

LEGISLATIVE COUNCIL

Thursday 2 April 2009

The President (The Hon. Peter Thomas Primrose) took the chair at 11.00 a.m.

The President read the Prayers.

PHOTOGRAPH OF LEGISLATIVE COUNCIL

The PRESIDENT: I inform the House that an official photographer will be present during question time today taking photographs for use in official publications.

OFFICE OF THE INSPECTOR OF THE POLICE INTEGRITY COMMISSION

Report

The President announced the receipt, pursuant to the Police Integrity Commission Act 1996, of a report of the Inspector of the Police Integrity Commission entitled "Special Report of the Inspector of the Police Integrity Commission pursuant to Section 101 of the Act", comprising the following reports:

- (1) Report by the Inspector of the Police Integrity Commission regarding a complaint by Detective T. S. Briggs of the NSW Police.
- (2) Report of the Inspector of the Police Integrity Commission regarding a complaint concerning aspects of the Whistler Report by Detective T. S. Briggs of the NSW Police, received 18 January 2008.
- (3) Report of the Inspector of the Police Integrity Commission pursuant to section 891B of the Act regarding a complaint by Sergeant Alison Brazel concerning the Police Integrity Commission.
- (4) Report of the Inspector of the Police Integrity Commission pursuant to section 891B of the Act regarding a complaint by Ms Stephanie Young concerning the Police Integrity Commission.

The President announced further that it had been authorised that the report be made public.

Ordered to be printed on motion by the Hon. Tony Kelly.

BUSINESS OF THE HOUSE

Formal Business Notices of Motions

Private Members' Business item No. 160 outside the Order of Precedence objected to as being taken as formal business.

UNPROCLAIMED LEGISLATION

The Hon. John Robertson tabled a list detailing all legislation unproclaimed 90 calendar days after assent as at 1 April 2009.

PETITIONS

Marine Parks, Sanctuaries and Habitat Protection Zones

Petition requesting a moratorium on the creation of all new proposed marine parks, sanctuaries and habitat protection zones and rejecting extensions to existing parks, sanctuaries and zones that further restrict fishing activities, and removal of the National Parks Association report the Torn Blue Fringe for consideration by the Parliament, received from **the Hon. Duncan Gay**.

BUSINESS OF THE HOUSE**Postponement of Business**

Business of the House Notices of Motions Nos 1 to 4 postponed on motion by the Hon. Tony Kelly.

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

REAL PROPERTY AND CONVEYANCING LEGISLATION AMENDMENT BILL 2009

Bill received from the Legislative Assembly, and read a first time and ordered to be printed on motion by the Hon. Tony Kelly.

Motion by the Hon. Tony Kelly 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 set down as an order of the day for a later hour.

BUSINESS OF THE HOUSE**Suspension of Standing and Sessional Orders: Precedence of Business****Motion by the Hon. Tony Kelly agreed to:**

That standing and sessional orders be suspended to allow the moving of a motion forthwith relating to the conduct of business of the House.

Precedence of Business**Motion by the Hon. Tony Kelly agreed to:**

That Government Business take precedence of General Business this day.

BUSINESS OF THE HOUSE**Order of Business**

The Hon. DUNCAN GAY: I seek leave of the House to move a motion relating to an order for the production of documents regarding a report of the Ombudsman, notice of which was given this day.

Leave not granted.

CHILDREN LEGISLATION AMENDMENT (WOOD INQUIRY RECOMMENDATIONS) BILL 2009**Second Reading**

Debate resumed from 1 April 2009.

The Hon. MARIE FICARRA [11.14 a.m.]: All members agree that it is so important that our society ensures the protection of children and the vulnerable. For too long, the soft pleas of the vulnerable have gone unheard. Children have been abused and neglected and their cries for help ignored by this Labor Government. Professionals and non-government organisations have stated the obvious: reform of child protection is needed. However, it has taken a very long time for some type of substantive action to take place. In 1997 the Wood royal commission exposed many tragic stories regarding the care and protection of children and young people in this State. It should concern us, as legislators, very much to think that 10 years later the Parliament is still learning of horrific stories involving children and young people, and it should make us determined to act decisively.

Let us cast our minds in sympathy to those whom the system failed. Seven-year-old Shelley Ward was allowed to starve to death although her family had been the subject of notifications to the Department of Community Services over a 14-year period. Toddler Dean Shillingsworth was found in a suitcase.

A 10-month-old baby, Missy, was beaten senseless after having been on the Department of Community Services' radar by virtue of at least four reports. Another toddler, three-year-old Emily, was the victim of a brutal bashing by her mother's boyfriend and died a painful death.

On 18 December 2002, some five years after the royal commission, which exposed varying acts of abuse against children and young people, the New South Wales Labor Government announced a \$1.2 billion plan to protect the most vulnerable. Clearly, this plan alone has not worked. Between 1 December 2002 and 20 December 2003, the New South Wales Ombudsman, Mr Bruce Barbour, reported there were 121 deaths of children known to the Department of Community Services. This amounts to a death rate of 9.31 children a month. In 2003 a three-year-old boy died after being violently sexually abused at the hands of two paedophiles, despite seven notifications to the Department of Community Services. The department was notified repeatedly of concerns. However, this poor child was found dead, having suffered severe injuries, with one of his attackers attempting to revive him using electrical wires. That is horrific—even worse, it was avoidable. I put all those deaths on record because they must never be forgotten. Sadly, 2004 saw a further 96 children die. In 2005, 109 children died. In 2006 the number of deaths increased further to 114. What is most startling is that the New South Wales Ombudsman's 2007 report exposed that the Department of Community Services knew one in six of these children. The Ombudsman said:

Approximately half of the children that were the subject of reports to DOCS identified in the report at the time of death had had their files closed.

It is absolutely beyond belief that although the department knew that these children were at risk of harm their files had been closed. Back then, Mr Barbour rightly stated:

We see too many files closed, too many cases not attended to in circumstances where they should be.

So the alarm bells were ringing loud and clear, but did this Labor Government hear them? No. The New South Wales Ombudsman also reported that the number of children reported to the Department of Community Services had increased by more than 45 per cent since 2001. Clearly, in light of the tragic deaths that I have outlined, together with the high numbers quoted and the continued reports of cases involving serious abuse, one must wonder why the New South Wales Labor Government failed to pick up that its system had been failing.

Labor should have proactively pursued the data and reports being highlighted by the New South Wales Ombudsman and others. Labor should have done more to properly protect the children and young people of this State, but it failed them. Faced with the obvious crisis in child protection in New South Wales, the Government announced that former Justice James Wood would head a special commission of inquiry into systemic problems relating to the protection of children and young people in New South Wales. Some may argue that we already knew of the tragic deaths and stories of serious abuse and that immediate proactive action should have occurred. But instead an inquiry was held. Has this inquiry gone far enough or has it, indeed, just further delayed action necessary to protect the children and young people of New South Wales? At the time of the announcement the Leader of the Opposition called for the Labor Government to put aside the inquiry and launch a more effective and impartial royal commission. The Leader of the Opposition, Barry O'Farrell, rightly asked:

How many more children have to die while slow progress is being made?

After months of travel, with so many people repeating their tragic stories, on 24 November 2008 Commissioner Wood presented a three-volume report on his special commission of inquiry into child protection services in New South Wales. On 3 March this year the Premier and the Minister for Community Services announced the Government's response to the Wood report and accepted 106 of the report's 111 recommendations, either in full or in part. I have referred already to the failed \$1.2 billion package announced in 2002 by the Government. We must ensure that the Keep Them Safe package announced on 3 March 2009 is not a repeat performance of the 2002 sham, which failed to protect so many children and young people and saw tragic deaths and the destruction of so many lives. I have read the three-volume report and considered carefully the issues it raises. I agree wholeheartedly with Justice Woods when he stated:

Non-government organisations are also key players in the system and provide universal, secondary and targeted as well as tertiary services to children, young people and their families aimed at minimising the risk of abuse and neglect as well as supporting those children and young people who have been harmed, some of whom will have been removed from their families and placed in out-of-home care.

In view of this comment I note with concern the March newsletter of the Council of Social Service of New South Wales [NCOSS], which outlines what that organisation believes is missing from the Labor Government's response to the Wood report. It states:

There is no mention of Community Services Grants Program or any additional resources for the CSGP and this is extremely disappointing.

There is not a great deal of detail about many of the key actions proposed and there will need to be much more work done to flesh out the actions.

Measures and indicators to determine progress are still to be developed.

I note that when the Wood report was released the Council of Social Service of New South Wales called on the Government to "provide a clear commitment to the way forward backed by resources". I would be interested to hear the Government outline its response to this very legitimate call. The Coalition does not oppose the bill, as it is at least a start in addressing the systemic problems that we have seen in the protection of children and young people in New South Wales.

My colleague the shadow Minister Community Services, Ms Pru Goward, and the Hon. Robyn Parker, have outlined some serious issues that the Government must address. Schedule 1 to the bill proposes to change the threshold level of harm for mandatory reporting from "risk of harm" to "risk of significant harm". This change is intended to reduce the level of mandatory reports to the Department of Community Services helpline. We have already seen a significant number of case files closed and later the tragic death of those children who had their case files closed by the department. The new provisions on mandatory reporting introduce a network of child wellbeing units in other government agencies such as Education, Health and Police purportedly to ease the load on the Department of Community Services. These units will deal with reports that do not meet the significant risk threshold. In view of past history, many people and many agencies are extremely concerned about this proposal. I share Ms Pru Goward's concern that this approach is low on accountability and involves very big risks. She stated:

The number and location of the wellbeing units is unclear and departmental resource shortfalls might limit the likelihood of mandatory reporters' concerns being followed up, just as the present system of central reporting to the DOCS hotline suffers from insufficient resources.

The legislative provisions with regard to record keeping and follow-up action need to be more stringent with regard to the wellbeing units. The Opposition wants the standard reporting templates rolled out as soon as possible so that we move forward in a timely manner. I have already mentioned the concerns of the Council of Social Service of New South Wales about the Government's package. The Government must ensure that it allocates adequate funding to cope with the necessary reporting requirements as well as the day-to-day administration.

I raise a particular concern regarding the change in provisions by way of item [7] of schedule 2.2, which requires that persons employed as children's registrars be qualified lawyers. There has been no direct consultation with those directly affected, who are currently performing the role of children's registrars and providing that service with excellence and dedication. The people currently employed as chamber registrars in the Attorney General's Department are very professional and experienced. There is currently a mix of both legally qualified and non-legally qualified, highly experienced children's registrars. There are seven in total. Four of them are legally qualified and the others are of an equivalent standing to their colleagues.

This matter is causing enormous uncertainty and insecurity for those who perform such a worthwhile and outstanding service to the public but who have been totally disregarded because there has been no consultation at the coalface. The whole purpose of alternative dispute resolution is to make the system less legalistic, and hence less intimidating. However, the recommendation is to make all Children's Court registrars legally qualified for no valid reason. This makes the system formalised, non-user friendly and legalistic. The inclusion of these provisions will make the system more adversarial and could exacerbate the situation, bringing dispute and conflict into an area where conciliation should be the preferable way forward.

I note that the Department of Community Services submission claims that in the past Children's Court registrars were always lawyers, but I am advised that this is not the case. If this requirement is introduced, should it not apply to all registrars in the New South Wales court system who are presently not required to be lawyers? The requirement for Children's Court registrars to be lawyers is ridiculous, impractical and unnecessary. Those registrars could be trained in mediation and alternative dispute resolution. They should be able to continue the excellent job they have done—many without legal qualifications—for many years.

I am horrified that the Labor Government has acted to limit the power of the New South Wales Ombudsman to review and report. I confidently state that if it were not for Mr Barbour exposing child deaths through the reportable deaths reports the Labor Government would have done nothing to stop the increasing deaths and serious abuses of children. Justice Wood recommended, based on the weight of the evidence before him, that the Ombudsman take over responsibility for the Child Death Review Team. Yet the Government has

removed the Ombudsman's authority to include information on the deaths of children known to the Department of Community Services within three years of their death. Justice Wood stated that his two recommendations in this regard would together ensure that the Ombudsman continued to provide oversight regarding child deaths with a view to identifying systemic problems within government. In chapter 23.121 of the report Justice Wood said:

Those deaths which do not meet the revised criteria—

that is, children who are not known to the Department of Community Services—

will still be the subject of scrutiny by the CDRT (Child Death Review Team). By transferring the role of convenor to the Ombudsman, information from those deaths can still inform child protection work.

I quote from a letter sent by the New South Wales Ombudsman to Ms Pru Goward, the member for Goulburn and shadow Minister for Community Services, on 27 March 2009, which is very recent:

It has been my consistent view that Mr Wood's recommendations should be considered as a reform package to be implemented in conjunction with one another. The important links between the three proposals provide for balanced improvement to oversight of child protection services through the avenue of reviewing child deaths. The result of not implementing the proposals as a package will, in my view, result in oversight that is less efficient and less effective.

In the first instance, there will be greater duplication between the Child Death Review Team and my office. The scope of the Child Death Review Team's work is linked to the scope of my work, in that under the legislation, the Team may not review a reviewable death. In other words, if my office does not review certain deaths, then the Child Death Review Team can. My main concern is that the deaths of children with a child protection history could now be undertaken within two separate agencies, both with the capacity to make comment on and recommendations about child protection systems and practices. This is likely to result in confusion for, an undue burden on, the agencies under scrutiny.

I also note that neither agency will be able to examine the deaths of vulnerable children in a holistic context. In the main, my work over the past six years has found that the profiles of children who die who have a protection history mirror those of children across the child protection system. This is why my child death review approach has to date been focused on reviewing how agencies have acted, and can act, to ensure the safety of children generally.

What more do we need? Why do we ignore these calls from an experienced, dedicated and passionate senior member of the public service, the Ombudsman? The people of New South Wales really have faith only in people such as the New South Wales Ombudsman. Because of the child deaths they keep reading about in newspapers and hearing about over the airwaves that horrify them they no longer have faith in us as legislators. The Department of Community Services has known about these cases and yet it has not followed up on them or acted on them with due diligence. We need to do whatever we can. The New South Wales Ombudsman has strongly stated his views, not only to the Opposition but also to the Government and the crossbench members, and we have a duty to listen. If we do not, and further deaths occur, we should hang our heads in shame.

The Government has, I believe, misrepresented the intent of Justice Wood in this regard. The Government has reduced transparency and accountability, and reduced the authority of the Ombudsman to review child deaths. The bill requires that the Ombudsman review all child deaths only biennially and that the death of children or siblings of children known to the Department of Community Services no longer be included in that review unless the child has died of abuse or neglect or in suspicious circumstances. The Coalition supports a proper and transparent process. This can only be facilitated by an annual review conducted by the Ombudsman—unrestricted, accurate, undoctored, and not downgraded in significance.

The Government wants us to believe that \$25 million to be provided over five years for foster care assistance would cater for 500 children. The foster parents, who give of their all, will need more money to provide additional food, clothing, extracurricular support services, and dental and medical services. Some may need a larger car or a larger house. The additional money announced by the Government is equivalent to \$10,000 per child per year, which is equal to the minimum foster care allowance that is available at present. The Government needs to make clear whether it will pay foster parents the full amount of additional allowance for each child, in addition to the provision of additional facilities, from this \$25 million or whether the allowances will be funded separately.

Not only are foster parents poorly supported financially, they are voiceless in the Children's Court regarding their understanding of the needs of children in their care and their relationship with their birth families, which are matters for the court's consideration. Foster parents remain concerned that they are only told that their child will be required in court at the last minute, when it is too late for them to participate in the proceedings. The Coalition encourages the new President of the Children's Court to recognise the role and

contribution of foster carers, and to ensure their inclusion in proceedings. We would welcome court registrars trained in mediation being involved in alternative and less adversarial dispute resolution processes involving foster carers.

Indigenous children make up one-third of all children in out-of-home care in New South Wales. From the experience I have gained through serving on the New South Wales Reconciliation Committee during my term in the other place, along with my membership of this House's social issues committee and particularly my involvement in its inquiry into indigenous disadvantage, I can affirm that the Opposition looks forward to a special package of measures for Aboriginal children being brought to the Parliament. We are disappointed that this is not seen as an urgent priority. The significant number of indigenous clientele seeking services via the Department of Community Services demands special measures. The Government should be reporting to this Parliament on its negotiations with the Federal Government over a partnership approach and its determination to implement recommendation 10.5 of the Wood report, which mostly concerns services to indigenous families.

The Opposition does not oppose the bill but we believe that the Government has missed a great opportunity for bipartisanship with regard to the most important issue facing all members: the welfare of our children. Instead, the Government seems intent to wreak its revenge on the Ombudsman for being too independent and too outspoken on child protection and welfare. The Government time after time refuses to listen to the informed opinion of non-government organisations, with which it has poor working relationships. This Labor Government has failed to listen to the real concerns of foster parents and has failed to harness their genuine understanding, love and passion for the welfare of children in their care. Solid and positive opportunities have been missed—a great shame that rests with this Government.

