis chose 275 representatives for their new National Assembly—60 of them women. His former boss, interim Prime Minister Ayad Allawi, just dodged another car bomb. A reporter asked Sada if he was concerned for his own safety and he shrugged it off. He said:

There is always a battle between the evil and the goodness ... and we will accept that battle, whatever will be the result. Iraq is not going to be a guiding candle in the dark Middle East.

The good Iraqis and the faithful Iraqis will never forget what the American nation has done for us in liberating our country from evil dictatorship. I bow before the American mothers and fathers for their sacrifices—they lost their beloved ones, sons and daughters, in battle of freedom of Iraq.

"Freedom is a very dear thing," says the general who risked his freedom and more for two dozen strangers. "You don't get it easy". You do not abuse it. As legislators we have a responsibility to ensure that the hate-filled fundamentalist terrorists who live in our midst do not get the opportunity to blow up our wives, our children and our friends. In spite of their cheerleaders, I support the bill and commend it to the House.

The Hon. PETER BREEN [12.57 a.m.]: At the risk of being labelled a cheerleader for fundamentalists and other terrorists, I oppose the Terrorism (Police Powers) Amendment (Preventative Detention) Bill. This is the latest violent response to the tragic events in New York City on September 11, 2001. The Hon. Eric Roozendaal made a very valuable and thoughtful contribution to the debate tonight. But I disagree with him when he says the war in Iraq is not part of the same series of events that began on September 11 2001. In my opinion this bill is yet another and further development as a consequence of those tragic events. I fail to understand why we would want to respond violently, as we are doing. I say the bill is violent because it violates our hard-won freedoms and liberties in a way that is unprincipled, unprecedented and unnecessary.

The principle of habeas corpus has been around for 800 years, and it is being violated in this legislation in a way that has never occurred before in the British common law system of justice under which we operate. Under current law, conspiracy to commit a crime would cover the situations that the bill contemplates, as was evident from the recent raids in Sydney and Melbourne. In my opinion the bill and preventative detention, and the kind of radical changes to the legal system that they represent, are unnecessary. The law enforcement officers who police the anti-terrorism laws that are in place are doing a splendid job. As far as I can tell, the bill will simply provide an opportunity for a different kind of policing, and one I do not believe is necessary.

Yesterday I met with some Muslim leaders at a restaurant in Newtown called El Basha. I have had contact with these people since I have been a member of this place. We have been to a number of interfaith meetings together. I have been to a number of functions with them. I attended the Eid Festival at Fairfield Showground with them only two weeks ago, and I believe I have a good rapport and a good relationship with them. Indeed, I call them my friends. These people are concerned about the way this bill will operate. When I was talking with them yesterday at Newtown they were greatly concerned about the way the laws will operate. To use their words, the anti-terror laws are not fair. They said the way the police deal with them is not fair. They said the treatment their brothers receive in prison is not fair.

In these Muslim voices I heard the echoes of my own Irish ancestors. I was reminded of that profound statement in Robert Hughes' book *The Fatal Shore*, in which he describes prisoners being flogged. When they were flogged in such a way that they were struck about the neck, their catchcry was "Flog me fair." It is the tradition in our colony and in our country that we treat each other fairly. As Australians we claim fairness as our primary cultural value. We recognise fairness in our dealings with one another. We talk about people having a fair go or a fair deal, which typically includes the notion that those who are disadvantaged ought to have assistance and we ought to stand with those who are in trouble and show them we care about how they are treated. Another common expression is "fair dinkum", meaning genuine or true. The popularity of the expression reflects the importance we place on fairness. Our national anthem is *Advance Australia Fair*, meaning not just the clemency of the weather but also that we abide by the rules of engaging fairly with each other.

Former Premier Bob Carr had some unusual ideas about what he thought was fair. I remind honourable members of legislation that was passed in this House to cement in certain prisoners who were the subject of recommendations by their trial judges that they never be released. Those prisoners were placed in that sentencing regime as a result of a promise Bob Carr made to the family of a victim of one of these heinous crimes. I remember Mr Carr, at an exhibition in Penrith, describing these laws as cruel. He went on to say that society is entitled to be cruel as a result of the crimes of which these people were convicted. That response, that

we are entitled to be cruel, is one I do not subscribe to. I do not believe that cruelty and violence achieve anything. I do not believe that treating people in a way that you would not have them treat you will achieve anything other than to add further violence, as the events since September 11, 2001 have demonstrated.

Preventative detention as described in the bill is defined in legal textbooks as custody intended to prevent further dangerous or criminal behaviour. It is traditionally applied to people who are already in prison and who have their detention extended on the basis that they are a threat, or a potential threat, to the community. The principle received judicial recognition in the High Court last year in two cases, *Baker* and *Fardon*. Both decisions were handed down on the same day and confirmed the power of State parliaments to extend the detention of offenders on the basis that they were a continuing threat to the community even though they had served their sentences.

That was a radical change from our understanding of preventative detention and habeas corpus. In both the *Fardon* and *Baker* cases, legislation defined a class or group of prisoners as opposed to what was called *ad hominem* legislation, struck down by the High Court in the decision of *Kable*. There is some doubt today about the reach of the *Kable* decision, about whether a ruling that applied to a particular person would be struck down given the previous decisions I have referred to. Justice Kirby describes *Kable* as a watchdog that barked only once. Those cases are to be distinguished from this legislation, which relates to preventative detention not of a prisoner who has served his or her sentence but of a person who has committed no crime. That is the important distinction between preventative detention as described in this legislation and as we have known it historically. In other words, it does not apply to a prisoner who has broken the law and is sentenced as a result of breaking the law, but it applies to someone who has committed no crime and who is merely a suspect.

Executive action of this kind in peacetime is unprecedented; indeed, it is exactly the reason that the writ of habeas corpus was established in the Magna Carta of 1215. Today we are abolishing that tradition in the English legal system to suit what appears to be the political convenience of the major parties no less than the concerns of the community about security. Traditionally judges have protected us from abuses of power of this kind. But judges in Australia, as other honourable members have observed, are constrained by the fact that we are the only common law country in the world that does not have a bill of rights. For example, this kind of legislation could not operate in America. For America to create preventative detention of the kind described in this bill it had to create the Guantanamo Bay facility in Cuba, because the American Bill of Rights does not allow preventative detention. In the Australian Federal Constitution there is a limit of 48 hours on preventative detention. This bill extends that to a period of 14 days. Why we would want to limit the small number of freedoms we have in the Commonwealth Constitution in that way simply puzzles me.

I was in the other place today during the vote on this bill. It was interesting to see that the major parties voted 73 to 6 in support of it. The six who opposed the bill were the six Independents. There is a message there. The Independents are being lobbied and perceived in the community in a way that misses the major parties. The concerns in the community about this bill, its reach, and the way it contradicts fundamental principles that have been in place for so long, are of great concern. It is repressive legislation. It may serve the interests of the major parties but it does not serve the ordinary people, who resent the Government and the Opposition assailing basic rights and freedoms.

Earlier I mentioned fairness as a primary cultural value. I contend that the lack of fairness in this bill is the reason that ordinary people would be concerned about it. Ordinary people have a healthy respect for the police in New South Wales, but the police have their limitations, both in terms of their forensic ability and the resources at their disposal. I had my own personal experience of the forensic investigators, as honourable members will be aware, when the Independent Commission Against Corruption decided to drive a Mack truck through my affairs. I learned quite a lot about the way investigators operate. I was greatly concerned, first of all, about the search warrant that was issued on my parliamentary office. When I went to get a copy of it at the end of the proceedings, as I was entitled to, I found that the basis on which the search warrant had been sought was largely incorrect. There was speculation and misinformation in the application, and a number of assumptions were made that were simply not true.

I have still not been able to resolve that matter. I have been to every authority in the State, but the issue of the defective search warrant application remains unresolved. If I cannot resolve it in my case, how are ordinary citizens, who are the subject of these kinds of search warrants or coercive and extraordinary powers, supposed to resolve their problems with police, problems of not overstepping the mark, acting incompetently or, in some rare cases, acting corruptly.