The Hon. ROBERT BROWN [11.39 a.m.]: There will probably be no more important bill debated in this House this year than the Children Legislation Amendment (Wood Inquiry Recommendations) Bill 2009. Debate on the bill should be confined to issues concerning the children of this State—in an atmosphere devoid of political point scoring. Last November the Hon. James Wood, AO, QC, handed down his report from the Special Commission of Inquiry into Child Protection Services in New South Wales. The bill is effectively the Government's response to that report, along with implementation of the policies in its own document *Keep Them Safe: A Shared Approach to Child Wellbeing*, which is backed by a commitment to provide \$230 million in a new funding package.

The Shooters Party has carefully considered this detailed and complex piece of legislation on this highly emotive issue. It has spoken both to interest groups and to the Opposition. I particularly thank the Hon. Robyn Parker for her input and Mr Ian Cohen and his staff for their help in our deliberations. When such complex legislation comes before the House the crossbenchers do not have as many resources available to them and the Shooters Party often has to rely on the information provided to it by the Opposition and the Government.

The Hon. Robyn Parker: You have more than we have.

The Hon. ROBERT BROWN: Not in total, perhaps. The Shooters Party has spoken to the Minister's office and to the Commissioner for Children and Young People, Gillian Calvert. The Department of Community Services [DOCS] has also briefed the party. When the Shooters Party spoke to Gillian Calvert she indicated that she could speak without any fear of politicising her position because she is retiring. The Shooters Party has not approached the Ombudsman, believing that the Ombudsman should not be put into a position where he could be seen to be lobbying. It has held those discussions in an effort to fully comprehend the ramifications and impact of the proposals of Justice Wood and the Government. The Shooters Party agrees with the Premier that the *Keep Them Safe* document represents a genuine effort by the Government to establish the framework for a new way of caring for children and families—and that is stating the bleeding obvious. The continual reporting of children being harmed and dying in this State is blight on each of us.

The care and protection of children and young people is, and always has been, a shared responsibility; it is not just the responsibility of the Government. It starts with parents and families, but sometimes those families struggling, for any number of reasons, need encouragement and help before they reach breaking point and we end up with hurt and traumatised children, or children that are neglected. The proposal by the Government sets a fairly solid course to do just that based on solid recommendations from a very in-depth inquiry. Most of us consider that the Department of Community Services is the only department that does or should help children and families but the problem is far wider than one department can properly cover.

There have been extensive discussions with former and present employees of the Department of Community Services and, quite frankly, theirs would have to be one of the most difficult jobs. All of government needs to be part of the response, as well as all legislators in this place. Each and every child deserves the chance to reach their full potential and children deserve the right to continue to live—that is a basic. I publicly acknowledge the efforts of the employees of the Department of Community Services and my heart goes out to them. Their job is not an easy one because of the issues they deal with daily. I believe that in most cases they are unfairly criticised, and have been unfairly criticised in the past. Not everyone understands just what those workers do and what they have to deal with. "Walk in my shoes", is the old saying. Sometimes the front-line troops, and the important contributions they make, are forgotten.

The Government has moved to change the threshold for matters that must be reported so that the Department of Community Services can focus its resources on those children and families in the greatest need. This should allow families who need help and services to get them sooner. If it works, in reality the entire community will benefit. The Wood inquiry made many recommendations: 111 in all. The Government has accepted the vast majority of those recommendations. The child death review recommendations have caused much debate in recent weeks. Only a couple of issues have come down to the wire, and no doubt amendments will be moved at the Committee stage.

I accept the assurance of the Government that there has been no stripping of the powers of the Ombudsman and, indeed, recognise its support for the Ombudsman scrutinising public administration. The bill does not reduce the scrutiny of the Department of Community Services by the Ombudsman. Claims have been made that without accepting all of the Wood recommendations the death of a little boy late in 2007 would no longer have been included in the Ombudsman's annual review. That assertion caused the Shooters Party concern. But after questioning that assertion it has no reason to believe that it is true. Indeed, the Government wrote to me in the following terms:

Currently the Ombudsman reviews the deaths of children according to a range of criteria, including children who died in suspicious circumstances or because of neglect or abuse.

And the most important part of that communication:

This role will continue.

The Ombudsman also reviews the deaths of children who are "known" to the Department of Community Services and the deaths of children whose siblings are "known" to the Department of Community Services up to three years before their deaths. That is the case no matter what the reports were about at any particular time, nor what caused the child's death.

Justice Wood concluded that the focus on children who were "known" to the Department of Community Services in the annual review of deaths led to a public perception that a large number of deaths could have been prevented if the Department of Community Services had intervened. The Ombudsman also conceded that many of the deaths—such as those involving drowning, illness, falls, and car accidents—had no relationship to the notification that the Department of Community Services received about the child or its siblings. Therefore, Justice Wood recommended removing the category of children "known" to the Department of Community Services from the Ombudsman annual report; instead including those children in the review of child deaths by the independent Child Death Review Team and the review work undertaken by the Department of Community Services. Justice Wood also recommended the Ombudsman report every two years rather than annually, thereby allowing more time for trends to be identified and recommendations for change as a result of the reviews to be implemented. The Government accepted both recommendations and the Shooters Party does not take issue with those decisions—they are pretty good decisions.

Justice Wood also recommended the administration and responsibility for convening the Child Death Review Team be moved from its current location in the Commission for Children and Young People to the Ombudsman. In considering arrangements for the oversight of child protection services during the inquiry Justice Wood found duplication of effort between the review team and the Office of the Ombudsman and tension in who undertakes research functions and for what purpose. Many of the representations received by the Shooters Party from people who have worked in the Department of Community Services supported the contention that there was "tension" in that arrangement. Any tension has the potential to create inefficiencies and inefficiencies in this game means another child dead or injured.

The response of the Government to that recommendation was: "The team is functioning well and is better able to carry out its important work in its current location". Hence, for the last couple of weeks the

Opposition and crossbenchers have had to work out what they believed to be the best outcome for the children of this State apropos that particular recommendation. That recommendation seems to have taken up most of the time for debate. It has been no easy task. In the end, the Shooters Party has not been convinced by the argument of the Government that the status quo should remain. It has come to the view that the recommendation by Justice Wood in relation to the administration and responsibility for convening the Child Death Review Team being moved from its current position in the Commission for Children and Young People to the office of the Ombudsman should be adopted.

This is a serious issue—I am stating the bleeding obvious there—and I am disappointed that in some cases there have been attempts to play politics with the issue. This issue is above and beyond politics. Child protection is a shared responsibility. It is the responsibility of each member of this House and the other place. It is incumbent upon all of us to enact the best possible laws and to assiduously research these issues so our decisions are based on what we believe is going to be the best outcome; not from the point of view of which bureaucracy gets the power but from the point of view of, first, the fastest and most efficient way to deliver a service and, second, the best way to collate that information to monitor trends and predict future issues. That will ensure those working in child protection will have the best chance to give each and every child at least the opportunity to reach their full potential.

The Hon. TREVOR KHAN [11.50 a.m.]: I congratulate the Hon. Robert Brown and the Hon. Ian Cohen on their contributions to the Children Legislation Amendment (Wood Inquiry Recommendations) Bill 2009. Both members made heartfelt and considered contributions to the debate and, plainly, have taken a great deal of interest in this legislation. I too take on board the words of the Hon. Robert Brown that this matter is above politics. It is about achieving the most effective outcome for many children in our State. I am sure that the objectives expressed by the Hon. Robert Brown are endorsed by the Hon. Robyn Parker, the Hon. Penny Sharpe and all other members of the House.

We are dealing with an amendment to the Children and Young Persons (Care and Protection) Act 1998. It seems that much of the debate has centred on the issue of protection. It is appropriate that we deal with that issue in an attempt to prevent circumstances of neglect by parents and physical and emotional abuse of children by parents and others. However, another part of the Act that we must give equal weight to is the care component. It is not only an issue of protection; it is also an issue of care. We must ensure that the children who end up in the care of the Department of Community Services receive the proper level of attention and support. After the children have started off badly in life, in many cases having received little from their parents, the State, or the director-general of the department, must provide them with the best of care and nurturing to ensure that when they reach adulthood they have had, as much as possible, the same opportunities and the same care and attention as any other child in our community.

We cannot have a system that allows second-best outcomes: people may be satisfied that we have plucked children from immediate harm but the children should not be eventually left in an emotional and physical limbo for the balance of their childhood. That is not good enough. It is not what this Chamber expects, it is not what the Parliament expects and, most importantly, it does not fit within the expectations of our community. With those preliminary comments, I will return to the bill. I am sure that many members, if not all, know that in my former life I practised law in Tamworth for over 20 years.

The Hon. Michael Veitch: Very successfully too, you tell us.

The Hon. TREVOR KHAN: Yes. As a lawyer in a regional centre I was exposed to many different areas of law. My primary areas of practice were family law and child protection matters. It is fair to say that my experiences in child protection matters were the most difficult because I was dealing, as were all parties involved, not just with a complicated piece of legislation, particularly post-1988, but also with extreme emotional issues. Clearly, the parents, to a greater or lesser extent, maintain a very strong emotional attachment to their children and, from my experience, in most circumstances, in fact the vast majority of cases, the children had a strong connection with their parents.

As to the other people involved, we cannot ignore the important role played by the officers of the Department of Community Services. As well as having an intellectual and career commitment to their job, in many cases they have a strong emotional attachment to the children. Indeed, they have a strong desire to ensure that the children are cared for as best as possible. All those factors create a soup of emotion that makes practising in this area very difficult. I am unable to forget the circumstances of the children. I remember many years ago a mother and child in court gripped together as decisions were handed down as to the care of the child.

The mother, with all her shortcomings, was distressed beyond belief. I had to perform the role of loosening the grip of the mother on the child so that the child could be taken away. Those circumstances are not experienced in criminal law and certainly not in commercial law, but they are regularly experienced by many practitioners in child protection law. Knowing the emotion that is involved, I say at the outset that I fully recognise that the officers of the Department of Community Services experience those same difficulties on a day-to-day basis. No doubt, it is one of the reasons the department has had such difficulty over many years recruiting and retaining staff.

It can be seen from what I have said that I do not come to this issue in a vacuum, either emotionally or in regard to understanding the law and its application. During my time as a lawyer practising in this area I witnessed the highs and lows of all the parties, including lawyers. As I have said, it must be understood that tensions exist in child protection matters, and not only the parties directly involved experience them. There are far more people involved who need to be considered in the equation. So often we talk about a child in need of care. But in many cases, perhaps the majority of them, it is children in need of care. One is immediately confronted with the circumstance that decisions have to be made about the disposition of two, three or more children and care plans have to be developed for those children, taking into account the potential, in many cases the certainty, of splitting the siblings from each other.

When practising in country areas lawyers find that "family" has a more extended terminology than simply parents and children. They are often confronted with the grandparents, aunts, uncles and other extended family members who consider that they have a role to play. They want to be involved in the proceedings and engage with the department. All too often the sheer logistics of taking into account the various competing interests, desires and expectations lead to many difficulties and tensions in the decision-making process. However, often the central issue is the parents. Although most of my practice related to dealing with the parents, I had to accept that many were far from perfect. Many of the parents have been engaged with the department for many years in one way or another and they confront a variety of problems, including drug and alcohol dependency, endemic unemployment, poverty, poor educational outcomes, domestic violence, homelessness, mental health issues, general health problems, and physical disabilities.

However, in many cases, parents, in their own minds at the very least, were attempting to do their best; unfortunately, their best must be recognised as just not good enough. As I said earlier, almost without exception the parents love their children, as we all love our children, and in most cases the parents and children have strong bonds of affection. Sadly, children—particularly older siblings—often perform roles in those families where they are forced to care not only for their siblings but also, regrettably, for their parents with all their shortcomings.

It is into this environment that the department is obliged to intrude and sometimes the parents do not understand that the intrusion is intended to help and protect their children. Not unexpectedly resentments may arise that sour the relationship between the parent, or parents, and the department. On some occasions the response of the department, which, in the vast majority of cases, contains caring and well-intentioned people, unfortunately does not reflect an insight into the bonds of love that exist between the parent and the child or children.

Pursuant to sessional orders business interrupted and set down as an order of the day for a later hour.

QUESTIONS WITHOUT NOTICE

METRO RAIL AUTHORITY CHIEF EXECUTIVE OFFICER APPOINTMENT

The Hon. MICHAEL GALLACHER: My question without notice is directed to the Minister for Public Sector Reform, and Special Minister of State. Can the Minister inform the House whether former Roads and Traffic Authority Chief Executive Officer Les Wielinga's appointment as Chief Executive of the new Metro Rail Authority was done by way of merit selection?

The Hon. JOHN ROBERTSON: That is a matter that should be directed to the Minister for Transport, and, accordingly, I suggest the Leader of the Opposition direct the question to him.

DEPARTMENT OF CORRECTIVE SERVICES REFORMS

The Hon. HENRY TSANG: My question without notice is directed to the Minister for Corrective Services. What action is the Government taking to reform the Department of Corrective Services?

The Hon. JOHN ROBERTSON: This Government has taken the difficult decision to introduce significant reforms across the Department of Corrective Services. A series of changes are underway to improve operations across the State's 31 prisons. These reforms have been in development for a number of years and reached the implementation stage this year. The changes will deliver \$63 million in savings to New South Wales taxpayers without any reduction in the standard of service delivered.

The Rees Government's prison reforms are about ensuring our prisons run effectively with modern, safe work practices and sensible working arrangements. The package of reforms we are introducing includes new workforce management plans that will eliminate the practice of rostering prison officers into empty wings. Workers will now move with the prison population, improving both officer safety and efficiency. The Government has also implemented the standard public-sector-wide absenteeism policy and centralised rosters, and has introduced a group of casual workers to support the existing permanent workforce in correctional centres.

The Government accepts that these reforms are controversial and that unions who are opposed to these measures have a right to protest. Indeed, I have many recollections of standing outside Parliament, particularly during the Greiner-Fahey years. I have had discussions with the union movement and will continue to do so. However, in challenging economic times, the Government needs to make tough decisions in order to make the taxpayer dollar go further, especially when faced with an overtime bill exceeding \$40 million per annum. This means we must benchmark the publicly run prisons in New South Wales with the private sector to achieve efficient and effective operations across the board. This will keep our community safe and maintain the high standard of our prisons.

This does not mean workers will be left out in the cold. No worker currently employed in either Cessnock or Parklea prison who wants to remain in the Department of Corrective Services will lose his or her job as a result of these changes. The Government has also agreed to provide 12 months salary maintenance for officers who move to the new operator at Parklea or Cessnock. The new operator, as a condition of the tender, will be required to invite existing personnel to apply and participate in the merit selection process. Departmental employees will be given preference of employment: officers currently employed at Parklea and Cessnock must be awarded the position over a non-departmental employee of equal merit. That is in addition to voluntary redundancies being offered to all staff at Cessnock and Parklea.

As I have previously outlined to the House, changes to the operation at Cessnock and Parklea jails do not amount to privatisation, as it is commonly understood. Indeed, the taxpayers will continue to own the bricks and mortar: the real estate and all the assets. In his submission to the upper House inquiry, Mr Gary Sturgess from the Serco Institute, with whom I am sure all members are familiar, stated:

We use the term "contracting" rather than "privatisation" ... the term "privatisation" is generally confined to situations where governments divest themselves of the ownership of the asset.

When the new operators commence at Parklea and Cessnock prisons, the Department of Corrective Services will still be responsible for deciding which prisoners move in and out of those prisons. [*Time expired.*]

The Hon. HENRY TSANG: I ask a supplementary question. Will the Minister please elucidate his answer?

The Hon. JOHN ROBERTSON: The State will retain management of the educational curriculum, the delivery of all health care, health related services and hospital facilities, and will determine which prisoners will be transferred to the High Risk Management Unit—more commonly known as SuperMax—in Goulburn. The Commissioner of New South Wales Corrective Services will still be responsible for the management of all classifications of New South Wales prisoners from minimum to extreme high-risk restricted inmates. He will manage any response by the highly trained Hostage Rescue Group in the event of a riot or hostage situation, and the commissioner will be required to approve all officers to be employed by the new operator after the appropriate background checks have been conducted.

Once operations are outsourced, all prison officers at Parklea and Cessnock prisons and the relevant operator of those prisons will continue to be answerable to the Commissioner of New South Wales Corrective Services for any and all operational issues. The Way Forward reforms are about the Government getting the best value out of each and every taxpayer dollar without reducing the quality or security of our correctional centres, and keeping the community safe.

GREATER WESTERN AREA HEALTH SERVICE AND SYDNEY SOUTH WEST AREA HEALTH SERVICE

The Hon. DUNCAN GAY: My question without notice is directed to the Minister for Health. Is it true that Greater Western Area Health Service is gearing up to shed 200 allied health positions? If so, can the Minister provide detail on that? Can the Minister also explain the so-called partnership between Greater Western Area Health Service and Sydney South West Area Health Service and why there are at least three senior positions at Greater Western Area Health Service currently occupied by senior bureaucrats from Sydney South West Area Health Service? As it now appears that the Minister is running the Greater Western Area Health Service out of the Sydney South West Area Health Service, is this a backdoor way of merging the two organisations to create an even bigger mess? What is the role that brings Sydney South West Area Health Service chief executive Mike Wallace to Dubbo so often?

The Hon. JOHN DELLA BOSCA: The Deputy Leader of the Opposition has asked me about four questions. I will try to deal with all of them in the four minutes allocated to me. The first question is in relation to job losses in Greater Western Area Health Service. There will be no cuts to permanent clinical positions in the area health services. Yet the Opposition's policy is to more than double the bureaucracy instead of providing more front-line doctors and nurses to improve patient care. The Opposition has pledged to increase the number of health services from eight to twenty. That means more managers and fewer resources for clinicians and patients.

The Hon. Duncan Gay: This is about the 200 allied health positions.

The Hon. JOHN DELLA BOSCA: No, it is about the health system and the patients. In contrast, the New South Wales Government's response to Commissioner Garling's report is an action plan comprising health initiatives worth \$485 million over four years to improve patient care and safety in public hospitals. Of course now the member has asked his first question about actual health care in the Greater Western Area Health Service [GWAHS]. In fact, he and his colleagues have asked many questions about creditors at the Greater Western Area Health Service. He has been complaining, as he and others well might, about the slow payment of creditors in that health service area. Many of the debts are well over the benchmark and I have said since I became Minister that that is unacceptable.

The Hon. Rick Colless: You said you would try to answer the question. You are not answering it.

The Hon. JOHN DELLA BOSCA: I am answering exactly the question I was asked. Outstanding creditors are a reflection of the state of the budget of the Greater Western Area Health Service, as they are of other health services' budgets. I have said repeatedly that each individual hospital, each individual health service and the system as a whole must operate within the budget allocated to it. A simple fact is that each and every area health service, hospital, ward and clinical operation must operate within budget. When faced with a creditor problem at the end of February 2009, the Greater Western Area Health Service had no private sector creditors beyond the benchmark 45 days.

The Hon. Duncan Gay: Point of order: While there were a number of questions, they were discrete to areas not involving payment of creditors.

The PRESIDENT: Order! I understand the point of order. The Minister will continue to be generally relevant.

The Hon. JOHN DELLA BOSCA: It is game, set and match that the Deputy Leader of the Opposition simply does not understand what he has been asking and campaigning about.

The Hon. Duncan Gay: We have hoisted you with your own petard.

The Hon. JOHN DELLA BOSCA: The member has hoisted himself with his own petard. He has been trashing the reputation of the Greater Western Area Health Service personnel for the past six months. The simple fact of the matter is that they cannot fix a creditor problem, a patient problem or a treatment problem unless they use wisely every cent of the taxpayers' dollars allocated to the service. That means ensuring that the services applicable to the Greater Western Area Health Service and the various facilities within it match the requirements of the patients presenting to the hospital facility. As a result, some skill sets required will be different, there will be redundancies and we will need to move different sorts of professionals into different sorts

of jobs. That will happen as a matter of course because that is the appropriate and effective way to manage a health system within budget. I was asked to explain the partnership between the Greater Western Area Health Service and the Sydney South West Area Health Service. It is about mentoring and developing the professional skills of the management of the Greater Western Area Health Service. [*Time expired.*]

The Hon. DUNCAN GAY: I have a supplementary question. Can the Minister elucidate his answer with particular reference to whether 200 allied health positions will go?

The Hon. JOHN DELLA BOSCA: As I said, the Greater Western Area Health Service is operating in a partnership—he described it as a partnership but I have described it as a mentoring relationship. We are developing a clinical plan and a method of ensuring that the services delivered by the Greater Western Area Health Service meet the needs of the population, within the budget. There is a separate argument that I have acknowledged in meetings with the medical professionals at Orange Base Hospital, Bathurst Base Hospital and Dubbo Base Hospital and Health Service.

The Hon. Michael Gallacher: You can waffle on all you want. You were asked a specific question about the 200 allied health positions.

The Hon. JOHN DELLA BOSCA: That question and the issues involved in those discussions have been along the lines of what is required in that service, including—

[*Interruption*]

Why does the Leader of the Opposition not listen to the answer?

The Hon. Michael Gallacher: You are not answering the question.

The Hon. JOHN DELLA BOSCA: I have answered that part of the question.

[*Interruption*]

The PRESIDENT: Order! The Leader of the Opposition will allow the Minister to answer the question asked by the Deputy Leader of the Opposition.

The Hon. JOHN DELLA BOSCA: They do not want to hear the answer because they do not have any answers themselves. I made the obvious point that the service must reflect patients' needs and it must do so within the budget. Jillian Skinner and Barry O'Farrell's brilliant idea is to establish a new area health service, thereby doubling the bureaucracy in Dubbo. That is a brilliant idea, Duncan! That will fix the problem—there will not be 200 allied health service personnel, there will be 400! The simple fact of the matter is that we are dealing— [*Time expired.*]

SYDNEY GAY AND LESBIAN MARDI GRAS ALCOHOL-FREE ZONE

Reverend the Hon. FRED NILE: I ask the Minister for Police a question without notice. Further to my questions asked on 11 November 2008 and 5 March 2009 regarding the 2009 Sydney Mardi Gras parade, the Minister indicated that the NSW Police Force would put Operation Bolten into effect, making Oxford Street an alcohol-free zone. Is the Minister aware that contrary to the intent and the presence of hundreds of police officers, liquor licensees along the route have boasted of selling record quantities of alcohol without intervention from the NSW Police Force? How many arrests were made at the Mardi Gras for alcohol-fuelled assault, offensive behaviour and resisting arrest? With such an investment of resources, why was the NSW Police Force unable to maintain the alcohol-free zone?

The Hon. TONY KELLY: I will take that question on notice and get back to the member. However, I point out that the alcohol-free zones relate only to the area outside the licensed premises. Any record sales inside the premises do not impinge on the alcohol-free zones. I will take the question on notice to ensure that the licensees were not selling alcohol and then allowing patrons to take it outside.

OUT-OF-HOSPITAL PATIENT CARE

The Hon. CHRISTINE ROBERTSON: I direct my question to the Minister for Health. Can the Minister inform the house what action the Government is taking to better resource out-of-hospital care services?

The Hon. JOHN DELLA BOSCA: The Hospital in the Home program provides options for people who are better managed in their own home with doctors, nurses and allied health team members providing dedicated care. Through the New South Wales Government's Caring Together health action plan—the Government's response to the Garling report—Hospital in the Home programs will be expanded to enable more patients with chronic and complex conditions to receive home-based care. Supporting and treating people in their home will take pressure off the hardworking and dedicated doctors and nurses in our busy emergency departments while ensuring that patients continue to get the care they need in an appropriate and comfortable setting.

To achieve this, the Severe Chronic Disease Management Program will be rolled out focusing on people over the age of 65 with very high-risk conditions such as diabetes, heart disease, chronic obstructive lung disease and high blood pressure. To support out-of-hospital care, New South Wales Health has also trained 22 ambulance extended care paramedics who assess and treat patients without the need for them to attend emergency departments. The Garling report indicated that an estimated 77 per cent of New South Wales residents or more than 4.8 million people live with at least one chronic disease and half die from a chronic disease. NSW Health has established a chronic care program to improve the quality of care and life of people with chronic diseases, to support their carers and families and to reduce unplanned and avoidable admissions to hospitals.

A range of initiatives is being implemented to better integrate services, including programs for self-management support, rehabilitation, care coordination, and advanced care planning. The focus of the \$485-million Caring Together health action plan is to promote a culture in our hospitals where the treatment and care of the patient is the centre of everything. These strategies are the result of extensive consultation across the State and from working closely with doctors, nurses and other health staff. The New South Wales Government's plan invests in 500 clinical support officers to give senior nurses the opportunity to devote maximum attention to patients, not paperwork.

Other initiatives include a nurse or midwife in charge in every ward, the introduction of clinical initiative nurses for emergency departments, male and female wards where possible, more clinical pharmacists, executive medical directors in major hospitals, hospital networks to assist with local decision-making, and more specialists for outer metropolitan and rural areas. The New South Wales Government has undertaken extensive consultation and has listened to doctors and nurses and other professionals, and it is taking action.

In stark contrast, members opposite, their leader and their shadow spokeswoman have resorted to their usual ways, producing a health plan spanning a voluminous eight pages. It is not a health plan; it is not even a good brochure. What is their key ticket item—to double the number of area health services, precisely what Commissioner Garling advised we should not do. Barry O'Farrell's bureaucracy will divert resources and services away from patients and will cost New South Wales taxpayers and patients \$300 million.

CROSS-BORDER TRANSPORT TASK FORCE REPORT

Ms LEE RHIANNON: I direct my question to the Minister for Health, representing the Minister for Transport. Last week the Government failed to release the report of the Cross-Border Transport Task Force, claiming the long overdue draft report needed updating before being submitted to the New South Wales Government for consideration. In the interim the Greens were leaked an internal document analysing submissions to the New South Wales-Queensland governments task force revealing a favouring of buses over rail, despite the communities' clear desire for the restoration of rail services in northern New South Wales following former Minister Costa's closure of the Casino to Murwillumbah rail line. Considering these circumstances, when will the Government release the final report of the task force into the public arena? Will the Government give close consideration to the wishes of residents and resident action groups in northern New South Wales who have so consistently advocated for improved rail transport in the region?

The Hon. JOHN DELLA BOSCA: A transport task force comprising the directors general of the New South Wales Ministry of Transport and the Queensland Department of Transport was established to advise the two governments on long-term transport strategies for the region. The report is being finalised and the Government will release it before the end of this month.

Ms LEE RHIANNON: I ask the Minister a supplementary question. Will it be released publicly?

The Hon. JOHN DELLA BOSCA: I will seek further advice from the Minister for Transport and get back to the member immediately.

FREEDOM OF INFORMATION APPLICATION DRAFT DETERMINATION PROCEDURE

The Hon. GREG PEARCE: My question is directed to the Minister for Primary Industries, Minister for Energy, Minister for Mineral Resources, and Minister for State Development. Is it currently the practice, or has it ever been the practice, for any department or agency to send a draft determination of a Freedom of Information Act application to his ministerial office before making the response public?

The Hon. IAN MACDONALD: No, I am not aware of that. I will ask my office and come back to the member.

POLICE NUMBERS

The Hon. KAYEE GRIFFIN: My question without notice is directed to the Minister for Police. Will the Minister please update the House on how the Rees Government's record budget for the New South Wales Police Force supports our hardworking officers to stay within the force?

The Hon. TONY KELLY: The Rees Government is investing in a better future for New South Wales, and the police portfolio is making a significant contribution—not only through its massive infrastructure program to build new police stations across the State but also in providing an increasing number of jobs in local communities. The Rees Government is delivering record police numbers to the people of New South Wales. This is not a political message—it is a fact. Since the last election, 1,774 police officers have graduated from the police college. That is an extra 409 over and above the 1,365 who have left the force in that time. That is 409 additional police officers.

[Interruption]

If members wait until I am finished, they will see the error of their ways. The authorised strength of our police force now stands at 15,306, maintaining our position as the fourth-largest police force in the western world. We will be adding a further 650 officers by the end of 2011, bringing the force to just shy of 16,000. That is 16,000 jobs, 16,000 working families across New South Wales supported through employment in the New South Wales Police Force.

Like any large organisation the New South Wales Police Force experiences some natural attrition—officers who retire or, for a variety of reasons, leave the force. Today I can advise the House that this attrition rate in the New South Wales Police Force has fallen to less than 4 per cent. I am advised that the rate is better than comparable organisations within the New South Wales public sector. The general attrition rate for the public sector in 2008 was 9 per cent. The police force attrition rate is less than 4 per cent, and we are better than any other police force in the country.

This is good news. It is because the police force is an employment of choice. But the Government is continuing to work with the New South Wales Police Force and the Police Association to further improve the retention of officers. Right now more than 1,600 people are already in training to become police officers. I am advised there are a further 670 applications from people interested in joining the New South Wales Police Force. Our hardworking police officers are staying with the police force because the Rees Government continues to provide them with the powers and resources they need to do their job. Police salaries have increased cumulatively by a massive 91.4 per cent since 1995. That is nearly double the inflation rate.

At a time when one would expect Opposition members to join the Government in support of our police force, they are doing anything but, as members can hear. The Opposition claiming this week that a lack of detective numbers is hampering the fight against outlaw bikies is nothing more than a slap in the face for our hardworking detectives. I am advised that as at 31 December there were 2,057 designated detectives in the New South Wales Police Force, significantly more than the number five years ago, when there were 1,456. Police tell me they have sufficient numbers of detectives to address the violence occurring at the moment, and I am confident in their dedication and their abilities. While the Rees Government is investing in the economy, the Opposition sits there smearing the good work of our hardworking police. *[Time expired.]*

TOORALE STATION FERAL PEST CONTROL

The Hon. ROY SMITH: I direct my question to the Hon. John Hatzistergos, representing the Minister for Climate Change and the Environment, and it relates to Toorale Station in outback New South Wales. I refer

to the reports that the National Parks and Wildlife Service is recruiting people to maintain the property and that one of its biggest problems will be controlling feral pests. To this end, it appears that an aerial shoot of wild pigs is planned for some time in the next few weeks. How much will it cost to use helicopters to cull feral pigs and, at the end of the cull, will we be advised how many pigs have been removed and the cost per pig? Further, why are conservation hunters, organised by the New South Wales Game Council, not given the opportunity to remove these pigs for free? Will the Government consider using these volunteer hunters to remove feral animals from national parks in the same way that the Government uses volunteers during emergencies such as bushfires, storms and floods?

The Hon. JOHN HATZISTERGOS: I will refer the member's question to the Minister.

FREEDOM OF INFORMATION APPLICATION DRAFT DETERMINATION PROCEDURE

The Hon. DON HARWIN: My question without notice is directed to the Minister for Health. Is it currently the practice, or has it ever been the practice, for his department to send draft determinations of Freedom of Information Act applications to his ministerial office before making the response public?

The Hon. JOHN DELLA BOSCA: I am not aware of such a practice, but I will ascertain information from my office and come back to the member as soon as practicable.

MORTGAGE STRESS

The Hon. IAN WEST: My question without notice is addressed to the Attorney General. Will the Minister please update the House on what the Government is doing to help people combat mortgage stress?

The Hon. JOHN HATZISTERGOS: Members will recall last month I informed the House that I had launched a mortgage stress handbook on behalf of Legal Aid NSW. The handbook is a practical, user-friendly guide free to anyone having problems with their mortgage payments. During these difficult financial times, I am pleased to inform the House that more than 4,700 of the handbooks have been distributed. The handbook covers a range of scenarios, including advice on what to do if you have missed a loan payment; your financial lender has contacted you; you have received a default notice; or the Sheriff is at your door. The handbooks have been made available at a series of mortgage stress forums that Legal Aid NSW has been holding across the State. In response to the growing problem of mortgage stress, last year I opened a forum in Parramatta. It was followed by forums held in Gosford and Rooty Hill. After community demand for more forums, Legal Aid held a forum last month in Dapto. I am advised that up to 60 people are attending the forums. On 23 April, we will hold another forum in Newcastle. Furthermore, planning is underway to hold forums in Wagga Wagga, Albury and in south-western Sydney. The fact that the forums are proving popular is evidence that the assistance they provide to struggling families has been sorely missed. Residents of these communities have been provided with face-to-face contact with a collection of service providers including financial counsellors, legal advisers and other support agencies.

Agencies that have taken part include the Consumer Credit Legal Centre, LawAccess NSW, community legal centres and financial counsellors. Consumers have been made aware of their rights and told of the importance of moving quickly and getting good advice when they find themselves unable to meet their mortgage payments. The aim is to prevent unnecessary home repossessions by explaining the options available to people and encouraging them to act to improve their chances of either saving their home or minimising their losses. Future forums will focus on first homebuyers to assist people taking advantage of the Federal Government's expansion of the first home buyer's grant program, as well as the State Government's initiatives. It is important that people make informed decisions about their capacity to service a mortgage as the global financial crisis worsens.