It is a grave mistake to think that investigators with coercive powers will be competent and able to do what they are supposed to do. Policing is a very difficult business. Having been a legal practitioner for 30 years, and having considerable experience with police and the way they operate, it seems to me that to give police all these extra coercive powers creates lazy policing. This bill will encourage police to go out and simply slap on a preventative detention order when someone is under suspicion. That is what the Muslim community is concerned about, because in one way or another all Muslims are under suspicion and therefore they are all vulnerable to misuse of these powers. Why would police officers bother going that extra yard to gather the evidence they need when they can simply declare the possibility of a terrorist act and bring in all the usual suspects? Once the suspects are in custody, and despite the protections in the bill, the police can put pressure on them in certain ways in order to secure evidence.

In the past couple of weeks I have had a number of run-ins with the Crime Commission over the way it has exercised its coercive powers. In fact, the head of the Crime Commission has written to the parliamentary oversight committee on the Office of the Ombudsman and the Police Integrity Commission, of which I am a member, and made complaints about the way I have approached the Crime Commission. But when the Crime Commission, or any police authority for that matter, uses its powers in such a way as to disadvantage witnesses and put them in the position where the police put one story to them saying "This is the story; this is what went down, and we expect you to support that position", it puts an inexperienced and frightened witness in a very difficult position. I suggest that to extend police powers in the way this bill seeks to do, even despite the safeguards, is a very dangerous track to be going down, and, whatever the result of the legislation, it will result in more innocent people being incarcerated.

I know it is late, but I want to refer to the so-called safeguards in the bill that have been brought to my attention by the Bar Association, the Public Interest Advocacy Centre and the New South Wales Council for Civil Liberties. All three bodies have found the safeguards to be grossly inadequate. The inadequacies identified by those bodies are as follows. In relation to doing away with the rules of evidence, proposed section 26O (2) provides that in making a preventative detention order the Supreme Court is not bound by the principles or rules governing the admission of evidence, which have been established to ensure the credibility of evidence. This lowers the standard of evidence for people who have been detained without charge below the standard that is applicable for detaining persons who have been charged with a criminal offence. In other words, the protections are greater for a person who actually commits a crime because the rules of evidence kick in. So there is one rule for suspects and a different rule for people who are charged.

In relation to ensuring compliance with an obligation to provide a copy of an order and a summary of the grounds for that order and right to materials, proposed section 26ZB provides that as soon as practicable after a person is taken into custody, the arresting officer must provide the detainee with a copy of the order and a summary of the grounds on which the order is made. It also allows for a copy of the order and the summary of the grounds to be provided to the detainee's lawyer at the detainee's request. However, there is no time limit imposed within which a copy of the order and summary of the grounds must be provided, and there is no penalty for failing to provide such information. Furthermore, the bill contains no requirement for the detainee or his or her lawyer to be provided with the underlying materials relied on. These fundamental omissions can render the right to contest the order largely ineffective. How does one argue before a judge of the Supreme Court about a deficiency in the preventative detention order when one is not given any information about the nature of the order?

In relation to informing the detainee of the orders, proposed sections 26Y and 26Z provide for a detained person to be informed that an order or an interim order has been made against him or her, and of his or her rights and obligations under the order. However, the bill does not stipulate a time limit within which such information is to be provided to the detainee, and thereby undermines the alleged safeguards provided by proposed sections 26Y and 26Z and by any provisions allowing the detainee to contest an order. With regard to the right to legal aid, unlike the Victorian bill this bill makes no explicit recognition of the right of a detained person to legal aid. This will be a case where people with the means to do so can contest a preventative detention order. If they do not qualify for legal aid, then they contest the order at their own expense or as a self-represented litigant.

In relation to the right to an interpreter and adult supervision, proposed section 26ZA makes the provision of an interpreter to a detained person a matter of police discretion, rather than a right. This further reduces the right of a detained person to be informed of the existence and nature of an order and of his or her rights and obligations under that order. The bill provides no provision for information provided to a person who is under 18 years of age or otherwise incapable of managing his or her own affairs to also be communicated to a

parent or guardian, or an independent third person. In regard to the monitoring of any contact with a lawyer, proposed section 26ZI enables the police and interpreters to monitor all contact between the detained person and his or her lawyer. This is an absolute subversion of the lawyer-client privilege principle, which the High Court of Australia has recognised as a fundamental civil right. The case of *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* (2002) is authority for that proposition. This right is essential to a person's ability to provide adequate instructions to his or her solicitor, and to receive proper legal advice and representation under our legal system. The abolition of this right under the bill is yet another provision that severely compromises the right of a detained person to contest an order under the bill.

In relation to compensation for wrongful preventative detention, unlike the related bills of the Commonwealth Government and of Victoria and Queensland, this bill contains no express provision for compensation where a person is wrongfully detained under the provisions of the bill. In addition to denying adequate scope for compensation to a person who has been wrongfully victimised under the legislation, this omission limits the scope for adequate accountability by police and government, and thereby leaves wider scope for abusive, careless or irresponsible exercise of power under the legislation. The provision in proposed section 26ZR that the bill does not limit the right to bring proceedings for a remedy in relation to an order is highly inadequate. It forces victims of wrongful detention to commence separate proceedings in order to obtain justice, and thus makes it less likely that the victim will in fact obtain justice. It places a heavy onus on the victim to prove that the detention was unjustified and that wrongful detention is harmful, as distinct from presuming that preventative detention is a harmful act for which the State must either justify or provide adequate compensation.

Assuming that abhorrent preventative detention powers will be granted by the major parties, the Supreme Court should, at the very least, be explicitly empowered to award compensation when revoking a preventative detention order, or upon application for compensation, as proposed by the Public Interest Advocacy Centre. In relation to trial by media, the bill provides no protection for detainees against being publicly stigmatised as terrorists, despite having never been charged or convicted of terrorism. And it provides no specific protection to such stigmatised persons from potential retribution. The bill places no obligation on police to provide persons released from detention with protection from adverse media exposure or means to safely return to their place of residence. There is no protection against police releasing information about the pending release of a detained person.

I still have not addressed a number of issues, but in view of the hour I will not deal with them except to say that claiming that the 10-year sunset clause in the bill is a balance against the fundamental rights breached by the bill is a doubtful proposition given that, by any contemporary democratic or human rights standards, the extraordinary powers granted could only be justified during a state of emergency. Given that we are clearly not under a state of emergency, a much shorter sunset clause would be preferable. I conclude by referring to something that Reverend the Hon. Fred Nile said in relation to the bill being repressive. He quoted a Singapore expert as saying that an attack on Australia by home-grown terrorists is inevitable. What Reverend the Hon. Fred Nile failed to say, however, is that this bill would not prevent such an attack.

If a preventative detention order is in place, we will not be any safer than when we had only our fridge magnets for protection. In reality, if the law enforcement authorities find out about a proposed terrorist act, they will arrest the suspects under existing conspiracy laws, as they did in the recent operations in Sydney and Melbourne. This new law will make the Government safer, but the citizens of New South Wales will not have any additional benefits or protections. The law will not be used to prevent a terrorist attack; rather, it will be used to intimidate and harass the Muslim community, creating isolation and resentment and provoking the siege mentality that will inevitably lead to the kind of activity we are seeking to prevent.

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [1.22 a.m.], in reply: I thank honourable members for their contributions, and I commend the bill to the House.

Question—That the amendment of Ms Rhiannon be agreed to—put.

The House divided.

Ayes, 5

Mr Breen
Ms Hale
Dr Wong
Tellers,
Dr Chesterfield-Evans
Ms Rhiannon

Noes, 26

Ms Burnswoods	Mr Gay	Mr Oldfield
Mr Catanzariti	Ms Griffin	Mr Pearce
Mr Clarke	Mr Hatzistergos	Mr Roozendaal
Mr Colless	Mr Jenkins	Ms Sharpe
Mr Costa	Mr Kelly	Mr Tsang
Mr Della Bosca	Mr Lynn	Mr West
Mr Donnelly	Reverend Dr Moyes	<i>Tellers,</i>
Ms Fazio	Reverend Nile	Mr Harwin
Miss Gardiner	Mr Obeid	Mr Primrose

Question resolved in the negative.

Amendment of Ms Lee Rhiannon negated.

Amendment of Ms Sylvia Hale negated.

Amendment of Mr Ian Cohen negated.

Question—That this bill be now read a second time—put.

The House divided.

Ayes, 26

Ms Burnswoods	Mr Gay	Mr Oldfield
Mr Catanzariti	Ms Griffin	Mr Pearce
Mr Clarke	Mr Hatzistergos	Mr Roozendaal
Mr Colless	Mr Jenkins	Ms Sharpe
Mr Costa	Mr Kelly	Mr Tsang
Mr Della Bosca	Mr Lynn	Mr West
Mr Donnelly	Reverend Dr Moyes	<i>Tellers,</i>
Ms Fazio	Reverend Nile	Mr Harwin
Miss Gardiner	Mr Obeid	Mr Primrose

Noes, 6

Mr Breen
Dr Chesterfield-Evans
Mr Cohen
Dr Wong
Tellers,
Ms Hale
Ms Rhiannon

Question resolved in the affirmative.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 3 agreed to.

Ms LEE RHIANNON [1.36 a.m.]: I move Greens amendment No. 1:

No. 1 Page 3, schedule 1. Insert after line 2:

[1] Section 4B

Insert after section 4A:

4B Application and Interpretation of the International Covenant on Civil and Political Rights

- (1) This Act must be read and given effect to in a way that is consistent with the *International Covenant on Civil and Political Rights*.

- (2) If in proceedings regarding any matter in relation to this Act, a court is satisfied that a provision of this Act is inconsistent with a right arising under the *International Covenant on Civil and Political Rights*, the court may make a declaration of that inconsistency, and the provision of this Act is of no effect to the extent of that inconsistency.

This amendment is based on an amendment being moved by my Greens colleagues in the Federal Parliament. An amendment based on the United Kingdom Human Rights Act would require courts to interpret the bill in line with the International Covenant on Civil and Political Rights. The Federal Government and, presumably, the New South Wales Labor Government in putting forward its legislation, say that these terrorism laws do not breach international laws. I therefore believe, and expect, that the Government will have no major problem with the amendment.

A number of submissions to the Commonwealth Senate inquiry, including one from the Human Rights and Equal Opportunity Commission, criticised the bill because it breaches our international obligations. The amendment will allow courts to declare the breach and make the law conform. I put on record the Greens support for a Bill of Rights. If we had such a bill the amendment would not be required. I look forward to the Minister's response to the amendment.

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [1.38 a.m.]: The Government does not support the amendment. It would be inappropriate for the State Government to legislate in the terms proposed. Under the external affairs power of the Constitution, the High Court can, of course, consider State and Commonwealth laws in respect of our international treaty obligations.

The Hon. DAVID CLARKE [1.38 a.m.]: The Opposition does not support the amendment. The bill does not breach international law at all.

Ms LEE RHIANNON [1.39 a.m.]: I note the last comment of the Coalition representative.

The Hon. Duncan Gay: Point of order: People are making comments from the gallery, which is unparliamentary.

The CHAIR: Order! People may sit in the gallery as a consequence of a courtesy extended by the Committee, but they must not comment or interfere in proceedings. If they do so, they will be asked to leave.

Ms LEE RHIANNON [1.40 a.m.]: I note the comments of the Hon. David Clarke. He said these laws do not breach international covenants. If that is the case, why will the Coalition not support the amendment? It really is very clear. If you want to give proof to the statements that have been made time and again that there is no problem with this law standing up in terms of our international obligations, why not support the amendment? I noted that although the Minister rejected the amendment, he did not put his foot in it in that way. However, I would like to hear from the Minister as to why the amendment cannot be supported, considering that it does not take anything away from the bill. It will put in place something the Government has stated is a fact.

The Hon. PETER BREEN [1.40 a.m.]: The International Covenant on Civil and Political Rights provides that a person shall not be placed in detention unless charged, so the bill breaches that covenant. On the question of whether the amendment can be sustained, as the bill breaches the covenant, it seems to me that the amendment would be outside the leave of the bill. Whilst I support the amendment in principle, I do not believe it can be passed at the same time as the bill.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [1.42 a.m.]: I support the amendment. I note the comments of the Hon. Peter Breen, who thinks that the amendment is beyond the leave of the bill, in the sense that the bill so obviously breaches the International Covenant on Civil and Political Rights. I also note the "Hear! Hear!" interjection by Reverend the Hon. Fred Nile, agreeing that the bill does breach the covenant. The idea that we should be proud of breaching any international covenant that really ought to be the basis of human behaviour is nothing short of a disgrace. That is why the amendment is important.

Amendment negatived.

Ms LEE RHIANNON [1.42 a.m.]: I move Greens amendment No. 2:

This amendment is to proposed section 26E, which prohibits a preventative detention order applying to a person under the age of 16. The bill stipulates that a police officer, upon becoming satisfied on reasonable grounds that a person under the age of 16 has been detained, must release that person from detention as soon as practicable. The phrase "as soon as practicable" is too vague and is open to abuse. The point at which releases would be deemed practicable would be subjective; too much discretion would be bestowed upon the police. It would be far safer and would provide much better protection of individual freedom to specify precisely when such a person must be released.

The Greens amendment would replace the phrase "as soon as practicable" with the word "immediately" so that police, upon discovering that a person held under a preventative detention order is under 16 years of age, would be required to release that person immediately. The amendment addresses the issue of human decency and treating young people properly. It will tighten up the legislation in the way the Government has alluded to. The Government says the intent is to ensure that young people are not caught up in these laws. If that is the case, surely the word "immediately" should be inserted in the legislation.

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [1.43 a.m.]: The Government opposes the amendment. It would insert in the bill the word "immediately" in place of the words "as soon as practicable" in relation to when police must act once they realise a child is under the age of 16 years. The phrase "as soon as practicable" is well understood by the police and by the courts. Any delay in releasing a child would need to be explained and the police are obliged to release the child as soon as they can possibly organise it, for example, once the parent or guardian had arrived.

The Hon. DAVID CLARKE [1.44 a.m.]: The Opposition opposes the amendment.

Reverend the Hon. FRED NILE [1.44 a.m.]: The Christian Democratic Party does not support the amendment. The latest evil strategy in the conflict in Palestine is to equip children aged 14, 15 or 16—in fact boys who are mentally handicapped—with bombs. I think this is something the Government should give consideration to. We do not support the amendment.

Amendment negatived.

Ms LEE RHIANNON [1.45 a.m.], by leave: I move Greens amendments Nos 3, 4 and 15 in globo:

No. 3 Page 8, schedule 1 [1], proposed section 26J, line 13. Omit all words on that line.

Insert instead:

26J Terms and conditions of preventative detention orders

No. 4 Page 8, schedule 1 [1], proposed section 26J. Insert after line 18:

- (2) A preventative detention order is subject to such conditions as are imposed by the Supreme Court when making the order, including (but not limited to) conditions with respect to the following:
 - (a) the place at which the person is to be detained,
 - (b) the number and times of personal visits from family members and other persons entitled to have contact with the detainee,
 - (c) the provision of other services to the detainee.

No. 15 Page 25, schedule 1 [1], proposed section 26ZH (4), line 24. Insert "(subject to any conditions of the preventative detention order)" after "includes".

These amendments to proposed section 26J, with the consequent amendment to section 26ZH, are necessary because the bill as it stands does not provide for the Supreme Court to attach specific conditions to preventative detention orders. Giving the Supreme Court appropriate discretion to attach conditions is essential if we are interested in justice and fairness. Judicial discretion is important in a number of ways in our justice system, including sentencing and so on, because it allows judges to tailor their rulings to the specific circumstances of each case. It is impossible for us to anticipate the wide variety of circumstances that the Supreme Court might encounter when handling applications for preventative detention orders. The best precaution we can take is to give the court wide discretion to find the fairest possible outcome.