In addition to the forums and the handbook, I am also pleased to inform the House that a new legal service will be established to assist people facing mortgage stress. The Mortgage Stress Legal Support Program, which will commence in July this year, will be a dedicated provider of advice and assistance to people who are struggling to pay their mortgages. The program will be made possible by a grant from the Public Purpose Fund, from which \$280,000 has been allocated to the New South Wales Consumer Credit Legal Centre and \$240,000 has gone to Legal Aid NSW. Legal Aid will use the funds to employ two legal officers, based in Parramatta and Gosford, to work specifically on these issues. The Consumer Credit Legal Centre will employ an additional financial counsellor and two solicitors, to be based in Sydney. If people want more information, the Mortgage Stress Handbook is available online at www.legalaidsnsw.gov.au. Anyone requiring urgent assistance can call LawAccess New South Wales on 1300 888 529.

LOCUST LEVY

Mr IAN COHEN: My question is addressed to the Minister for Primary Industries. Does the Minister recognise the anger being expressed by landholders on the east coast of New South Wales who are paying a levy on their rural rates that contributes towards combating locusts west of the Dividing Range? Will he acknowledge that many of these landowners are providing species, habitat and water catchment protection services, often in the form of gazetted wildlife refuges and voluntary conservation agreements? Will the Minister move to improve the relevance of the rating system and make a distinction between productive farms and conservation blocks?

The Hon. IAN MACDONALD: A comprehensive review has been conducted and a different regime in terms of our rating system has been implemented.

The Hon. Duncan Gay: And you still got it wrong.

The Hon. IAN MACDONALD: We looked at this very carefully and in doing so I sought the advice of the Hon. Richard Bull.

The Hon. Tony Kelly: Who is he?

The Hon. IAN MACDONALD: Richard Bull was a former leader of the National Party in this House. In fact, he was the senior mentor to the current Deputy Leader of this House. I think his advice was pretty good, and on the basis of that advice we made significant changes to a lot of smaller properties. Many of them would be on the coast but there were others inland as well. With regard to those properties we have made substantial changes. I believe we have a pretty good system in place for pest insect levies. When there is a crisis, it is spread across the State.

The Hon. Duncan Gay: You spread all the pain onto the farmers.

The Hon. IAN MACDONALD: No, not all of the pain. If the Deputy Leader of the Opposition has a memory that goes back more than a day or two, he will recall that the State Government made a substantial contribution of several million dollars to fight the locust plague in the State in 2005-06. He has forgotten about that probably.

The Hon. Duncan Gay: You took all their money.

The Hon. IAN MACDONALD: There was an undertaking from industry that in due course they would pay it.

The Hon. Duncan Gay: Then you loaded them up with debt for what is a national disaster. If it were a fire or a flood, the State would pay it, but you are making the farmers pay in a time of drought. It is just disgraceful.

The Hon. IAN MACDONALD: Why don't you stand up and talk?

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

[Interruption]

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

The Hon. IAN MACDONALD: The Deputy Leader of the Opposition knows nothing about this area. He has denied the commitment of a bona fide industry year in, year out. He runs around the State playing little opportunist games. That is the only thing he does.

The Hon. Greg Pearce: Point of order: My point of order relates to relevance. The Minister is not anywhere near to addressing the question.

The PRESIDENT: Order! The Minister should ignore interjections and be generally relevant.

The Hon. IAN MACDONALD: To return to the original question, the particular issues are dealt with in other ways with policies that relate to wetlands on properties. We have exempted many more of the smaller properties that participate in these sorts of activities, but I do not contemplate that we will exempt any more. We must remember that pest animals do not come up to a property fence and say, "This property has a wetland; we will not go there." These pests go right across the landscape of New South Wales, and we have a system in place that covers the whole State. [*Time expired.*]

Mr IAN COHEN: I ask a supplementary question. Does the Minister really believe that an insect levy charged to a person living, for example, at Cattai, a bus distance from the Parliament, for an issue that is problematic west of the range is a fair thing to landowners on the outskirts of Sydney?

The Hon. IAN MACDONALD: Absolutely.

NORTH MANLY QUARRY SITE SALE

The Hon. MARIE FICARRA: My question without notice is directed to the Minister for Lands. Why has the department decided to sell the old quarry site at 13A Amourin Street, North Manly, instead of transferring ownership of the land to Warringah Council, given its heritage and environmental significance to the people of Warringah? Can the Minister assure the House that the survey included in the contract of sale is correct and that the department has complied with all provisions of section 11 of the Crown Land Act "principles of Crown land management"? In the interests of the environment, heritage and the community, will the Minister withdraw this public land from sale to developers and ensure it is protected for future generations?

The Hon. TONY KELLY: The Department of Lands has advised me that the subject land in Amourin Street, North Manly is located above an old quarry excavation site, which over the years Warringah Council has developed as the Quarry Reserve recreation area. This Crown land, which is currently on the market by tender, was previously held under lease by the North Manly-Brookvale sub-branch of the RSL for the purpose of a clubhouse. The lease was forfeited in 1959 without any development having taken place.

Given that the land is zoned for residential development under Warringah's local environmental plan, the department wrote to council in August 2008 seeking its comments on the proposed sale. Council was advised that in view of the existing residential zoning it would have to acquire the land at current market value if required as part of its network of public recreation reserves. This is normal practice in such circumstances. While the department's letter was immediately acknowledged, a formal response from council was not received until the land was placed on the market on 14 March 2009, six or seven months later. Council in its response to the department requested that the land be withdrawn from sale and transferred to council at no cost. That means that the Government does not have the money for hospitals, police officers and other such projects around the State. The Department of Lands is of the view the land to be sold is not physically part of the developed Quarry Reserve, which is managed by council, and is some six metres below the land to be sold.

Given the circumstances, I believe the sale of this Crown land is in the public interest. However, if council maintains that it is required for recreation purposes, the offer for it to acquire the land still stands. In the meantime, council has advised me that it has identified a threatened species of flora on the site. Department of Lands officers met on site with council staff this morning, Thursday 2 April, to inspect the plant. It was agreed that an expert from the Royal Botanical Gardens be co-opted to make a positive identification. The tender selection process has accordingly been put on hold to allow for the identification to be carried out.

ELIZABETH MACARTHUR AGRICULTURAL INSTITUTE

The Hon. TONY CATANZARITI: My question without notice is addressed to the Minister for Primary Industries. What action is the Government taking to ensure that the planned upgrade of facilities at Menangle's Elizabeth Macarthur Agricultural Institute creates jobs for that area?

The Hon. IAN MACDONALD: I thank the Hon. Tony Catanzariti for his important question. It gives me the chance to inform the House about the progress of the planned upgrade to laboratory facilities at the Elizabeth Macarthur Agricultural Institute. An investment of \$43 million to upgrade facilities at the institute was announced by the Government in last year's budget. This upgrade will secure the institute as the State's key plant and animal health facility, and the frontline laboratory for animal and plant disease emergencies. I am pleased to inform the House that construction of new laboratories at Elizabeth Macarthur Agricultural Institute will create the equivalent of around 150 full-time jobs during the construction phase. Planning work began for the upgrade as soon as the funding for the project was confirmed in the State budget.

Australian company S2F Pty Ltd has been engaged as principal design architects for the project. S2F is an Australian company that specialises in laboratory design with a proven track record and a wealth of experience in this type of project. Many international laboratory facilities for pharmaceutical corporations and food companies have been designed by S2F, including recent projects in China, New Zealand and the United States. Australian laboratory clients of S2F include the University of Queensland, Monash and Griffith universities, the Australian National University, the CSIRO, and the Walter and Eliza Hall Institute. Soon after being awarded the contract, architects from S2F met with staff at Elizabeth Macarthur Agricultural Institute to get their input and to provide practical feedback on design options. Concept plans were then developed and, once the final concept was approved, detailed planning commenced.

Final plans for the first stage of the Elizabeth Macarthur Agricultural Institute project are nearing completion and are expected to be lodged with Wollondilly Council within the next few weeks. Construction is expected to start in October. Stage one of the project is the construction of new plant and animal laboratories valued at \$35 million. The new laboratories will be constructed to create a distinct biosecurity precinct within the institute that meets the latest international biosecurity standards. This strict biosecurity precinct will be one of only a small number of similar facilities in Australia. Having state-of-the-art biosecurity facilities will ensure that New South Wales's preparedness for exotic plant and animal disease incursions remains the best in the country. Scientists working in laboratories within the biosecurity precinct will be capable of undertaking virology, microbiology, bacteriology, and molecular biology research and diagnostics in a safe and secure environment.

Once construction of the new facilities is complete, the second stage of the Elizabeth Macarthur Agricultural Institute project will begin. Stage two will be the refurbishment of existing laboratories and the upgrading of the waste management system. The original laboratories have been in operation since the institute began operations in 1988. Since then, laboratory certification standards have become more stringent and laboratory technology has continued to develop. The refurbishment will bring existing facilities up to twenty-first century standards. New and improved facilities at the institute will ensure that New South Wales continues to be at the forefront in research and preparedness against emerging plant or animal threats.

Elizabeth Macarthur Agricultural Institute laboratory facilities played a major role in the successful fight against equine influenza, with more than 130,000 tests conducted. The new facilities mean the institute will be even better equipped to mount a swift response should another disease as devastating as equine influenza get through quarantine and reach New South Wales. The New South Wales Government, through the Department of Primary Industries and the Department of Commerce, will work with S2F Pty Ltd, Wollondilly Council and the local community to ensure the Elizabeth Macarthur Agricultural Institute upgrade progresses smoothly.

I would hope that the Deputy Leader of the Opposition could see past his characterisations of misbehaviour that have manifested today in this Chamber and support this great development at Camden. Unlike his flippant little mate in Orange, who has put out a press release, thinking that the 150 jobs associated with the project should be in Orange, forgetting of course that these are jobs in the construction of a biosecurity facility and not jobs that— *[Time expired.]*

The PRESIDENT: Order! I have never sought to stop interjections when they are part of the flow of debate, only when they become disorderly. If a member seeks, however, to bait another member, it becomes very difficult for the Chair to maintain order. All members should adhere to the standing orders.

PRISON PRIVATISATION

Ms SYLVIA HALE: I address my question to the Minister for Corrective Services. I refer to the rally by thousands of corrective service officers, and their families and supporters, outside the Parliament today. Will the Minister guarantee those officers and their families that the privatisation of Cessnock and Parklea jails will not result in a reduction in their pay or their working conditions? Or, will the Minister be honest with them and admit that privatising jails is all about reducing the pay of corrective service officers and cutting their working conditions, and driving down the living standards of working families?

The Hon. Greg Donnelly: Point of order: Ms Sylvia Hale is well and truly familiar with the standing orders. Clearly, contained within her question was argument and debate, and therefore her question should be ruled out of order.

Ms SYLVIA HALE: To the point of order: Clearly the question contained a request for information; it did not contain argument or debate. I am sure the Minister can defend himself.

The PRESIDENT: Order! I will read the question. While I am considering the question, rather than delay question time I will take the next question.

Later,

The PRESIDENT: Order! With regard to the point of order taken earlier to a question asked by Ms Sylvia Hale, I rule the question out of order under Standing Order 65 (1).

HEALTH SYSTEM REFORM

The Hon. DAVID CLARKE: My question without notice is directed to the Minister for Health. What is the Minister's response to Dr Valerie Malka, head of trauma at Westmead Hospital, when she says on the subject of the Garling report: "Nothing will change unless there is a clear mandate to stop the culture of bullying and intimidation"? What is the Minister's response to the many members of the medical and nursing profession who are critical of his proposed Independent Advisory Council, which will be answerable only to the Minister and his director general with no obligation to make its findings public? Will the Minister agree to calls by the Hospital Reform Group of Doctors to make this monitoring process as transparent as possible by having the council's findings reported to the Parliament? Will the Minister support the Coalition's call for the establishment of an independent body to monitor, evaluate and report to the public through this Parliament on the Government's implementation of the Garling recommendations?

The Hon. JOHN DELLA BOSCA: The Coalition's policy on everything is more bureaucrats and fewer nurses. With regard to every single aspect of the health debate—whether it be about the Greater Western Area Health Service, the trauma plan, or implementation of the Garling report—the Coalition's policy is: Let's have more bureaucrats; let's have \$300 million worth of bureaucrats and 3,500 fewer nurses. Bullying is not tolerated in any workplace—with the possible exception of the New South Wales National Party and the New South Wales Liberal Party. Bullying is certainly not tolerated in our hospitals.

The New South Wales Government will be investing over \$49 million in a significant culture change program that will improve respect and dignity for both patients and staff within the New South Wales health system. The Caring Culture Program is part of the New South Wales Government's Caring Together: The Health Action Plan for New South Wales, which was developed in response to the Garling report. The program will build on existing initiatives that provide more transparent grievance processes and training in interpersonal communication and conflict resolution. All staff will participate in the Caring Culture Program, regardless of whether they are internationally recognised specialists, toilet cleaners or biomedical engineers.

To support the Caring Culture Program, a grievance advisory service will be established with front-line advisers working in area health services to provide independent, objective advice to affected staff. Mr Garling considered the framework of New South Wales Health's policies and procedures on the prevention of bullying to be robust and comprehensive, reflective of best practice and easily accessible. The Caring Culture Program will complement these policies and ensure their effective and consistent application within workplaces across the health system. The success of the Caring Culture Program will be measured through staff and patient surveys. While there are many pressures in the modern clinical environment, there is no excuse for abuse or disrespect, and these behaviours will not be tolerated. The focus of Caring Together: The Health Action Plan for NSW is to promote a culture in hospitals where the care and treatment of patients is at the centre of everything the public hospital does.

During the Garling consultation a common theme emerged among doctors, nurses and clinicians that experts must be involved in monitoring the implementation of Caring Together: The Health Action Plan for New South Wales—I agree. As the Minister for Health, when developing Caring Together: The Health Action Plan for New South Wales, I consulted with 12,000 clinicians, health workers and community members to get their ideas, to draw on their expertise and to ensure the best possible health action plan. The Government is committed to continuing that transparency. The new Community and Clinicians Advisory Council will provide advice and report to me on implementation. An independent panel will also report to me and the panel will monitor the progress of the implementation teams. Leading independent private sector auditors will be appointed to audit the implementation progress against the action plan, and I will report to a new subcommittee of Cabinet on health. Progress will be made publicly available every six months for the next three years.

In response to the general terms of the member's question, as the Minister for Health I attend question time daily and I am always happy to answer any questions about the implementation of the Garling

recommendations, the health action plan or how the health system is performing—although the members opposite do not listen. The New South Wales Government has yet to finalise the composition of the panel and the council but that will be soon, along with the logistics and frequency of their meetings. During the consultations for Caring Together: The Health Action Plan for New South Wales the Government has been completely open and transparent about the views aired during the various forums and these can be seen at the health action plan website—<http://healthactionplan.nsw.gov.au>. *[Time expired.]*

BUREAU OF HEALTH INFORMATION

The Hon. PENNY SHARPE: My question without notice is addressed to the Minister for Health. Can the Minister inform the House of any initiatives the New South Wales Government is putting in place to help clinicians get more data so they can make better decisions about patient care at the local level?

The Hon. JOHN DELLA BOSCA: I thank the honourable member for her question and ongoing interest in health issues. During extensive consultations with doctors and nurses across the State about the Garling report recommendations there was a call for greater information upon which to base decisions at the local level. Through Caring Together: The Health Action Plan for New South Wales—the Government's response to the Garling report—an independent information bureau is being established. The Bureau of Health Information will make hospital data more transparent and enable information analysis at the local level to improve patient care. It will be responsible for producing regular and timely reports on the performance of the New South Wales health system, particularly on waiting times, emergency department performance and hospital infection rates, and developing and distributing tools to allow users to interrogate the data.

The data will be publicly reported at State and area health service level, as well as hospital and clinical service level, so doctors and nurses have the information they need to make the best decisions for patients. In addition to performance data, new measurements will be developed over time to provide a more comprehensive way of seeing how patients in New South Wales public hospitals are being looked after—not just how quickly they are seen. Subject to further consultation with doctors and nurses some of the new measurements may include clinical performance on the outcome and appropriateness of treatment, reports to the community on the safety and quality of the clinical care, and the costs associated with the care provided. The Bureau of Health Information is a key step towards transparent public reporting and better analysis of information; all directed to improve health care for patients, by providing doctors, nurses and allied health workers with the useful information they need.

As the Garling report points out, New South Wales has one of the better public health care systems in the developed world, but we need to meet the challenges of the future and confront the problems in the system, including increasing health costs and an aging population. The Caring Together: The Health Action Plan for New South Wales is only the beginning of important changes to continue to deliver the best possible health care and to ensure ongoing patient care and safety. The Government has accepted 134 of the 139 Garling report recommendations, and has been working hard to put together and implement its \$485 million action plan.