The allowable conditions would not be limited but could include the place at which the person is to be detained, the number and frequency of personal visits, and the provision of other services, such as religious or medical services, to the detainee. It is worth noting that in any proceedings the applicant would have an opportunity to make submissions to the court about conditions. If there were an important security argument against a particular condition, that argument would be heard and considered by the court. This is a sensible amendment that would improve the operation of the Act and allow for more flexible and fairer outcomes without jeopardising the initial intention or purpose of preventative detention.

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [1.47 a.m.]: The Government does not support these amendments, which seek to allow the Supreme Court to set the conditions upon which a person will be detained. This is a matter for the Department of Corrective Services and/or the Juvenile Justice department.

The Hon. DAVID CLARKE [1.47 a.m.]: The Opposition does not support the amendments.

Amendments negated.

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [1.48 a.m.], by leave: I move Government amendments Nos 1 to 12 inclusive:

No. 1 Page 8, schedule 1 [1] (proposed section 26J). Insert after line 23:

, and

(e) a summary of the grounds on which the order is made.

(2) To avoid doubt, subsection (1) (e) does not require information to be included in a summary if the disclosure of the information is likely to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004* of the Commonwealth).

No. 2 Page 11, schedule 1 [1] (proposed section 26N (4)), line 6. Omit "will assist in achieving". Insert instead "is reasonably necessary to achieve".

No. 3 Page 11, schedule 1 [1] (proposed section 26N). Insert after line 31:

(8) The Supreme Court may refuse to make a prohibited contact order unless the police officer applying for the order gives the Court any further information that the Court requires concerning the facts and other grounds on which the police officer considers the order should be made.

No. 4 Page 17, schedule 1 [1] (proposed section 26X). Insert after line 19:

(6) During any period that a subject under 18 years of age is not detained under an arrangement in force under this section, a police officer must not detain the subject together with persons who are 18 years or older unless the nominated senior police officer under section 26R considers that there are exceptional circumstances and approves of that detention.

No. 5 Page 17, schedule 1 [1] (proposed section 26Y (2)), lines 36-38. Omit all words on those lines. Insert instead:

(c) the people that the person is entitled to contact under sections 26ZE and 26ZH and the restrictions that apply to any such contact, and

No. 6 Page 18, schedule 1 [1] (proposed section 26Z (2)), lines 36-38. Omit all words on those lines. Insert instead:

(c) the people that the person is entitled to contact under sections 26ZE and 26ZH and the restrictions that apply to any such contact, and

No. 7 Page 19, schedule 1 [1] (proposed section 26ZA (3)), line 39. Omit "physical".

No. 8 Page 20, schedule 1 [1], (proposed section 26ZB (1) and (2)), lines 7-16. Omit all words on those lines. Insert instead:

(1) As soon as practicable after a person is first taken into custody under an interim preventative detention order, the police officer who is detaining the person under the order must give the person a copy of the order.

No. 9 Page 20, schedule 1 [1], (proposed section 26ZB (5)), lines 25-31. Omit all words on those lines. Insert instead:

(5) A person who is being detained under a preventative detention order may request a police officer who is detaining the person under the order to give a copy of the order to a lawyer acting for the person in relation to the order.

No. 10 Pages 20 and 21, Schedule 1 [1], (proposed section 26ZB (6), (7) and (8)), line 33 on page 20 to line 3 on page 21. Omit "or the summary" wherever occurring.

No. 11 Page 24, schedule 1 [1], (proposed section 26ZG). Insert after line 17:

- (4) If the police officer who is detaining a person under a preventative detention order has reasonable grounds to believe that:
 - (a) the person is unable, because of inadequate knowledge of the English language or a disability, to communicate with reasonable fluency in that language, and
 - (b) the person may have difficulties in choosing or contacting a lawyer because of that inability,
 the police officer must give the person reasonable assistance (including, if appropriate, by arranging for the assistance of an interpreter) to choose and contact a lawyer under subsection (1).

No. 12 Page 31, schedule 1 [1], (proposed section 26ZO). Insert after line 13:

- (3) The Commissioner of Police is to ensure that the Ombudsman:
 - (a) is duly notified of the making of a preventative detention order or prohibited contact order, and given a copy of any such order, and
 - (b) if a person is taken into custody under a preventative detention order - is duly notified that the person has been taken into custody, and
 - (c) if an order is revoked - is duly notified of the revocation.

These amendments have been prepared based on information provided by the Prime Minister's Office regarding draft amendments to the Commonwealth Anti-Terrorism Bill (No. 2) 2005 and were prepared by Commonwealth officers in response to the report of the Senate Legal and Constitutional Committee. Amendment No. 1 provides clarity about who will prepare the summary of the grounds on which a preventative detention order is made. It will be the Supreme Court. Amendment No. 2 clarifies that the prohibited contact order must be reasonably necessary to achieve the purposes of a preventative detention order, not merely that it will assist in that regard.

In relation to amendment No. 3, consistent with the application for a detention order, the court is given power to refuse to make a prohibited contact order unless the police provide further information that the court requires. Amendment No. 4 recognises the need for special protection for detainees who are under the age of 18 years. Generally, detainees will not be held in police custody, but when this is necessary any detainees under the age of 18 will not be held with adults, unless there are exceptional circumstances.

Amendments Nos 5 and 6 clarify that the police must inform a person of the class of family and other people they will be able to contact. Amendment No. 7 clarifies a requirement for the police to arrange an interpreter being extended to anyone who, because of any type of disability—not only a physical disability—is unable to communicate fluently in English. Amendment Nos 8, 9 and 10 are consequential upon amendment No. 1. Amendment No. 11 facilitates the subject's access to a lawyer by specifically providing for the arranging of an interpreter, when necessary, to assist the subject in choosing and contacting a lawyer. Amendment No. 12 requires the Commissioner of Police to notify the Ombudsman of the making of a preventative detention order, a prohibited contact order and the revocation of such orders.

The Hon. DAVID CLARKE [1.50 a.m.]: For the reasons given by the Minister, the Opposition supports all the amendments.

Ms SYLVIA HALE [1.50 a.m.]: While I accept that the amendments have been moved to make clear the position of the person who is detained and to provide for appropriate assistance from, for example, an interpreter or others, just a reading of the breadth of these amendments makes clear just how deficient the bill was in the first instance. Regardless of those deficiencies, the Government was prepared, with the support of the Opposition, to pass this legislation. If ever there was a condemnation—

The CHAIR: Order! Ms Sylvia Hale will confine her remarks to the amendments before the Committee. This is not an opportunity to give a second reading speech.

Ms SYLVIA HALE [1.51 a.m.]: The amendments were moved in globo. I believe it is appropriate to talk about the overall effect of the amendments. While it may be said that the Government is attempting to amend the bill to improve it, the amendments are indicative of how deficient the bill was in the first place and

how many other amendments should probably be made to it—if one had the time to peruse the legislation and the Act that finally will be passed by the Federal Government, at our leisure.

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [1.52 a.m.]: I cannot let those remarks go without responding. As I said at the beginning of my prelude to these amendments, the amendments were made in response to a report of the Senate Legal and Constitutional Committee. It was after a thorough investigation by that Senate committee—in other words, consultation—that the Government formulated these amendments. I do not see how they can be criticised.

Amendments agreed to.

Ms LEE RHIANNON [1.53 a.m.], by leave: I move Greens amendment Nos 5 and 7 in globo:

No. 5 Page 17, schedule 1 [1], proposed section 26Y (1), line 24. Insert "(but in any event not later than 2 hours)" after "practicable".

No. 7 Page 18, schedule 1 [1], proposed section 26Z (1), line 26. Insert "(but in any event not later than 2 hours)" after "practicable".

These amendments also concern the phrase "as soon as practicable". Proposed sections 26Y (1) and 26Z (1) stipulate that as soon as practicable after a person is first taken into custody under an interim preventative detention order, or a preventative detention order is made, the police officer who is detaining the person under the order must inform the person of that fact and of details of the detention order, and also inform that person of their rights with regard to the Ombudsman as well as the court process. This is vital information, the absence of which would be a perversion of justice.