But what contribution has the Opposition made to that process and how has it responded to the Garling recommendations? The answer is an eight-page brochure spelling out a six-point plan, which is really a two-point plan because one of those points is outlined in five parts. A closer inspection of the Opposition's two-point plan reveals the Opposition has accepted four of the Garling recommendations, and one of its plans is the complete opposite to what Commissioner Garling recommended. The Opposition wants to return to the hospital board structure, which would result in more than a doubling of our area health services from 8 to 20. In that regard the commissioner's recommendation No. 134 is crystal clear. It states:

I recommend that there be no alterations to the current area health service governance structure.

Barry O'Farrell's reckless and ill-conceived plan will cost \$300 million—the equivalent of 3,500 nursing positions—and divert much-needed resources away from front-line services.

CARBON CAPTURE AND STORAGE

Dr JOHN KAYE: My question without notice is directed to the Minister for Energy. Is it true that Geoscience Australia has identified 10 offshore sites across Australia as potentially suitable and worthy of further study for the bearing of greenhouse gas emissions but that not one of those sites is in New South Wales? In the absence of suitable onshore sites in New South Wales, has the department or other agencies estimated the cost of transporting 57 million tonnes of CO₂ annually to burial sites in Victoria or South Australia, or even

conceivably the Northern Territory? Does the absence of suitable in-State burial sites massively increase the cost estimates for carbon-capture storage for the coal-fired power stations of New South Wales? When will the Rees Government face reality and give up on the myth that carbon-capture storage can make a cost-effective and timely contribution to reducing the greenhouse emissions of the State?

The Hon. IAN MACDONALD: Yes, I am aware of those sites and I am also aware that not one site has been identified in New South Wales. The historical reason for this is that there has been significant petroleum exploration in other parts of the country and most of the sites identified by Geoscience Australia as associated with those locations are petroleum-bases sites, for instance in Bass Strait, Otway Ranges and off the Western Australian coast.

The Government understands there is a lot of work to be done in this area. Drilling is currently being undertaken at the Munmorah Power Station and as at last week it had reached 1,500 metres. Completion of that drilling is expected to be at the beginning of May. Highly technical work will then be done by an international firm to identify storage prospects for the proposed expansion of the pilot facility that has been bolted on to the power station by Delta, CSIRO and the Government. I understand that work has been highly prospective as to carbon-capture methodology.

In relation to identifying sites in New South Wales, the Government will be looking at areas such as the Darling Basin, which has been identified as having suitable structures for exploration. The Government will also be testing other areas out west as part of a drilling program funded by the \$100 million Clean Coal Fund that the Government has allocated to reduce our carbon footprint. I have also held discussions with Santos about its operations. Santos believes it can sequester up to 30 million tonnes of carbon per annum in its Central Australian structures. That area is about 1,000 kilometres from Sydney, and the Darling Basin is about 700 kilometres away, but the identification of closer sites would considerably reduce costs.

The Ministerial Council on Mineral and Petroleum Resources is looking at a proposal for a national grid system for the transport of carbon to suitable sequestration sites. This work will continue and is highly prospective. But let us get back to the real issue: coal is not going away in the next 30 to 40 years. Coal is the most widely used fuel internationally and it will continue to be used. The United States of America is in the process of introducing legislation that contains a significant component for the sequestration and development of clean coal. If my memory serves me correctly, the United States has earmarked around \$10 billion for that research and development, which is a large amount of money to put towards this project. It is much better than the Bush administration's \$600 million Clean Coal Fund.

The honourable member should remove his green blinkers and support efforts to convert the carbon that is being released by the coal industry. About 92 per cent of our energy is generated from stationary coal power stations. They will not be closed down tomorrow. The thousands of people in jobs in the industry are not going to be thrown out of work. We are not going to close down the mines. We have to reduce our carbon footprint—*[Time expired.]*

COOMA AREA RENAL DIALYSIS SERVICES

The Hon. MELINDA PAVEY: My question without notice is directed to the Minister for Health. Is the Minister aware of the recent refusal by the Greater Southern Area Health Service for a kidney dialysis patient to travel from Cooma to Canberra on the patient transfer service to receive his three-times-a-week life-saving treatment? Will the Minister inform the House and the patient whether Greater Southern Area Health Service will pay the \$650 bill for the ambulance that the patient was forced to take, as well as the regular taxi bills he is forced to pay for his transport from a nursing home to the hospital? Will the Minister inform Cooma patients whether NSW Health has any plans to install full renal services at Cooma Hospital?

The Hon. JOHN DELLA BOSCA: The question asked by the Hon. Melinda Pavey deals with a number of specific issues. I will obtain full information and provide the member with an answer as soon as possible.

I suggest that if members have further questions, they place them on notice.

CROSS-BORDER TRANSPORT TASK FORCE REPORT

The Hon. JOHN DELLA BOSCA: Earlier in question time Ms Lee Rhiannon asked me a question on the cross-border transport task force report. I am advised by the Minister for Transport that the report will be made public, as I advised the member in my substantive answer.

FREEDOM OF INFORMATION APPLICATION DRAFT DETERMINATION PROCEDURE

The Hon. JOHN DELLA BOSCA: Earlier today the Hon. Don Harwin asked me a question about my office receiving draft freedom of information determinations. I can confirm to the House that my office does not receive draft freedom of information determinations. My office receives a copy of the final determination, as sent to applicants, for information purposes only. That makes sense because, as Opposition members would be aware, my office is frequently contacted to provide comment on issues pertaining to freedom of information releases.

GREATER WESTERN AREA HEALTH SERVICE AND SYDNEY SOUTH WEST AREA HEALTH SERVICE

The Hon. JOHN DELLA BOSCA: I refer to comments and interjections made by the Deputy Leader of the Opposition during an answer I gave earlier today about the Greater Western Area Health Service and Sydney South West Area Health Service. I make it very clear that there are no plans to sack any allied health workers in the Greater Western Area Health Service. There are approximately 400 allied health workers across the entire area. It would be preposterous to suggest that the health service would cut in half its allied health workforce. However, as was indicated in my substantive answer to the question, the Greater Western Area Health Service has been making sure that it can deliver its services within the budget allocated. The area health service is holding discussions with a variety of health workers and also the Health Services Union over the next few weeks to listen to concerns of its members about the recruitment of allied health staff in the area and establish whether the staff mix is appropriate. The Greater Western Area Health Service is committed to the recommendations of the Garling review into health services.

As to another issue raised by the Deputy Leader of the Opposition, I make it very clear that the partnership between the Greater Western Area Health Service and the Sydney South West Area Health Service is a great boon to the people of the Greater Western Area Health Service, particularly patients and clinicians. An informal partnership has been in place for a long time between doctors, nursing staff and allied health in the Greater Western Area Health Service base hospitals and Royal Prince Alfred Hospital in cardiology and cancer treatment. I have spoken to clinicians in the Greater Western Area Health Service who are thrilled and pleased that they can advance and have more detailed engagement with their colleagues at the Royal Prince Alfred Hospital. This partnership takes the informal arrangement a step further. It means that a world-class service is provided in our leading teaching hospital in those clinical areas and it is more accessible to local residents in the greater west.

The partnership will improve clinical networks and engage clinicians in decision making and knowledge sharing, as well as provide new opportunities to attract and retain the doctors and nurses and other health professionals we need in rural and remote areas of New South Wales. The partnership will also enable the sharing of corporate support systems and administrative expertise. It will mean that we are spending more of the resources available on patient care, rather than on bureaucracy. I know that upsets the Deputy Leader of the Opposition, whose policy is exactly the opposite, but that is the way it is. We expect this to lead to an improvement in the greater west's financial performance, and therefore improve time limits in paying local creditors.

SHOALHAVEN HOSPITAL PARKING

The Hon. JOHN DELLA BOSCA: The Hon. Don Harwin asked me a question on 26 March 2009 about car parking at Shoalhaven District Memorial Hospital. As I said in my previous answer, car parking is an issue at every hospital in Australia. I am advised by the Chief Executive of South Eastern Sydney and Illawarra Area Health Service that the area health service and hospital are keen to ensure that responsibility for finding a solution to the car parking issue at Shoalhaven hospital is shared between the area health service and Shoalhaven City Council. I am further advised that the area health service is continuing negotiations with the Lord Mayor of Shoalhaven City Council and it is confident that a solution can be reached that will not impact on the clinical services available at the hospital.

GUYRA MEDICAL SERVICES

The Hon. JOHN DELLA BOSCA: The Hon. Rick Colless asked me a question on 26 March 2009 about Guyra hospital. I can advise that Dr Martin Danke, the visiting medical officer at Guyra multipurpose

service, has tendered his resignation effective on 30 June 2009. Dr Danke also indicated he would no longer be providing general practitioner services from Guyra Medical Centre. I take this opportunity to acknowledge the outstanding effort and enthusiasm that Dr Danke has provided during his six years as visiting medical officer at Guyra, and highlight the standard of coverage he has provided to the Guyra multipurpose service and local residents. I am advised that Dr Danke has been instrumental in instigating a number of initiatives and improvements at Guyra health service during the year and has played a key role in developing plans for the state-of-the-art multipurpose centre, which opened in August 2006.

With the support of management and staff at Guyra health service, Dr Danke's commitment to the provision of quality care has enabled Guyra multipurpose service to adhere to its role delineation and to meet rigorous injury industry standards. I am advised that Hunter New England Health is actively working to fill the vacancy that will be available when Dr Danke leaves. I understand that meetings took place between the area health service and representatives from Guyra Shire Council on 26 March to discuss recruitment initiatives to attract a new visiting medical officer to the Guyra township. The area health service will continue to work with the shire council, the community, the New England Division of General Practice and the Rural Doctors Network to recruit the best and most highly skilled general practitioners to fill the impending visiting medical officer vacancy at Guyra multipurpose service.

Questions without notice concluded.

[The President left the chair at 1.08 p.m. The House resumed at 2.30 p.m.]

NEW SOUTH WALES OMBUDSMAN

Report

The Hon. Tony Kelly tabled a report from the New South Wales Ombudsman entitled, "Final Report: Investigation into the Roads and Traffic Authority Regarding the Handling of Two Applications made under the Freedom of Information Act, 1989", dated 24 February 2009.

Ordered to be printed on motion by the Hon. Tony Kelly.

CRIMES (CRIMINAL ORGANISATIONS CONTROL) BILL 2009

Bill received from the Legislative Assembly.

The Hon. TONY KELLY (Minister for Police, Minister for Lands, and Minister for Rural Affairs) [2.31 p.m.], on behalf of the Hon. John Hatzistergos: I move:

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

Question put.

The House divided.

Ayes, 29

Mr Ajaka	Ms Griffin	Ms Sharpe
Mr Catanzariti	Mr Kelly	Mr Smith
Mr Clarke	Mr Khan	Mr Tsang
Mr Colless	Mr Lynn	Mr Veitch
Ms Cusack	Mr Mason-Cox	Ms Voltz
Mr Della Bosca	Reverend Nile	Mr West
Ms Fazio	Ms Parker	Ms Westwood
Ms Ficarra	Mrs Pavey	<i>Tellers,</i>
Mr Gallacher	Mr Robertson	Mr Donnelly
Miss Gardiner	Ms Robertson	Mr Harwin

Noes, 4

Mr Cohen
Ms Hale
Tellers,
Dr Kaye
Ms Rhiannon

Question resolved in the affirmative.

Motion agreed to.

Bill read a first time and printed.

Suspension of Standing Orders

The Hon. HENRY TSANG (Parliamentary Secretary) [2.39 p.m.], on behalf of the Hon. John Hatzistergos: I move:

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.

Ms LEE RHIANNON [2.39 p.m.]: It is certainly necessary to debate this matter now. We learnt that the Government had plans to vary the program before the House today by reading the newspaper. This bill has been brought on with great haste. We accept that it is very important legislation that will have a far-reaching effect, but to bring it on with such speed without members having sufficient time to consider the detail is clearly irresponsible. Time and again the Minister for Police has berated my colleagues and me for using standing orders to bring on debates on urgent matters.

We acknowledge that the issue is urgent but the bill is not urgent. The Premier himself said that it was complex legislation that should not come before the House before June because so many matters need to be clarified. The Ministers concerned and the Premier have given no justification for why the matter is now urgent. What has changed overnight? It is quite disturbing that these days we learn more about the running of this House from reading the *Daily Telegraph* and the *Sydney Morning Herald* than we do from having meetings with Ministers. These are made out to be meetings to inform members about the program for the week and any proposed variations. Clearly, that process has been severely abused in this case.

The Hon. Greg Donnelly: You seek contingency every day, Lee.

Ms LEE RHIANNON: I outline my case for urgency. If you were willing to adopt Standing Order 44 in a sensible way, we could move through the great bulk of matters on the notice paper much more efficiently, as the Senate proposed, and not waste reams of paper to reprint it each day. We are ready to sit down with the Government and discuss how standing orders can work effectively. Opposition and Government members should be concerned about the haste with which the bill has been introduced.

The problems that have unfolded in recent weeks are deeply disturbing and public safety should not be put at risk. However, over the years the Labor Government has put in place a raft of law and order legislation. We have not had explained why that legislation is not working and why police cannot use those powers. All of a sudden we have a reversal of a very clear position that the Premier outlined; that it is a complex matter and we need to be able to work this out. He even said that the bill would not come forward in May but in June. Then all of a sudden we read in the *Daily Telegraph* that the position has changed. I urge members not to support the bill proceeding to debate now.

We should respect the right of members to thoroughly scrutinise any legislation, particularly legislation that will have a far-reaching impact on the people of New South Wales and on our justice system. Members of Parliament and the public will be deprived of the right to examine this legislation. I have to check, but I understand that the Queensland Government, in bringing forward similar legislation, accepts that the public has a right to have some input. The Government is abusing the rules of this place to fast-track legislation. Again I remind members that it was the Premier who informed us that the Government needed time to get the legislation right. Does the Government now think it does not need to get it right?

Ms SYLVIA HALE [2.44 p.m.]: Time and again members in this place are lectured about bringing on debates on matters of urgency, yet in this instance we have not had a briefing. I believe one or two members were able to access the Government's briefing but the rest of us have not had the opportunity for a briefing. Members have not had copies of the agreement in principle speech in the lower House made available to them and I have only just received a copy of the bill.

The Hon. Greg Donnelly: Sylvia, you should not have been at the rally. You should have been at the briefing.

Ms SYLVIA HALE: It depends on whether you went to the right room. Some of us were told to go to room 814-815. We turned up and found a meeting of the Volunteers Committee being held there. That is how the Government runs this State! It cannot even get the rooms right. The pushing through of this bill is a serious infringement of people's rights, on the pretext of urgency. Indeed, it is not even any pretence of urgency when we know that a major portion of the bill will not be presented to the House until May. In fact, the only thing that is urgent is the opportunity for the Premier, the Attorney General and the Minister for Police to grandstand, to tell the public, "Look at what we are doing." As usual, they are seriously curtailing the civil liberties of the citizens of this State but not doing anything really to address the problem.

It is not urgent that the bill be rushed through today. The problems deserve serious discussion, not hasty action. The Government only claims urgency, as it is all spin and no substance. It wants to be seen to be doing something but knee-jerk legislation is not the way to go. Given that a second tranche of related legislation is due to come before the House in May, surely it makes more sense to wait and deliver all the required changes at once, rather than rushing through one half now before the break.

We all know that the Government is driven by the tabloids. That is no way to make policies and laws. This bill is not urgent because bikie violence and organised crime have been around for a long time. In fact, New South Wales saw an even worse instance of bike violence in Milperra at the Viking Tavern in 1984 where six bikies and one 14-year-old bystander were killed in an armed clash between gangs. That was sickening, as was the incident at the airport, but we already have laws and a police operation underway, Operation Ranmore, targeting bikie violence, which had resulted in 340 people being arrested on 883 charges as at January.

The Government often denies urgency on the basis that something is outside the order of precedence. This bill is outside the order of precedence and notice has not been given in the normal manner. It has not lain on the table for five days and, as such, members have had virtually no time to peruse it. We have had limited time to consider it or to seek advice from interested parties. Only yesterday the Hon. Penny Sharpe, in response to an urgency motion from my colleague Lee Rhiannon, said:

We have a whole day tomorrow to deal with private members' business so it is not reasonable for the Greens and the Opposition to work together to use up Government time today. There is no reason why the Greens and the Opposition cannot do a deal and bring this matter on tomorrow.

Well, here we are "tomorrow" and the Government is taking away private members' time yet again. The Greens do not support this urgency motion. This legislation is important and deserves time for scrutiny. Bikie violence will not be solved overnight. The police have adequate powers already to go on investigating and fighting organised crime. Drug manufacture and sales will continue whether or not bikie gangs are declared organisations. We have seen clearly that bikie gangs involved in criminal activities do not respect the laws we already have, so I suspect they will not respect these new laws either. Unfortunately, solving crime is not as simple as passing a piece of legislation—and certainly it is not as simple as the Government choosing to grandstand. [*Time expired.*]

Dr JOHN KAYE [2.50 p.m.]: As my colleagues have argued, the Government simply has not established a case for urgency with regard to this bill. As my colleagues have also argued, laws to deal with biker violence already exist. The Government already has the draconian law and order legislation that comes from central casting. The Government's urgency motion raises questions about what the Government has been doing for the past 12 years. The reality is that there is nothing new in biker violence; it has been around for a long time. I acknowledge that there is now an outbreak of biker violence and that there is certainly a need to address it. But we cannot understand the urgency and haste with which the Government has introduced the legislation. In the short time I have been a member of this Parliament the Government has introduced a massive number of laws. Indeed, over the last decade a massive number of laws have been introduced to address law and order issues.