It is bad enough that citizens might be detained merely on suspicion without having committed any crime, but now the bill, with its poorly worded, hopelessly vague "as soon as practicable" standard, raises the possibility of detainees not even being informed of the reason for their detention until considerable time has passed. What exactly does "as soon as practicable" mean? It is quite subjective. Does it mean when the police officer gets a chance? If he or she is busy, that could mean many hours. The provision is wide open to abuse because an officer could easily manufacture reasons for delay.

The Greens amendments would stipulate that the information must be provided as soon as practicable, but in any event not later than two hours after a detention order is made or a detainee is taken into custody under an interim order. Two hours is an appropriate time to arrange for the information to be conveyed. The two-hour limit would remove the potential for abuse and ensure that the process is as fair as possible. While I was speaking I heard interjections that suggested it is just a standard term. The issue is that we have had legal group after legal group say that this has to be changed. It may be standard procedure in some quarters, but that does not mean the provisions cannot be tightened up.

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [1.55 a.m.]: The Government opposes these amendments, which seek to impose time limits on the exercise of police powers. The legislation must allow some flexibility in time frames. Having said that, "as soon as practicable" is well understood by both the police and the courts to mean exactly that, as I pointed out earlier. If I set a maximum period, it might simply invite police to use all of the available time whereas a person may have been released earlier.

The Hon. DAVID CLARKE [1.56 a.m.]: The Opposition opposes these amendments.

Amendments negated.

Ms LEE RHIANNON [1.56 a.m.], by leave: I move Greens amendment Nos 6 and 8 in globo:

No. 6 Page 18, schedule 1 [1], proposed section 26Y (3), lines 18 to 23. Omit all words on those lines.

No. 8 Page 19, schedule 1 [1], proposed section 26Z (3), lines 18 to 23. Omit all words on those lines.

These amendments will delete subsection (3) of proposed section 26Y and subsection (3) of section 26Z which apply identically to interim prevention detention orders and preventative detention orders respectively. These

subsections provide that a police officer is not required to inform a detainee of the fact that a prohibited contact order has been made in relation to that person's detention, or the name of a person specified in a prohibited contact order that has been made in relation to that person's detention. This is key information that can be withheld from a detainee, yet no rationale has been provided for it.

Why should a detainee not be entitled to know that there is an order in place by order of the Supreme Court prohibiting that person from having contact with another person or persons? Simply knowing of the prohibition will in no way weaken or subvert that prohibition, but it would provide for greater procedural fairness and would also be more practical. After all, it is difficult to comply with, let alone challenge, a prohibited contact order if one does not know of its existence. It is bad enough that citizens will be detained simply on suspicion without any evidence of a crime having been committed, yet now we are talking about not even telling detainees about all of the orders made by the Supreme Court that apply to them. This serious abrogation of all individual freedom ought to be deleted from the bill.

I again remind honourable members that these amendments, in common with other amendments moved by the Greens, are in no way intended to weaken what the Parliament is attempting to achieve. As honourable members know, the Greens have stated on the record that we oppose the legislation. The amendments are designed to tighten up the provisions so that this State will still have its terrorism bill, but without damaging people's freedoms to the same degree as would be the case if the amendments are not accepted.

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [1.58 a.m.]: The Government does not support these amendments. They would make the bill inconsistent with similar Commonwealth provisions.

The Hon. DAVID CLARKE [1.58 a.m.]: The Opposition opposes these amendments.

Amendments negatived.

Ms LEE RHIANNON [1.59 a.m.]: I move Greens amendment No. 9:

No. 9 Page 19, schedule 1 [1], proposed section 26ZA (3). Insert after line 40:

Maximum penalty: Imprisonment for 2 years.

Greens amendment No. 9 is essential to provide consistency between proposed sections 26Y (1) and 26Z (1). Under those proposed sections failure on the part of a police officer to provide key information to a detainee is an offence with a maximum penalty of two years imprisonment. Proposed section 26ZA (3) requires a police officer, in complying with proposed sections 26Y (1) and 26Z (1), to arrange for the assistance of an interpreter if there are reasonable grounds to believe that one is needed. Failing to provide an interpreter when one is needed is effectively the same as failing to provide the information at all. Getting the information is not much use if one cannot understand it, yet failure to comply with the interpreter requirement in proposed section 26ZA (3) carries no penalty. It therefore represents a potential backdoor means of avoiding the requirements of proposed sections 26Y (1) and 26Z (1). In order to remove this inconsistency, the amendment inserts into proposed section 26ZA (3) the identical penalty for non-compliance as exists for proposed sections 26Y (1) and 26Z (1).

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [2.01 a.m.]: The Government does not support the amendment. There is no need to insert an offence provision for failing to arrange for the assistance of an interpreter. Police are lawfully required to do so, and any failure can be reported to the Police Integrity Commission or the Ombudsman for future action.

The Hon. DAVID CLARKE [2.01 a.m.]: The Opposition does not support the amendment.

Amendment negatived.

Ms LEE RHIANNON [2.01 a.m.]: I move Greens amendment No. 10:

No. 10 Page 20, schedule 1 [1], proposed section 26ZA (4), lines 1 and 2. Omit all words on those lines.

Greens amendment No. 10 seeks to delete proposed section 26ZA (4), which allows the assistance of an interpreter to be provided by phone for the purpose of providing the crucial information specified in proposed

sections 26Y and 26Z. The amendment is necessary because it is generally not appropriate or practical to have an interpreter doing his or her job over the phone. The most obvious example is the case of a deaf detainee who requires a sign language interpreter. However, it is also true of interpretation generally as it is often a tricky profession that depends upon visual cues for accuracy.

Accurately translating another language is complicated, and without visual cues such as hand movement, facial expression and so on it is far more likely that mistakes will creep in. It is perfectly reasonable to require that an interpreter be physically present on occasions when one is required, and it is an important safeguard for the rights of detainees to require an interpreter. Again, it is a simple amendment to ensure the provision of safeguards that one would think the Government would have the humanity to provide.

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [2.02 a.m.]: The Government does not support the amendment. The provision of a telephone interpreter is necessary in some instances, particularly in isolated areas; otherwise the person may have no way of communicating with police or the authorities.

The Hon. DAVID CLARKE [2.02 a.m.]: The Opposition does not support the amendment.

Amendment negated.

Ms LEE RHIANNON [2.02 a.m.]: I move Greens amendment No. 11:

No. 11 Page 21, schedule 1 [1], proposed section 26ZC (1), line 25. After "treatment," insert:

and

(c) if required, must be given access to appropriate medical care,

This amendment is important to ensure that detainees are given access to appropriate medical care when required. At present proposed section 26ZC requires detainees to be treated with humanity and respect for human dignity, and to not be subjected to cruel, inhuman or degrading treatment. The Greens believe that, in addition to these protections, it is important that the bill explicitly guarantees detainees access to medical care if required. Once again, one would think this would be a simple, straightforward measure. Indeed, one would have thought that such a provision would already have been included in the legislation. The provision of medical care is a basic human right, and it is important that it be included in the bill. Some members may argue that the amendment is superfluous and that such a provision is already implied. If that is so, including the provision will do no harm. But if there is any question about whether medical care is guaranteed, the amendment ought to be supported in order to ensure that guarantee.

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [2.04 a.m.]: The Government does not support the amendment, which is superfluous. Police and/or corrections personnel already have a significant duty of care to provide anyone in their custody with appropriate medical care.

The Hon. DAVID CLARKE [2.04 a.m.]: Clearly the amendment is superfluous, and the Opposition opposes it.

Amendment negated.

Ms LEE RHIANNON [2.05 a.m.], by leave: I move Greens amendments Nos 12, 13, 14 and 16 in globo:

No. 12 Page 22, schedule 1 [1], proposed section 26ZE, line 8. Omit "entitled to contact".

Insert instead "entitled, where being detained under the order, to have contact with".

No. 13 Page 22, schedule 1 [1], proposed section 26ZE, lines 25-27. Omit all words on those lines.

No. 14 Page 22, schedule 1 [1], proposed section 26ZE. Insert after line 33:

(3) The form of contact that a detainee is entitled to have with another person under subsection (1) includes (subject to the conditions of the preventative detention order):

(a) being visited by that other person, and

(b) communicating with that other person by telephone, fax or email.

No. 16 Page 25, schedule 1 [1], proposed section 26ZH (5) and (6), lines 28-36. Omit all words on those lines.

These amendments are intended to ensure that detainees are not unreasonably restricted in their communications with the outside world. Under the amendments, competent adult detainees would be subject to the same arrangements as currently apply to minors and those incapable of managing their own affairs. Additionally, the two-hour time period for minors and those incapable of managing their own affairs would be deleted, providing for a common arrangement for all detainees. That is, detainees would be entitled to have contact with family members and others specified in the bill in person, rather than just on the phone, and would not be restricted to merely communicating the fact of their detention and safety.

Of course, such contact would be monitored by police under proposed section 26Z (1), and under Greens amendments would also be subject to conditions imposed on the detention order by the Supreme Court. Let us be clear about what the bill proposes. Citizens will be detained without having committed any crime, and will not be allowed any contact with family members other than to tell them by phone that they have been detained and are safe. There will be no other information and no other contact. One can imagine the distress families will suffer, and the confusion and consequences that will flow from the complete cessation of communication. Families will suffer enormous stress, jobs will be lost, businesses will go broke, and lives will be ruined. Much of this could be mitigated if reasonable communication were allowed.

The security implications are negligible, given that every word would be monitored. If necessary, the Supreme Court could impose restrictions. It would be a fairer and more humane way to treat detainees and their families without putting security at risk. Once again, it is a minimal amendment to an aspect of the bill that is indeed insidious. At least we should try to keep communications open. The damage that will be done to our society with every aspect of this bill will be enormous. This is simply a minimal amendment that could really change things.

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [2.07 a.m.]: The Government does not support the amendments, which seek to provide a detainee with face-to-face contact with certain persons. The amendments are inconsistent with the Commonwealth provisions and may jeopardise the security concerns of police.

The Hon. DAVID CLARKE [2.07 a.m.]: The Opposition does not support the amendments.

Amendments negatived.

Schedule as amended agreed to.

Title agreed to.

Bill reported from Committee with amendments and report adopted.

Third Reading

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [2.08 a.m.]: I move:

That this bill be now read a third time.

The House divided.

Ayes, 26

Ms Burnswoods	Mr Gay	Mr Pearce
Mr Catanzariti	Ms Griffin	Mr Roozendaal
Mr Clarke	Mr Hatzistergos	Mr Ryan
Mr Colless	Mr Jenkins	Ms Sharpe
Mr Costa	Mr Kelly	Mr Tsang
Mr Della Bosca	Mr Lynn	Mr West
Mr Donnelly	Reverend Dr Moyes	<i>Tellers,</i>
Ms Fazio	Reverend Nile	Mr Harwin
Miss Gardiner	Mr Oldfield	Mr Primrose

Noes, 6

Dr Chesterfield-Evans
Ms Hale
Ms Rhiannon
Dr Wong
Tellers
Mr Cohen
Mr Breen

Question resolved in the affirmative.

Motion agreed to.

Bill read a third time.

ADJOURNMENT

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [2.16 a.m.]: I move:

That this House do now adjourn.

METROPOLITAN WATER PLAN

The Hon. DON HARWIN [2.16 a.m.]: Two weeks ago the Premier all but acknowledged the failure of the Government's Metropolitan Water Plan when he admitted that he had requested the development of a new water plan to be released early next year. The Opposition has consistently highlighted problems with the Metropolitan Water Plan because it is an environmentally damaging proposal lacking the vision needed to sustain Sydney's water supply over the long term. For months we have called for greater water recycling and for the protection of the Shoalhaven environment. Currently, some 450 million litres, equivalent to 75 per cent of Sydney's annual water usage, is flushed into the ocean.

In an adjournment speech about water supply infrastructure on 2 June last year I commented on the Government's lack of interest in large-scale recycling. Eighteen months later, the Government is desperately scrambling to acquire credibility on the issue. Premier Iemma's proposals, however, remain inadequate.

Under the Government's original Metropolitan Water Plan just 3 per cent of sewage water was to have been recycled. The Premier recently announced that the Government has set a target to increase the use of recycled water to 70 billion litres a year. What the Premier did not mention was that recycling 70 billion litres amounts to a reuse of only 11.5 per cent of Sydney's annual wastewater. The truth is that unlike the Coalition, this tired, old Labor Government has no serious commitment to large-scale recycling. In the middle of last year Sydney Water dumped its biggest water recycling initiative: a \$110 million pipeline carrying water for industry through the city's south-west.

Carefully devised over four years, the pipeline was promoted as a key part of Sydney Water's WaterPlan 21, a blueprint on how to make Sydney's water use sustainable by 2021. Inadequate investment in recycling was not the only serious shortcoming of the now floundering plan. Also included was a proposal to raise the Tallowa Dam by seven metres and construct a \$680 million pipeline for transferring water from the Shoalhaven to Sydney. This scheme would be an environmental disaster. It threatens to flood up to 440 hectares, including more than 100 hectares of Morton National Park and the Ettrema Gorge wilderness area. This would require the revocation of wilderness areas for the first time since the Wilderness Act was passed in 1987, a move which has prompted the National Parks and Wildlife Service South Coast Region Advisory Committee to write to the Government.

Furthermore, at least two endangered ecological communities—river flat eucalypt forest and Illawarra subtropical rainforest—are likely to be impacted, with the habitat of the brush-tailed rock wallaby also placed at risk. The Government is also yet to properly determine whether Kangaroo Valley village and the Hampden Bridge—the oldest suspension bridge in Australia—will be adversely affected by the proposed flooding. The residents still do not know, and the Government still does not know, despite it being part of the Government's water plan. In addition to its negative environmental impact, the plan also stands to adversely affect those

working in the prawning and oyster farming industries that rely on the environmental flows downstream of the Tallowa Dam. Over the past year the Government has not properly consulted the people of Kangaroo Valley and the Shoalhaven about this aspect of its so-called water strategy, and the honourable member for Kiama has failed to support his constituents in their fight against the dam raising and water transfers.

Although the project has repeatedly been described as forming a major plank of the Government's Metropolitan Water Strategy, on Monday night the Government appeared to back away from its policy when the Minister for the Environment announced that a decision to proceed with the raising of the dam had not yet been made. The decision to suspend the project, however, is not enough. It must be absolutely and categorically ruled out—something that the Minister has not yet done. The Minister stated also that there was an argument for building a bigger dam further downstream. Clearly all options, even more drastic ones, are very much on the table. The Shoalhaven community is a leader in water recycling.

When completed next year the area's Reclaimed Water Management Scheme will use 80 per cent of reclaimed water in the drought-proof irrigation of 750 hectares of dairy farming and recreation land. Such efforts to manage and recycle water in a responsible manner should not be rewarded with flooding of wilderness areas and the decimation of local fishing and aquaculture industries. The Government must immediately scrap its plan to raise the wall of the Tallowa Dam to transfer water to Sydney.

AMERICAN CIVIL RIGHTS MOVEMENT

Reverend the Hon. Dr GORDON MOYES [2.21 a.m.]: Today, Thursday 1 December, is the fiftieth anniversary of the event that began the civil rights movement in the United States of America. That event was, of course, the famous action taken by Mrs Rosa Parks when she refused to vacate her bus seat for a white passenger who had requested that she move to the back of the bus. On this day 50 years ago, 1 December 1955, the 42-year-old seamstress was travelling home on one of Alabama's racially segregated buses. After work that evening she was tired. She simply refused to budge. She sat down. The bus driver stopped driving, and Mrs Parks was arrested and fined for disobeying a city ordinance.