I want to take the debate a step further. If the suspension of standing orders goes ahead it will mean not only that this House will not have the right to give proper consideration to the legislation but also that the people of New South Wales will not have an opportunity to see it. The first time the Greens saw it was this morning. We have not yet seen in print the Minister's second reading speech, and we have not yet been able to read the debate in the other House. Under these circumstances it is impossible to give legislation of this nature—which has such draconian implications not only for biker gangs but also for everyone throughout New South Wales—the consideration it deserves, given the principles it undermines.

On first glance, the legislation takes away the right of individuals to associate with whomever they choose. That is a major step away from a society that has been based on freedom of association. Taking away that right, without proper consideration, would be a dereliction of our duty as a House of review. It would be a dereliction of our duty as a House that is committed to protecting civil liberties to take away that right without appropriate debate and without appropriate consideration. Taking away the right to a fair trial before a sanction is imposed on an individual, as this legislation does, is also a major change in the way the law deals with individuals. It is a major change in the relationship between society and individuals: it is a major change in our understanding of freedom, and the rights and civil liberties within our society. Taking away those rights and civil liberties in that fashion, without proper debate, would be a dereliction of duty. Taking away those rights and civil liberties without the legislation lying on the table of the House, without the legislation having been properly analysed not only by members in this Chamber but also by people throughout New South Wales would be a complete dereliction of our duty.

In the few minutes that were available to me to have a look at the legislation I read that it takes away the right of presumption of innocence when applying for bail. That is a major change to the way bail legislation operates. It is a change that needs to be debated appropriately. Without this legislation being debated properly we will stand charged—and we will probably be found guilty—with denying the rights of the people of New South Wales to debate this matter, denying the rights of the Parliament to properly consider this matter, and taking away, in a cavalier fashion, the rights of the citizens of New South Wales.

It is very important that we have a proper debate about how we deal with biker violence. If there is a case for legislative change, let us have that debate. But let us have that debate in the proper way instead of ramming the legislation through the Parliament, in a sense of moral panic created by the Premier, in a sense of moral panic that perhaps pays out to some elements of the community but certainly does not pay out to our obligation to protect civil liberties. I urge members of this Chamber to reject this motion and to allow the issue to be debated in the normal and proper fashion.

Mr IAN COHEN [4.54 p.m.]: I did not intend to speak in this debate—I believe we will have plenty of opportunity to address the issue and I do not want to waste the time of the House—but I have to say that it is an abomination that the bill is being rammed through the House today. I was informed about the briefing regarding the bill to be held in the Premier's office by Reverend the Hon. Fred Nile at about 11.50 a.m. today during the debate on a bill that is extremely important to me—which this process is now holding up—that is, a bill concerning children and the Department of Community Services. I felt I could not leave that, so I missed the briefing. It is appalling that debate on the bill will be brought on with urgency in this House today without members having had an adequate opportunity to consider debate that occurred in the lower House.

As I speak in this debate I have just been handed the Government's briefing document on the bill. That is the first time I have seen it—perhaps I have been tardy. Nevertheless, what we are seeing here today is legislation being rammed through the Parliament. We will debate whether the bill is necessary later in accordance with the procedures of the House but so far as I am concerned the speed with which the legislation is being rammed through the Parliament, the panic that is being instituted, and the assault on basic human rights in our supposedly democratic society are completely untenable. We know how the question will be decided—we know what the balance is in this House and we accept that: it is democracy—but the way in which the legislation is being rammed through the Parliament without adequate assessment is really quite appalling.

Question—That the motion be agreed to—put.

The House divided.

Ayes, 29

Mr Ajaka	Mr Hatzistergos	Ms Sharpe
Mr Brown	Mr Kelly	Mr Smith
Mr Catanzariti	Mr Khan	Mr Tsang
Mr Clarke	Mr Lynn	Mr Veitch
Mr Colless	Mr Mason-Cox	Ms Voltz
Ms Cusack	Reverend Nile	Mr West
Ms Fazio	Ms Parker	Ms Westwood
Ms Ficarra	Mrs Pavey	<i>Tellers,</i>
Mr Gallacher	Mr Robertson	Mr Donnelly
Ms Griffin	Ms Robertson	Mr Harwin

Noes, 4

Dr Kaye
 Ms Rhiannon
Tellers,
 Mr Cohen
 Ms Hale

Question resolved in the affirmative.

Motion for the suspension of standing orders agreed to.

Second Reading

The Hon. JOHN HATZISTERGOS (Attorney General, and Minister for Industrial Relations) [3.03 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 not granted.

In that case I refer honourable members to the agreement in principle speech of the Premier in the other place.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [3.03 p.m.]: I speak to the Crimes (Criminal Organisations Control) Bill 2009 on behalf of the New South Wales Liberal-Nationals Coalition. We remain highly critical of the New South Wales State Labor Government's inconsistent response to escalating outlaw motorcycle gang related crime, but we recognise that extraordinary violence requires extraordinary measures. I ask for the indulgence of the House to give a brief history of violent outlaw motorcycle gang related crime in New South Wales. There are vital lessons to be learnt from the past. Some of them this Government has forgotten, others we may have an opportunity today to make law.

On 9 August 1984, a fight broke out at the Bull and Bush Hotel in Baulkham Hills. One man was badly hurt, but it would not make the news the next day—although it should have. Senior members of Sydney's outlaw motorcycle gangs would later comment that this was the beginning of a war between rival clubs, the effects of which we still see and feel today. Three days after that altercation, on 12 August 1984 at 2:31 a.m., two police constables received a call over their radio that shots had been fired at Louisa Road, Birchgrove in Sydney's inner-west. These would be some of the first shots fired in the gang war that today the New South Wales State Labor Government has been forced—indeed it has been dragged kicking and screaming—to address, even though up until the last few days it was not willing to acknowledge such a war existed.

No-one was seriously injured or killed in this incident—or the several other incidents that took place between 9 August and 2 September 1984—but within one month tensions had increased amongst Sydney's outlaw motorcycle gang members to the point where catastrophic violence was inevitable. That tension erupted in the car park of the Viking Tavern in Milperra on 2 September. Seven people died in that gun battle, and 43 people would later be charged with seven counts of murder. That event took the life of Leanne Walters,

whom Australia would remember as the innocent whose life was taken in this explosion of criminal violence. The incident would decimate the ranks of Sydney's gang population; many were either dead or were sent to jail. That was 25 years ago, when bikie crime in Sydney and right around the country was far less organised and at a lower level than it is today.

Where an opportunity exists to profit from drugs and criminality, violence is never far behind. In March 2007, shots were fired into the Mr Goodbar Night Club in Paddington merely because outlaw motorcycle gang members suspected a rival club's president was nearby. In April of that year, shots were fired into a tattoo shop in the wake of a defection of club members. In May of the same year, a fire devastated an inner-Sydney motorcycle gang clubhouse and 24 hours later three gunmen shot and seriously wounded two security guards outside another nightclub. Forty-eight hours after that, another clubhouse was hit by a firebomb. Sydney and her suburbs have waited with bated breath for the next outbreak of violence.

Between 6 November and 11 December 2008 there were 16 drive-by shootings across some of Sydney's most populated suburbs. Mount Druitt, Fairfield, Seven Hills, Belmore, Glenwood, Carlingford, Leumeah and Merrylands joined Auburn, Bankstown and Lakemba as drive-by shooting hotspots. On 4 February 2009 another clubhouse was firebombed and gutted. This history may seem tedious, but it is important that the House notes that this bill today is not a swift response by the Government to a recent crisis, but rather a belated rejoinder to events that have unfolded and escalated over a period of years. Hopefully March 2009 will go down as the month in which these violent acts reached a crescendo. In that month a man is killed, bludgeoned to death at Sydney Airport, raising the spectre of inadequate security at what should be one of our nation's safest locales. In answer to this brutality, nightly drive-by shootings occurred across Sydney's west, and these left another senior gang member critically injured in hospital. Today, we have a unique opportunity to bring this cycle of violence to an end. In 2006 Assistant Commissioner Nick Kaldas, former commander of the Gangs Squad said:

Just because bikies deliver teddy bears to children's hospitals once a year doesn't mean they're not criminals the other 364 days.

The question of who, where and what these gangs are, is not easy to answer. Their membership and modus operandi is fluid. According to police, there are 35 outlaw motorcycle gangs in Australia, comprising 3,500 members, with 10 gangs opening 26 new branches in all six States in 2007.

The Australian Crime Commission lists the criminal activities of outlaw motorcycle gangs as including but not limited to amphetamine production and supply; importation of heroin, MDMA and other precursor chemicals; the sale of illegal alcohol and tobacco; intimidation and harassment of witnesses in criminal proceedings involving gang members; illegal prostitution and the procurement of illegal immigrants to work in illegal brothels; the supply of illegal firearms; tax fraud; and money laundering. These are not the motorbike riders romanticised in films such as *Easy Rider*, *The Wild One*, the more recent *Wild Hogs*, or our own local attempt *Stone*. These are serious criminal organisations that have no place in modern Australian society.

The Government claims that the objective of the bill is to disrupt and restrict the activities of organisations. When I talk to front-line police around the State, "disrupt" and "restrict" are not the goals they have in mind. They and the community want an end to the violence, an end to the open warfare, and an end to this organised criminal activity. To this end, criminal networks must be smashed. The activities of those identified by police as participating in crime to consort and conspire must be stopped.

The Crimes (Criminal Organisations Control) Bill 2009 is not the New South Wales State Labor Government's first attempt at such legislation. The Justice Legislation Amendment Bill was introduced into Parliament in 2001 with the broad objective to control the association of individual gang members. The New South Wales Opposition in the Legislative Council supported the passage of the legislation on the condition that the New South Wales Ombudsman would report to Parliament every 24 months on the ongoing implementation of the Act. That was in 2001. In 2005 major parts of the legislation were repealed in the Statute Law (Miscellaneous Provisions) Bill 2005, in advance of the publication of a report of the New South Wales Ombudsman into the effect of non-association and place restriction orders. The New South Wales Ombudsman found:

The non-association and place restriction orders at sentencing were used infrequently, with only 20 orders being made by courts during the two year review. There had also been no appreciable increase in the use of bail or parole conditions restricting associations between offenders and other persons, or restricting offenders from attending specified places.

The Ombudsman, Bruce Barbour, said:

In many respects, the new laws duplicate the existing powers of courts, police and correctional authorities to impose these types of conditions on offenders or accused persons. For reasons including lack of knowledge and certainty, authorities have generally relied on existing powers when dealing with those persons.

The failure of the Justice Legislation Amendment Act was due in large part to the recalcitrance of the courts to issue the orders and a lack of political will on behalf of the New South Wales Government to drive the agenda. The Government went back to the drawing board again. The Crimes Legislation Amendment (Gangs) Act 2006 commenced in December 2007 and introduced into the Crimes Act 1900 several new offences, including participating in a criminal group and knowing or being reckless about whether participation in a criminal group contributes to the occurrence of any criminal activity. Section 93T of the Act specifically targets participation in a criminal group. Only 23 outlaw motorcycle gang members were charged under this legislation, and only half of those were convicted—in this regard I am citing evidence given by Assistant Commissioner Hudson to the Joint Committee on Australian Crime Commission in September 2008.

In 2006, three years ago, I spoke extensively in this House about the legislation and my concerns with outlaw motorcycle gangs. I said at that time that the Government had to recognise that we have a problem with outlaw motorcycle gangs and that the bill we were debating then would not fix those problems, although it would assist the police, who had been calling for those changes for some time. I also pointed out the importance of the Crime Commission in using its incredible investigative powers to target bikies and break apart their criminal networks, and to take away their assets, their homes, their bikes and their boats. I spoke of the then recent shooting outside the Gas Nightclub in the city, an incident that allegedly involved organised outlaw motorcycle gangs. The incident highlighted that bikie gangs were moving from illegal activities into legitimate business.

I pointed out that gangs of outlaw bikies were using legitimate businesses to launder their ill-gotten gains. I told that Government that as a result of its slackness it had not focused on what had happened in Western Australia and South Australia. In 2006 I said the significant number of crowd control security organisations in New South Wales that are funded by bikie gangs had spread like cancer, particularly through the city and metropolitan areas, and that many crowd control security organisations that operate freely within the metropolitan area had—and they still have—direct links to outlaw motorcycle gangs. Things did not get better in the wake of that legislation, as I predicted. If the number of violent incidents is any reflection, they actually got worse.

However, the Government would consider it a success, not because of its actual effect on the criminal activities of bikies, but because it gave the Government a statistic to flaunt before Sydney's media whenever the issue of gang-related violence was raised. Operation Ranmore and its 900 arrests has been mentioned innumerable times by the Minister for Police and the Premier, as bikie violence has escalated these past few months. I congratulate the hardworking officers of Operation Ranmore, and I emphasise "hardworking". Many of these police officers are participating in several operations and task forces at the one time. The announcement of Strike Force Raptor would reveal that Sydney's overworked, underpaid and under-resourced New South Wales Police Force was incapable of tackling two emergent crises at one time.

To fully man the 125-officer strong task force, Operation Tai Pan, which targets malicious driving offences, was gutted and its highway patrol officers diverted to targeting outlaw motorcycle gangs—even though the new players in Sydney's underworld do not even ride motorcycles. When tracking the response from Government to the escalating violence, we are confronted with an inverse reaction from the New South Wales State Labor Government. Ineffective stunts played out not for the benefit of the community or police, but rather for the media—but even the media stands unconvinced. In February last year I started calling for the New South Wales State Labor Government to enact the same tough anti-bikie legislation that had been adopted in South Australia as a response to the growing crisis. I did not want, as police had told me would be the case, New South Wales to be viewed as a soft touch, a safe haven for bikies who were preparing to move from South Australia in expectation of the impact of the legislation. Well, guess what? That is what happened. The Government's response to the call was confused and contradictory and, in the long term, ultimately damaging to the pursuit of better and more effective legislation.

The Serious and Organised Crime (Control) Bill passed through the South Australian Parliament in July 2008 and came into effect in September the same year. It has been heavily criticised not only by civil libertarian groups but also by outlaw motorcycle gang members themselves, who have threatened legal action. Without a single organisation declared as criminal, gang members were already running scared. As I indicated, the evidence of motorcycle gang members fleeing South Australia and coming to States like New South Wales is there for all to see in our newspapers, in which we read more and more about violence occurring on our streets. The laws became the subject of an inquiry by the Joint Committee on the Australian Crime Commission, and that demonstrates the importance the Federal Government places on a pan-territorial response to escalating organised crime.

The New South Wales State Labor Government's response arrived today belatedly, with minimal consultation to say the least. That is unacceptable for such a contentious bill. The New South Wales Opposition is willing and able to engage in public debate on the merits of these laws, and we have stated our position time and again, particularly over the past few months. In contrast, the Government has ducked and weaved through inquiries on this bill. It has spun its way out of making any commitment about if and when, or in what form, the bill would be introduced into the House. We were told there was no such thing as a bikie war, so there was no need for this legislation. We have heard every excuse. Yet today we are told that the bill is urgent. The Government has finally woken up to the call from the people of New South Wales that they have had enough.

I make it clear, our support for this legislation is based upon broad support for similar measures enacted elsewhere. That it has been brought on at all does not diminish the disgraceful manner in which the State Labor Government has failed to consult with the Opposition and the crossbench before deciding to ram the legislation through both Houses today. We are in the grip of an all-out gang war and it must be stopped. But it was being waged last week too, and the week before that. Again, this Government is legislating on the run. It is running from crisis to crisis, from emergency to emergency. It is always a few steps behind what is required of an effective State administration, and several leagues behind what the community expects the Government to do.

I want the House to note that the proposed briefing by the Premier's office on this legislation was cancelled at short notice this morning. A few short moments before question time today the Attorney General was in a position to brief me and two other members of the Opposition. I was grateful for that. We were told that the briefing would be held at 11 o'clock so we cancelled appointments to be available at 11 o'clock. The leaders of the Opposition from both Houses, together with the shadow Attorney General, all rearranged their diaries to attend the briefing. But not only did the Attorney's officers not turn up; they also did not telephone to offer an excuse for not turning up on time. They just turned up sometime later as if everything was fine.

The Hon. John Hatzistergos: Ring me.