At that point the incident may have remained an unexceptional event in small-town America, soon to be forgotten. Instead, it brought about the formation of the Montgomery Improvement Association, led by the young Baptist pastor Dr Martin Luther King Junior, that called for the now famous boycott of the city's bus company. That boycott lasted 382 days and brought Mrs Parks, Dr King and their cause to the attention of the entire world. Resolution finally came when a Supreme Court decision struck down the Montgomery ordinance under which Mrs Parks had been fined, and outlawed racial segregation on public transportation as unconstitutional. The unlikely activists and their supporters had won.

Fifty years later Rosa Parks is honoured worldwide as the Mother of the Civil Rights Movement. As honourable members would be aware, she passed away only four weeks ago, but she was the first woman in American history to have her casket placed on display in the rotunda of the United States Capitol, an honour usually reserved for American Presidents. Her life became the inspiration behind the careers of many exceptional black women, including Condoleezza Rice and Oprah Winfrey. These women now stand tall because Rosa Parks sat down. The civil rights movement in some respects is a confusing term, as the movement, despite having civil aims, was deeply embedded in the religious. Indeed, the unstoppable forces for change came primarily from the pulpit. Dr King taught congregations the revolutionary virtue of transforming one's enemies, not beating them. In a sermon that became quite famous, entitled "The American Dream", Dr King issued this remarkable challenge to his oppressors. He said:

Do to us what you will and we will still love you. We cannot in all good conscience obey your unjust laws, because non co-operation with evil is as much a moral obligation as is co-operation with good, and so throw us in jail. We will go in those jails and transform them from dungeons of shame to havens of freedom and human dignity. Send your hooded perpetrators of violence into our communities after midnight hours and drag us out on some wayside road and beat us and leave us half-dead, and as difficult as it is, we will still love you. Somehow go around the country and use your propaganda agents to make it appear that we are not fit culturally, morally, or otherwise for integration, and we will still love you. Threaten our children and bomb our homes, and as difficult as it is, we will still love you.

But be assured that we will ride you down by our capacity to suffer. One day we will win our freedom, but we will not only win freedom for ourselves, we will so appeal to your heart and your conscience that we will win you in the process. And our victory will be a double victory.

It was with this attitude that Dr King was able to "keep the struggle on high Christian standards", as he put it. The experiences of Dr King made him "more persuaded than ever before that "neither death nor life, nor angels,

nor principalities, nor things present, nor things to come... shall separate us from the love of God, which is in Christ Jesus our Lord." I still believe that standing up for the truth of God is the greatest thing in the world. This is the end of life. The end of life is not to be happy, to be successful or to have money. The end of life is not to achieve pleasure and even to avoid pain. The end of life is to do the will of God, come what may.

The civil rights movement in America proved beyond doubt that Christianity is the greatest force for change in this world. Without guns or bombs or violence, a cultural and legal tradition of black persecution was turned on its head, just as slavery was by William Wilberforce 150 years earlier. Today those who wish to silence the vibrant voice of Christianity in politics need only remember the virtuous achievements of this movement that began 50 years ago today. We salute the civil rights movement. We remember Dr Martin Luther King Junior but, in particular, we remember Rosa Parks who enabled black women everywhere to stand tall because she sat down.

UNIVERSITY OF NEW SOUTH WALES ASIA CHANGI CAMPUS

The Hon. PETER PRIMROSE [2.26 a.m.]: A few weeks ago this House passed a motion deploring the death penalty imposed by Singapore's judicial system on Australian citizen Van Tuong Nguyen. All pleas to commute his sentence have fallen on deaf ears and even his legal team expects that he will be killed in Changi gaol on Friday. However, there is another reason that we should focus on Changi. In March 2007 the University of New South Wales [UNSW] will open its doors as the first foreign university in Singapore at a new campus being built at Changi.

UNSW Asia will be the university's first offshore campus and the first wholly owned research and teaching institution to be established overseas by an Australian university. Designed to reach an enrolment of 15,000 over the next 10 to 20 years, the campus will have extensive research laboratories, a library, student amenities and sporting facilities, accommodation and all the services of a world-class university. The new university will offer a comprehensive range of undergraduate, post-graduate and research degrees in areas such as commerce, engineering, science, design media and international studies. Students will have the opportunity to move between Sydney and Singapore as part of their studies.

At least 70 per cent of the student population will be drawn from outside Singapore. But, of course, those thousands of staff and students will all be subject to Singaporean law in areas such as the possession of drugs, sexual practices, censorship and sedition. Chewing gum, for example, is banned in Singapore under the Regulation of Imports and Export (Chewing Gum) Regulations. Some foreign newspapers and magazines have their sales or circulation restricted. These include the *Asian Wall Street Journal* and the *Far Eastern Economic Review*. Private ownership of satellite dishes is banned.

Reporters sans Frontieres ranked Singapore as 140th out of the 167 surveyed countries in relation to freedom of the media. Section 377 of the Singapore penal code makes penetrative, non-reproductive sex between persons of any gender a criminal offence, while section 377A specifically criminalises non-penetrative sexual acts between men. Groups of more than six are considered legally to be rioting in Singapore and can be broken up by police. However, bungee jumping is no longer illegal. The Sedition Act is in chapter 290 of the statutes of Singapore. In September this year, for instance, it was used when two men were charged for making seditious comments against the Government on the Internet.

On the issue of drugs, anyone caught with 13 grams of heroin, 28 grams of morphine or 418 grams of cannabis faces mandatory capital punishment. Between 1991 and 2004 more than 400 people were hanged in Singapore, mostly for drug-trafficking offences. Amnesty International states that this is the highest execution rate in the world relative to population. Singapore's hangman, Darshan Singh, boasts that he has carried out more than 850 hangings during his tenure, including 18 in one day. After the execution a family has until 1.00 p.m. to collect the body, otherwise it is cremated by the State. I mention these matters not to denigrate Singapore—a country that I believe has a great future. I do so because I am desperately concerned that staff and students at an Australian university in Singapore need to be fully aware that they will be subject to the laws and restrictions of Singapore.

If they break the rules they will receive punishment under Singaporean law. Australian universities honour free speech, the publication of academic material, and the clash of ideas. Critical publications, displays and Internet material that challenge current thinking are the lifeblood of our courses. I also understand from some that the use of chemical substances is not unknown on campuses. Let us take the recent case of Slovenian art student, Matija Milkovic Biloslav, who last week exhibited an artwork at a Singaporean art college entitled,

"I am going to send you to a better place." That is a reference to the infamous last words that hangman Darshan Singh claims he says to the victims of Singaporean justice.

The artwork featured Van Tuong Nguyen's execution number and a noose. When the *Australian* newspaper unexpectedly covered the exhibition it was threatened with legal action if it published a picture of the artwork. The art college changed the exhibit by hastily removing the execution number and it claimed that the work was about suicide. I will leave honourable members with the following question: How would the Government of Singapore react to a campaign by students and staff at UNSW Asia in opposition to the death penalty? I admit to feeling uncomfortable about the likely answer.

CAMPBELLTOWN HOSPITAL EMERGENCY DEPARTMENT

The Hon. JOHN RYAN [2.31 p.m.]: Tonight I wish to bring to the attention of the House circumstances that appear to occur regularly in the accident and emergency facility at Campbelltown hospital. Sadly, Campbelltown Hospital has been the subject of enormous controversy over a number of years. It appears that this is just another issue that is waiting to be addressed. The situation was brought to my attention after Sunday 6 November, when two constituents of mine conveyed their 17-year-old son to the casualty section of Campbelltown Hospital. He had severely injured both of his legs in a sporting accident, breaking bones that required surgery. My constituents were pleased that they had decided not to call an ambulance but to convey their son to Campbelltown Hospital because once they arrived they discovered that the hospital had gone to code red. Had he been in an ambulance he would have been diverted to a hospital elsewhere in Sydney. However, because of his condition, and because he was in the hospital, he had to be accepted.