The Hon. MICHAEL GALLACHER: The Attorney General says, "Ring me". Probably we should have, but unfortunately we did not have his number. I am unaware of whether crossbench members received such a briefing. Given the Opposition's offer of bipartisan support for this legislation, the Government's action on this occasion was not just unprofessional, it was plain rude. I should have thought that, given the Government's failure to have passed through the Parliament a piece of equally controversial legislation last year, it would have taken a more consultative approach about matters that might cause this House to divide.

Only a few days ago the Premier went on the record to explain that the care with drafting this legislation would preclude it from being presented to the Parliament. That statement places the effectiveness of the entire bill in doubt. Over the last few days we have been told that the bill will be quite extensive, that it will be quite involved, that it will take some time to prepare, that we will not see it enacted until probably May or June at the earliest, that the Government wants to get it right for police. Today we see the bill for the very first time. The Government's position on this is unacceptable.

In effect, the Government is asking us to put our trust in its administration to get this legislation right. It is a bit like having a gun held to your head and you are told to sign on the dotted line or else. The Coalition stands united in ensuring that the Government does whatever it can to address outlaw motorcycle gang violence and the spread of motorcycle gangs into criminal networks within Sydney and throughout New South Wales. However, it is fair to say that our trust has been abused in the past when the Government has got it wrong. We are not supporting the Government on this issue; we are supporting members of the New South Wales Police Force, who have been calling on the Government to have these changes made for some time.

We will support this legislation because of a promise the New South Wales Opposition made to outlaw the outlaws. We support this legislation because criminal enterprises should not be allowed to run riot through our streets merely because they wear a badge on their backs. We are therefore in the unenviable position of having to trust a government that has proved time and time again to be untrustworthy. Through the Crimes (Criminal Organisations Control) Bill 2009, and with the Supreme Court as its instrument, the New South Wales State Labor Government seeks to restrict the criminal activities of organisations recognised by the New South Wales Commissioner of Police as being involved in serious criminal acts. The mechanism will be interim orders placed upon members of declared organisations that may later be confirmed by confirmatory control orders.

No legislation is perfect. The aborted Justice Legislation Amendment Act, which was subsequently repealed on the recommendation of the Ombudsman, is evidence of this. However, given the short period of

time the State Labor Government has had to prepare this legislation, it is worth noting how drastically it has changed the legislative template used by the South Australian and Western Australian governments. At the core of the legislation in those jurisdictions was the regulatory and authoritative oversight of the Attorney General. The community expects that legislation targeting serious crimes that has the potential to impinge upon the civil liberties of individuals without trial by jury should, at the very least, be overseen and regulated by a democratically elected parliament.

The Attorney General is commissioned specifically by the Executive to oversee these kinds of bills. The Crimes (Criminal Organisations Control) Bill places the responsibility for declaring organisations as criminal in the hands of the Supreme Court. Given the untested legal waters this bill introduces, it is only appropriate that the judiciary has a role to play. However, the New South Wales Opposition remains concerned that the reasons for the Attorney General abrogating his responsibility for this legislation stems not from any attempt to expedite the declaration process but rather because of the Labor Party's internal political machinations. It can be inferred from this abrogation that the Attorney General may not fully support such extreme legislative measures, and this is a matter of concern.

Another matter of concern is the circumstances around which a control order can be circumvented. Over the past few months I have spoken with many people interested in this legislation, including a number of key police stakeholders, and one of the questions I am frequently asked is: Will this legislation not drive the bikies underground or change their modus operandi? This legislation disregards the circumstances in which persons under control orders associate if it is for the purpose of a lawful occupation, business or profession. The message this sends to members of outlaw motorcycle gangs is simple: to continue consorting all they have to do is start a legitimate business. I put that on the record hoping that the Attorney General with his new-found love for this legislation—and he has been asked on a number of occasions, including earlier this week, to detail his concerns about the South Australian legislation, but he decided to use it as an opportunity to attack the Opposition on something completely unrelated and did not even refer to the legislation—can allay not only my concerns, and not only the concerns of members behind me, but also, more rightly, the concerns of members of the New South Wales Police Force, who, upon the passage of this legislation, will be asked, and expected, to go out and do wonders.

The Hon. John Hatzistergos: They were consulted.

The Hon. MICHAEL GALLACHER: The Attorney General interjects and says they were consulted. Could the Attorney General indicate the extent of the conversations he has had with the New South Wales Police Association over the past couple of days—before Cabinet made its decision—given that the Police Association was asked to convene a meeting with the shadow Attorney General and me in the past couple of weeks about another piece of legislation that the Government was putting through on an issue about which we were quite happy to sit down and talk to the association? Now that the Government has found a new ploy for consulting with the Police Association on operational matters—not on matters relating to workplace safety or work practices within the New South Wales Police Force but on an operational matters—I ask the Attorney General whether the Police Association was shown the legislation and consulted prior to today as it was with regard to other pieces of legislation just recently?

Let us call a spade a spade. The reason we are debating this legislation is that the Government has finally realised that things are spiralling out of control. The Government can no longer get away with the spin—suggesting that there is no such thing as a bkie war, that everything is fine, and that this is just the normal argy-bargy that goes on in any organisation. The Government realised in the past week that, unless legislation was cobbled together as quickly as possible and put through this Parliament, it ran the very serious risk of the blame for any escalation of such incidents—possibly resulting in more deaths and, heaven forbid, the death of an innocent, as we saw back in 1984—being laid at the feet of the Premier and his Government for its failure to act.

Had I said anything wrong in this contribution, in the many other contributions I have made, in the countless press conferences I have held and in my media statements, it would have been jammed down my throat today. The Government realises that it has done nothing for three years. It has been caught out and it is trying to spin the situation so that it appears to be the saviour, coming in at the last moment and fixing everything. However, the real problem is the organisation of the New South Wales Police Force. It is not simply a case of passing laws in New South Wales and expecting the police to wave a magic wand and make all the Government's problems go away. These are problems caused by the Government's neglect, and that neglect is coming back to haunt everyone.

There has been debate in the House and outside this place about police numbers and detectives. Operation Raptor will involve general duties police officers who will be taken away from patrols and locations where they are desperately needed. Communities that are screaming for extra police resources will have their cops moved across to Operation Raptor. The Government has also transferred highway patrol officers from much-needed work dealing with car hoons. That is further evidence of how thin the thin blue line has become in New South Wales. We have not heard anything about additional detectives or new front-line troops being involved in this operation. The Government is moving officers from place to place, but it is like rearranging the deckchairs on the *Titanic*.

Strike Force Raptor will focus on media stunts. Just like Operation Ranmore, we will see plenty of charges laid, but we will not be provided with the details of those charges. People will hit the dock, but they will not necessarily all be bikies. There will be plenty of movement and doors kicked in for the television cameras and the Government will say that it is on top of the situation again. The reality is that front-line troops—the general duties officers and highway patrol officers—will be used extensively in the Government's media management. It will fall to the detectives to unravel the bikie gang networks and the tentacles that extend through business and criminal enterprises. Who knows where those tentacles will lead. It will fall to the detectives to do the job.

Those detectives are already overstretched. The Minister has pleaded with us to believe that everything is fine with the detectives. There might be 2,000-odd designated detectives, but I would put money on the fact that a large proportion of them are now filling general duties positions. The Government will use plainclothes constables who are not designated detectives and who are yet to get the years of experience they need. Despite their enthusiasm, they do not have the experience required to fight this level of organised crime. The Government paints a dishonest picture and it is only when we start to scratch the surface that we see the dire situation within the New South Wales Police Force. I have spoken to police officers in the past 24 hours—indeed, in the past couple of hours—who have real concerns, not about the legislation, even though many were not consulted about it, but about their ability to access the resources they need to do the job from within the Police Force. It has nothing to do with enthusiasm, professionalism or commitment; they have plenty of that. The problem is that they do not have the appropriate resources to do the job in the first place.

As I indicated at the outset, the Opposition does not oppose the legislation. However, we have put on the record our concerns about a Government with a history of getting it wrong. As I have already illustrated, it is a bit like being held hostage and forced at gunpoint to sign on the dotted line. We have not had an opportunity to examine fully the implications of this legislation or to talk to local police and others about its workability. Given that, we are forced to trust the Government at the eleventh hour on legislation that should have been in this Parliament weeks ago. We were told that it would take months for the legislation to be prepared despite the fact that the Government knew it would take only days to draft it. At no stage has the Government said why things have changed so dramatically over the past couple of days. We were told that the legislation would be introduced in June, but the Government has suddenly introduced it and told the Opposition to support it or else.

The public is sick and tired of the Government's approach to problems caused by its neglect, and they are desperate to see those problems rectified. Like the Opposition, people are desperate to support the Police Force every step of the way. We trust that the Government has got this legislation right. We hope that as a result of a commitment on the part of the Police Force we will see a change in the behaviour of bikies in New South Wales, and that that change will spread across the country. This issue is on the record—it has been there for years—but the Government has ignored it. Members opposite should not take pride in what they have done today. This is a mess of their own making.

The Hon. TONY KELLY (Minister for Police, Minister for Lands, and Minister for Rural Affairs) [3.36 p.m.]: Last Sunday week at Sydney Airport events took place that shocked the nation. The fatal brawl between bikie gangs that horrified and terrified all the innocent people who witnessed it did not come out of nowhere. Since last year we have seen a steady escalation in violence related to outlaw motorcycle gangs—drive-by shootings in suburban streets, cold-blooded assassinations and attempted assassinations, bombings and bashings. Just before Christmas I asked the Commissioner of Police to develop some proposals for legislation to improve the capacity of the New South Wales Police Force to deal with the underlying causes of violence, not just to arrest the offenders. On Monday I was due to sit down with the Attorney General to discuss the commissioner's proposal. The meeting to finalise the legislation was arranged the previous week, prior to the airport incident on Sunday. We all know what happened the day before the scheduled meeting. That outrage obviously lent even greater urgency to introducing legislation that would enable police to start dismantling organised criminal groups such as outlaw motorcycle gangs.

This bill represents the first part of the Government's legislative response. The remainder will be introduced when Parliament resumes in May. This bill does two main things: First, it introduces a mechanism for declaring criminal organisations and their members; and, secondly, and most importantly, it strengthens the capability of the New South Wales Crime Commission to take the proceeds of crime from these organisations and their associates. Clearly, the declaration provisions owe much to the South Australian model, and I congratulate Premier Mike Rann on having the courage to be the first in the country to attempt such a scheme.

I understand that following recent events the governments of Queensland and the Northern Territory have indicated that they are considering going down the same declared organisation path. We have not slavishly followed the South Australian provisions; there are some differences in the model contained in this bill. Most obviously, we are taking politicians out of the process. Unlike in South Australia, the Attorney General will not make declarations. He or she will merely be provided with a copy of the police commissioner's application for a declaration and will be able to make a submission to the court if he or she desires. The Government has chosen to use the Supreme Court to make the declaration both as to organisations and to members, but it will use a different legal avenue for each, as I will explain shortly.

By entrusting this role to Supreme Court judges, we can avoid having to include a list of the types of organisations that cannot be declared, such as political parties. Such an exemption list is commonsense. After all, who wants to see a future government trying to declare an opposing party or a troublesome lobby group unlawful? Members should examine what has happened in South Australia. The bikie gangs have formed a political party, ostensibly to oppose the repressive legislation. However, it is obvious that it is really a device to get around the law by using a political party exemption.

The Government and its advisers thought very hard about this, and we ultimately decided that a list of exempt types of organisation would just create loopholes for crime gangs to exploit. So we are trusting that an arms-length process conducted by the Supreme Court and a strong definition of what a criminal organisation is will be a better guarantee that the legislation cannot be misused. We are also ensuring that the legislation is fully reviewed by the Ombudsman after two years.

The effect of the legislation will be that proceedings will occur in a number of phases. In phase one an eligible Supreme Court judge sitting in an administrative capacity can make a declaration about normalisation on the application of the commissioner. The commissioner will be able to rely on criminal intelligence, some of which must be protected from further disclosure at the commissioner's request, to establish that:

members of [the] organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity

And that the organisation:

represents a risk to public safety and order in this State.

Affected parties—whether members or persons affected by the organisation, for example, victims—will also be able to make submissions to the judge. These may also be kept confidential if required. The matter will be determined on the balance of probabilities. The declaration lasts three years unless revoked. There will be no right of appeal or review in respect of the declaration of an organisation.

If the judge makes the declaration, the commissioner may then move to phase two, which involves a list of alleged members of the declared organisation. In this phase a different Supreme Court judge, this time sitting in a judicial capacity, will consider a further affidavit from the commissioner seeking interim control orders on all those named individuals as well as the revocation of any licences they hold in industries designated "high risk". This process takes place in the absence of the members concerned and is determined on the balance of probabilities. Again, the commissioner may rely on criminal intelligence, which must not be disclosed without his consent. If the court accedes to the commissioner's request and makes the interim orders, it will also set down a hearing date for the issue of final orders.

Within 28 days of the interim orders police must serve formal notice on all named members. This will set out the grounds for the interim order—namely, their membership of the declared organisation. It will also set out the consequences of the order—namely, that they cannot associate with any other person on the list of members, which will be attached, and the revocation of any relevant licences. The notice will also tell them the hearing date for the determination of final orders and advise them that they must file a notice of attendance if they intend to contest the order or seek to have it varied in any way. The sanctions and conditions imposed by

the interim orders remain in force until they are revoked, varied or replaced by final orders. There will be a limited defence of lawful business association, but only for the duration of the interim order. I think that answers the question from the Leader of the Opposition. We cannot have this as a defence to a final non-association order as every declared member will then set up in business with other members to get around the order.

Phase three is the hearing of submissions on final orders. Hearings can occur in the absence of the declared person affected. If he or she wishes to make submissions, a notice of appearance must be filed in advance. This means that police and the court will know if they intend to turn up. Generally, the only issues on which the controlled member can make submissions will be the question of membership and any variations sought to the non-association orders, for example, on grounds of hardship or unreasonableness. As this is a judicial finding by the Supreme Court there will be a right of appeal, but only on legal points or evidentiary issues with the consent of the court. Penalties for breaches of non-association orders will be two years for a first offence and five years for second and subsequent offences.

The amendment to the Criminal Assets Recovery Act picks up the offence in section 93T of the Crimes Act, which makes it an offence to participate in—which means assist—an organised criminal group. This offence was introduced as part of our 2006 gangs legislation. This casts a wider net than membership and should enable the Crime Commission to go after assets held in the names of front men and others acting on behalf of criminal groups, such as bikie gangs. The process I have outlined may seem complicated and unnecessarily fragmented. However, it has been developed this way on the basis of the best legal advice. By separating the administrative and judicial aspects, both exercised by judges of the Supreme Court, we hope to make the legislation strong enough to withstand legal challenges from cashed-up bikie gangs. We believe the structure the bill sets out manages to combine certainty with fairness. There is no doubt that getting a declaration approved will be a major undertaking for police. Even though the rules of evidence will not apply to declaration hearings, police will need to put together a very strong case both against organisations and against individual members. That is only appropriate but, in the light of that, no-one should think we are going to see a declaration a week. It is a big job and it has to be done right.

We do not dispute that the bill introduces extraordinary measures. Old friends will no longer be able to meet or even talk on the phone. Some people will have to quit their jobs in a time of increasing economic pressure. How can such consequences be justified? It is because bikie gangs are serious criminals who are hiding in plain sight. Their very visibility in some ways makes them hard to deal with. On the one hand, bikie gangs have managed to fool some parts of the media and even members of the public into thinking that their members are just rough diamonds, lovable rogues with soft hearts, who deliver toys to sick children—although I imagine recent events have caused even the most naive observers to question this rosy view of bikies.

On the other hand, their visible presence in a group, with their identifying patches and other regalia, lets everyone who gets in their way know what to expect. Their gang identity reinforces their power. If you are a witness to a crime committed by a solitary bikie or if you are a small business not wanting to sell your enterprise to the local chapter of the Rebels, you know that if you stand up to one of them, you are really facing the might of the whole gang. People sometimes wonder at the occasional upsurges of extreme violence involving bikie gangs. Would they not be better off keeping their heads down and just getting on with their core businesses of making and selling drugs, dealing in stolen cars, money laundering and so on? That is only partly true.

There is no doubt that the recent violence is about control of the illicit amphetamine market and about tribal loyalty and revenge on gang enemies, but such periodic outbursts serve another purpose. They remind anyone who is tempted to stand up to them, including the police, what these gangs are capable of. Cross us and we will shoot up your house, even if your parents or children are inside. We will firebomb your premises. We will bash you to death or shoot you in your front driveway. That is why this legislation will, for the first time, take on these crime gangs as a whole and not just charge individual members for individual offences. We must stop them acting as a group or as a gang if we are to break their power. That is why the new non-association orders are needed. No doubt some will say that not everyone, even in an outlaw motorcycle gang, commits offences. Even if that is true, their membership of the brotherhood, their respect for the code of silence, and the extra menace their numbers bring help the gang to carry on its criminal enterprise. If they do not like the crime they are surrounded by, they should leave the gang.