As we know, it is not unusual for accidents and emergency departments in our hospitals to become code red. However, what concerned these people was why their local hospital had gone to code red. It was not because of a build-up of accident and emergency cases. They found that the emergency ward was full of acute mental health patients, who were taking up 16 of the 25 beds in the emergency department. These patients did not need to be in the hospital's emergency department. They were there because there was nowhere else for them to go, such is the shortage of mental health facilities in south-western Sydney. This ward, which should be set aside for accidents and emergencies, was being used as a psychiatric ward because of a chronic shortage of mental health facilities in south-western Sydney and Campbelltown in particular. My constituents noted that a ward set aside in the accident and emergency section for the resuscitation of patients was being used by people with broken bones, which in this case included her son, who had been conveyed to the hospital because of a sporting injury.

Another room, which contained a single bed and was intended to be used as the plaster room for setting breaks, was also occupied by a mentally ill patient. There were numerous security guards stationed within the ward. There was one for each acute care mental health patient, which I understand is a hospital requirement. I understand that this situation is not unusual. Staff at the hospital informed my constituent that it was common for Campbelltown Hospital accident and emergency department to house approximately six to eight mentally ill patients each night and a few more on weekends. The situation is exacerbated on weekends because the local Campbelltown mental health facility stationed within the campus of Campbelltown Hospital, Waratah House, tends to build up; there are no visits by doctors during weekends to discharge mental health patients.

As there are no discharges from Waratah House on weekends, acute mental health patients build up in the accident and emergency department. At the very time the community needs its accident and emergency unit, largely for sporting accidents and so on, it is being filled with mental health patients. This situation needs to be rectified. I call on the Government to provide more appropriate mental health facilities in the Campbelltown area so this situation does not continue and the Macarthur region will continue to have proper access to accident and emergency facilities.

GENERAL GEORGES SADA, NATIONAL SECURITY ADVISOR TO THE IRAQI GOVERNMENT

Reverend the Hon. FRED NILE [2.36 a.m.]: Last Monday I met a remarkable man in Canberra in the main hall of Federal Parliament House, General Georges Sada, who is the National Security Advisor to the Iraqi Government. During the Iraqi regime led by Saddam Hussein, General Sada was the Air Vice Marshall in charge of the Iraqi Air Force with particular responsibility for fighter aircraft. He was the guest speaker at the annual prayer breakfast held in the main hall of Federal Parliament House, which was attended by more than 600 guests. Many Federal parliamentarians took part in the prayer breakfast, including John Anderson, Peter Costello, Kevin Rudd, Harry Quick and Bruce Baird, as well as the Governor General.

General Sada told us some interesting stories. One story concerned orders he received, when he was the Air Vice Marshall, from Saddam Hussein to equip 96 supersonic fighters—I understand they were Russian aircraft—with chemical bombs which would be dropped on the main population centres of Israel.

He was given that order in front of a number of defence officials in the regime and he refused to carry it out. He persuaded Saddam Hussein that the Iraqis could not succeed in their mission because they would be "flying blind" while Israel had the "eyes". He meant that the Israelis had superior military equipment and could identify the aircraft before they reached their targets. However, some of the aircraft could have got through. Sada said that there were weapons of mass destruction in Iraq. Some of them were destroyed but a large number were shipped across the border into Syria, where they remain to this day.

Sada shared another story with us, of which I have had confirmation from a former American Air Force Colonel, David Eberly. In January 1991 Colonel Eberly and some other coalition pilots were shot down over Iraq and captured. They were made prisoners of war. Saddam Hussein gave the order that all the pilots were to be executed as they were classified as criminals of war. Because Sada was head of an air force department he was put in charge of the prisoners of war. He received the order that they were to be executed but disobeyed it. As a consequence, Saddam Hussein threw him into prison, where he suffered greatly. The pilots whose lives were saved by Sada's stand have expressed their appreciation for his bravery.

Sada was ordered to join Saddam Hussein's Ba'ath Party in 1986. He refused to do so and was thus forced to retire. The key fact in this man's life is that he is a Christian. I was amazed that a Christian could hold such a high position in the Iraqi regime. But his ability to fly aircraft and to organise the air force for Saddam Hussein made him invaluable. Shortly after Sada was forced out of the air force Saddam Hussein invaded Kuwait and Sada was the first man he called back into service. He was restored to his former position and put in charge of the air force. Sada was obviously a loyal citizen of Iraq but because he would not execute the American prisoners he was thrown into prison. Sada is a remarkable man. I understand that he will be visiting Parliament House tomorrow. I am not involved in Sada's visit—I have only just learned of it—but I urge honourable members to take the opportunity to meet this remarkable Christian, who showed amazing courage and faith by putting his life at risk to protect the American pilots.

NEW SOUTH WALES-ASIA BUSINESS ADVISORY COUNCIL

The Hon. HENRY TSANG (Parliamentary Secretary) [2.41 a.m.]: I report to the House tonight on the success of the New South Wales-Asia Business Advisory Council. The council reports to the Minister for State Development. I thank the Minister, and Deputy Premier, the Hon. John Watkins, for attending the twentieth meeting of the council that was held on Monday 21 November 2005 at Governor Macquarie Tower. I will outline the council's achievements in 2005. The council provided support for the Government's trade missions and market visits program, including participating in pre-departure briefings and leading a mission to Korea. It participated in the Government's Small Business September 2005 celebrations and co-hosted functions on the following issues: free trade agreements, global market opportunities and cross-cultural business skills. Professor Fahey gave a keynote address on behalf of the council at the 2005 Asia Update Forum.

The council lent its support to incoming business and government delegations from India, China, Thailand and Indonesia. It supported the Government's business migration program and co-hosted a special New South Wales business migrants' settlement briefing. As well, it assisted bilateral business associations with the promotion of the Australia-Indonesia trade briefing by the Indonesian Co-ordinating Minister for the Economy, the 2005 Australia India joint business council meeting and the China-Australia economic and trade co-operation forum. It also hosted the New South Wales Asia business lunch, which was attended by more than 80 business people. That event provided an opportunity to emphasise the Government's commitment to work with the State's Asian business communities to attract investment and advance trade.

The council participated in the joint economic meeting between New South Wales and Guangdong Province, China, which took place because of New South Wales' sister-state relationship with Guangdong. It also met with members of the Small Business Development Corporation and the New South Wales Regional Development Advisory Council to identify opportunities for collaboration. The council was reappointed in 2005 for another two-year term, which finishes on 30 June 2007.

The council also has a number of initiatives for 2006, which will be celebrated as the Australia-Japan Year of Exchange to commemorate the thirtieth anniversary of the Basic Treaty of Friendship and Co-operation. Together with the Japan Chamber of Commerce and Industry, the council will hold a seminar in May. The

council will develop case studies to identify the key factors contributing to the economic success of sister-state and sister-city relationships. Guidelines will be developed to assist decision-making processes with regard to entering or exiting these types of relationships. The council will host the 2006 New South Wales Asia business event and engage with New South Wales Asian business communities to further trade and investment opportunities with the region.

In 2007 Sydney will host the Asia Pacific Economic Co-operation [APEC] Business Summit. The council will work with the APEC Business Advisory Council to ensure this event will benefit trade and investment opportunities with APEC nations. It will continue to support the Government's trade missions and market visits program, the business migration program and its briefing program for incoming delegations. The council will also participate in next year's Small Business Month.

I take this opportunity to thank Dr Malcolm Cook, program director of the Asia-Pacific region for the Lowy Institute, on his wonderful presentation on the future of the Asia-Pacific Economic Co-operation Forum. I thank also Mr Chris DeCure, head of the Department of Foreign Affairs and Trade's APEC 2007 task force, for his wonderful presentation on the arrangements for the 2007 forum and the role of the APEC Business Summit. The council had a successful and beneficial discussion on how it can contribute to the APEC Business Summit. More interestingly, we had a wonderful briefing on APEC and what we should do to work with APEC. Finally, I thank the Premier, Morris Iemma, for his continued support for the New South Wales Asia Business Advisory Council for the coming year.

Motion agreed to.

The House adjourned at 2.46 a.m. until Thursday 1 December 2005 at 11.00 a.m.