It is often said that organised crime cannot flourish without the capacity to infiltrate industries and occupations that can assist them both to commit the crimes and to launder the profits. This is why we have taken the strong measure of saying that if you are a declared member of a criminal organisation you are not a fit and proper person to work in a high-risk industry. In some cases existing licences will be revoked. In all cases

declared members will not be able to apply for licences. If this seems harsh, I remind the House that when this Government, with the New South Wales Police Force, undertook a clean-up of the private security industry some years ago—a move that was widely applauded—many licensees had to leave the industry. We do not want bikies being bouncers, having firearms licences, handling cash at casinos, driving tow trucks or being bookies.

I have said a lot about bikie gangs but this legislation, though responding to recent bikie crimes, is not bikie specific. Sadly, outlaw motorcycle gangs are not the only organised criminal groups we have had in this State. Who can forget the Asian crime gangs from the 1990s, such as the notorious 5T gang? The legislation provides a means whereby any similar gang can be dealt with and broken up. This Government has boosted the New South Wales Police Force to record numbers. We have given it the resources, the powers and the strong support it needs to undertake the dangerous and important work that we, as a Parliament, ask of its officers. This legislation is just the latest example of our unstinting support for law enforcement and our determination to keep crime levels low. I commend the bill to the House.

Reverend the Hon. FRED NILE [3.50 p.m.]: On behalf of the Christian Democratic Party I place on record our support for the Crimes (Criminal Organisations Control) Bill 2009, which will give New South Wales police the powers they need to fight outlaw motorcycle gangs. I emphasise the word "outlaw" because this bill does not attack all motorcycle gangs. We know there are a number of social motorcycle groups with members from different backgrounds. The bill deals with outlaw motorcycle gangs. It is important that the bill has the support of both sides of the House—even if the Greens do not support it. In the war against bikie gangs it is important for them to know that Parliament is united on this issue, otherwise they will try to counteract what we are seeking to do. If the gangs sense any division or weakness, they will exploit it.

I acknowledge that the bill is being rushed through Parliament in the shortest possible time. However, this is an emergency and the legislation needs to be passed. After this week Parliament will be in recess for a month and nothing will happen legislatively until 5 May. Even though its introduction today has changed the parliamentary business program, I am pleased that we are debating the bill and that it will be passed by both Houses of Parliament today. In relation to the bill, the Premier said:

When bikie gangs crossed the line and brought their internal strife into the public view only 10 days ago, I promised the Government would act.

Last week we were briefed by the Police Commissioner on what he needed to take the fight to the gangs ...

We unleashed Operation Raptor, building on the success of previous police operations and bringing the dedicated effort of 125 police officers to bear on criminal gangs.

Since the terrible incident at Sydney Airport, 12 members of various outlaw motorcycle gangs have been arrested.

The Premier then outlined some of the endeavours of the police. He continued:

The Government knew that police needed to be backed up with new powers to take on outlaw motorcycle gang crime.

The Government, through the Premier, is keeping that pledge. I was pleased when the Leader of the Opposition, Barry O'Farrell, spoke in the House and made clear the Coalition's support for the laws. He said that the police had requested those powers last year. He was critical of the Government for the time taken to introduce the legislation. He referred to the death of Anthony Zervas, who died as a result of a brutal bashing at Sydney Airport. Last Sunday his brother, Hells Angels member Peter Zervas, was shot as he sat in his car outside a Sydney unit block. Mr O'Farrell said that he wanted to ensure the public was protected from the violence. He said:

I would have no problem if you put all the outlaw motorcycle gang members in two rooms and allowed them to shoot themselves to death.

The trouble with that proposition is that innocent people could still be hurt. We cannot allow gangs to solve their own problems, which is why the police must act. Mr O'Farrell went on to say:

[But] in the current climate in New South Wales there are drive-by shootings, bashings, bombings and murders that could at any stage affect an innocent bystander. That is why we need to give police these powers.

The solution is very simple, even though the bill deals with a complex issue. The bill provides a process for the Commissioner of Police, acting on the basis of police intelligence, to apply for a declaration by a Supreme Court judge to declare certain organisations as criminal organisations. It would be an administrative process, with the judge acting in his or her personal capacity. The Commissioner of Police would then seek to name individuals

whom he wanted to be subject to a control order. This decision would be made by a judge sitting in the court to issue such orders against those individuals. Orders would first be issued as interim orders and then crystallised at a final hearing.

Individuals subject to the control orders face a number of consequences. An offence of associating with other members is punishable by up to two years jail for the first offence and five years for subsequent offences, with a neutral presumption against bail for this offence. They would have their licence suspended and then revoked on final orders if they work in a high-risk, regulated industry, such as the security industry, second-hand goods, liquor, racing, casino, firearms, motor trades, and the repairs and tow truck industries. The bill will be a major weapon against the outlaw gangs. It will widen the scope of existing criminal assets recovery laws to enable action against those who participate in a criminal group, as per the existing offence in the Crimes Act. In other words, it will hurt them in their hip pocket. We know from recent events that many of the gangs accumulate substantial amounts of cash, expensive cars and so on. Those assets can be confiscated to demonstrate that gang members, like everyone else, must be law abiding. The Christian Democratic Party supports the bill.

The Hon. CHRISTINE ROBERTSON [3.56 p.m.]: I speak in support of the Crimes (Criminal Organisations Control) Bill 2009. The bill, while the end result of lengthy considerations by law enforcement agencies, is clearly an appropriate response to the horrifying incidents of recent weeks. The outbreak of violence that led to a brutal killing at Sydney Airport was a sickening event. It is even more appalling, given that it happened in broad daylight and in full view of families with children. Many of those who witnessed the savage attack have been traumatised by the experience, which is why the New South Wales Government is acting to ensure that innocent bystanders are no longer placed in the middle of bikie wars.

I remind the House that officers from the New South Wales Police Force and the Australian Federal Police arrived on the scene within minutes of being notified and apprehended four men allegedly connected with the incident. The New South Wales Police Force has never let up on these criminals. Today we have the opportunity to ensure that our police can go one step further and prevent, wherever possible, such incidents from occurring in the first place. As well as arresting five men since that fatal Sunday, the strike force set up to deal with outlaw motorcycle gang violence has been doing its job. Strike Force Raptor was launched on 27 March 2009. This decisive act sends a strong message to all outlaw motorcycle gangs that police will crack down on all illegal crime and will not tolerate any acts of public violence.

The gangs squad's 75 tough, experienced police officers have a great record so far. The first of the high-impact proactive strategies resulted in 25 people and four vehicles being searched and 11 licensed premises patrolled. A woman suspected of links to the Rebels outlaw motorcycle gang was arrested and charged with supply and possess a prohibitive substance after a vehicle search. The male driver of the vehicle, also allegedly associated with the Rebels gang, was arrested for being disqualified from driving. A total of eight move-on directions were issued throughout the evening. A vehicle allegedly linked to the Comancheros gang was issued with a defect notice in Kings Cross and 25 traffic infringement notices were issued throughout the evening, including six speeding offences. The work of the strike force continues.

Yesterday Strike Force Raptor executed a search warrant that resulted in the arrest of an associate of the Rebels outlaw motorcycle gang. The 36-year-old man was charged with eight firearms offences plus possession of a prescribed restricted substance, three counts of possession of a prescribed steroidal agent and one count of carrying a cutting weapon. The man was arrested yesterday following the completion of the search warrant. Bail was refused and the man was ordered to appear in Kogarah Local Court today, 2 April. These are wonderful successes, but again they are reactive responses.

The bill allows a far more proactive approach by the New South Wales Police Force. And it does so with sound safeguards and adequate steps to ensure that these disgusting criminals are not treated unfairly. The Premier has stated clearly that once we give the New South Wales Police Force the powers it needs the force has the experienced, specialised, willing and tireless criminal investigators to get this job done. No doubt the bill will have its detractors, but there are also honest supporters who will be pleased to more fully understand how the bill will operate. The South Australian legislation is often quoted in the press and has been referred to in this House. An important difference between this bill and the South Australian legislation is that the judge of the Supreme Court is sitting in his or her administrative capacity when making the declaration in respect of an organisation.

The making of a declaration that an organisation be declared a "criminal organisation" is not a judicial function. A key tenet of our judicial and political system is the separation of powers. In drafting the bill the

Government was mindful of the importance of such distinctions, and that these must be retained. I remind the House that the bill was drafted after advice from legal and constitutional experts. Unlike the South Australian legislation, which provides a 28-day timeframe for individuals to provide submissions to the Attorney General prior to the making of a declaration, in New South Wales the declaration hearing itself will take submissions from members of the organisation and from any other affected parties. Affected parties may include former gang members or victims of gang crime. The bill provides that they can make their submissions confidentially if they wish. Without this provision it is highly doubtful that any non-members would ever risk becoming involved in the hearing: the risk of retribution would be too great.

It is also important to note that non-association provisions within the bill relate only to declared members. This means that accusations of people being subject to "guilt by association" are unfounded and ill-informed. Unlike the South Australian law, these provisions do not relate to members or associates of an organisation who are not named on a declaration. That is why police in New South Wales will not need to give numerous warnings before the offence is committed, as is the case with gang associates in South Australia. It also makes no difference if a gang were to change its name either before or after a declaration is made. Any order that is made relating to a gang member will persist, regardless of whether the gang tries to change its name to something innocuous. I am sure these thugs will try many strategies to respond to the question: Are they or are they not a member of a declared organisation? If it is a genuine case of mistaken identity, then fair enough. But they will not be able to say they no longer belong to that gang just because it now calls itself something new. Of course, if they have long since severed their links with the declared gang and can prove it, this would be taken into consideration.

While the Supreme Court judge sits in his or her administrative capacity to declare the gang a criminal organisation, the making of a declaration regarding actual membership is a judicial finding. A person who is then subject to an order—in the bill they are called a "controlled member"—will have the opportunity to appear at the hearing of submissions on the final order. At that hearing they can make submissions on the question of membership or on variations sought to the control order. In addition, any objector will also have a right of appeal to the Court of Appeal. The bill protects the rights of individuals who need to be protected. Non-association provisions do not apply to close family members. Despite the fact that many criminal gangs use family members to run their criminal enterprises, immediate family relationships are not under threat. For extended families or kinship networks it will be open to the applicant to seek from the Supreme Court a variation to permit such associations if it would be harsh or unfair to prevent them.

Let me reassure the detractors that the declaration of a gang as a criminal organisation has no legal effect other than allowing a justice of the Supreme Court, on application from the Commissioner of Police, to make a further declaration that certain members of that organisation be prevented from associating. Therefore it is a definitive decision on which other proceedings depend. There is no penalty for being a declared organisation. The focus is on what the members of the organisation do. With regard to safeguards, there will be a review of the Act after two years; the Commissioner of Police alone is responsible for seeking the declarations; the Government is staying at arms length from declarations, which cannot be made by a politician, as occurs in South Australia; declarations in respect of both an organisation and its members can only be made by a justice of the Supreme Court; and the Ombudsman will review the operation of the bill after two years.

The Government takes its responsibilities for sound, effective legislation seriously. If an organisation is worried about the negative connotations of being declared a criminal organisation then perhaps it should have avoided involvement in criminal activity in the first place. It will be open to a declared organisation to apply to the Supreme Court to have the declaration revoked. However, this can only be done on the grounds that the organisation has radically changed its nature and no longer engages in the kind of criminal conduct that was the basis for the original declaration. As Minister Kelly said, the bill includes provisions relating to high-risk industries. This includes industries that criminals have been known to use to launder money, or where there is the potential for criminals to obtain restricted items, such as firearms, which may then be used for criminal purposes. It also includes industries that require a licence and have a high degree of monitoring and supervision of their practice.

In this State we believe that people who work in industries in which the community places a high level of trust must be employed under rigorous standards. Members of organisations known for their involvement in money laundering and willingness to engage in corruption are clearly not fit and proper persons to engage in our valuable racing and gaming industries or our motor trades, where the highly profitable car theft and rebirthing racket abounds. And rest assured, these thugs do not need these jobs as legitimate sources of financial support. One of the central aims of the bill is to reduce the income that gang members can make from organised crime,

and thereby to reduce their capacity to fund acts of violence. The bill will also amend the Criminal Assets Recovery Act to allow the New South Wales Crime Commission to commence asset confiscation proceedings against members of criminal gangs, whether they are declared or not. It will also allow the Crime Commission to go after assets that crime gangs have put in the names of cleanskins—people who are not members of a crime group but who still assist the group.

Our message to the crime gangs is: There will be no safe place to hide your tainted assets. And we will publish the names of any organisations declared as criminal groups, so affected persons can make representations. As for the list of individuals, declared members must be given a list of all the people they cannot associate with. So any attempt to keep the list secret would be futile. It would also lead to accusations of a secret banned persons list. This is not, and never has been, the Government's intention. We want to name these criminal thugs and we want to shame them. We want them to know that they can no longer ride roughshod over this community and the laws of our State. To achieve this we will rely on the good sense and integrity of the judges of the Supreme Court and the Commissioner of Police. The police commissioner knows who these criminals are, and they are the people the New South Wales Police Force wants to target. The bill gives the Supreme Court and the Commissioner of Police the laws to do their job, rather than create more red tape or bureaucracy just for the sake of it.

Despite what the critics will say, the bill does not make membership of a gang, in and of itself, an offence. If anyone wants to join an outlaw gang they, stupidly, still can. It is what they do next that is the vital point. Sanctions under the bill in relation to non-association and the revocation of licences in high-risk industries will apply only to members who are named on a further declaration. These declared members will commit an offence only if they continue to associate with each other after the declaration. The Government is completely confident in these laws. These laws will be used. We will prove membership, and we do have the resources to police them and investigate the related crimes. We want the members of outlaw motorcycle gangs to know they cannot hide behind their colours any longer. Their free ride is over. The police have told the Government that these are the powers and offences they require to tear these gangs apart. The Government listened and here is the bill to prove it. I congratulate the Attorney General and the Minister for Police on working so hard to bring such a sensible and workable bill to this House. I commend the bill to the House.

The Hon. ROBERT BROWN [4.10 p.m.]: I speak to the Crimes (Criminal Organisations Control) Bill 2009 on behalf of the Shooters Party. Although I very rarely agree with Ms Lee Rhiannon, some of the things she said in trying to kibosh the bill today were pretty close to the mark. It would have been better if the crossbenchers had had more time to review the legislation, but I am encouraged because the Opposition and the Leader of the Opposition in this House, who has such an extensively knowledge of police matters, appear to support what the Government is doing and I take my lead from that. The Shooters Party received representations on this matter, which were probably the same representations received by many others: most people have been informed of the Government's intentions by articles in the *Daily Telegraph*. The Shooters Party has a broad range of constituents from all walks of life. Indeed, quite a few of our members have still got mullets and ride motorcycles.

The Hon. Greg Donnelly: There is nothing wrong with that.

The Hon. ROBERT BROWN: Absolutely. Not too many of them ride motorcycles and wear pink and black socks, which is a big ask. I am pleased that in the title and body of the Crimes (Criminal Organisations Control) Bill 2009 there is not much mention, if any, of the words "bike", "bikie" or "motorcycle" but the words "gang", "criminal", and "crime" appear. For the life of me I cannot see why we allow the media, and even ourselves, to be gulled by heroic words such as "outlaw". A crim is a crim, whether he or she rides a bike or drives a Hyundai—as I am told a couple of them do. I can now go back to my constituents and say, "No, fellas they are not trying to shut you down here. This is not intended as a sneaky way to get even with the firearm owners in this State. It is a genuine piece of legislation."

I agree with the Leader of the Opposition that the legislation is urgent, and I am pleased the Government has given it urgency, but it is a pity that some of the other crossbench members do not agree with that. The Shooters Party supports the bill; however, I offer a little piece of advice to the Attorney General. I suggest the words "tattoo parlours" be added to clause 27 (6) (m), which contains the words, "any other activity prescribed by the regulations".

Ms SYLVIA HALE [4.13 p.m.]: I speak in opposition to the Crimes (Criminal Organisations Control) Bill 2009. Today the extraordinarily rushed consideration of the bill marks a new low point in the process of

law-making in this State. Regardless of the merits of the bill, it is clear that it is before us today purely because the Premier was copping some critical media comment from the tabloid parrots that spend their lives in a perpetual state of confected fear and outrage, perpetually demanding that something be done immediately.

Reverend the Hon. Fred Nile: Name them!

Ms SYLVIA HALE: The parrots? I am talking about the *Daily Telegraph* in the prime instance, and the shock jocks. That is not a sound basis for the introduction of the bill and the removal of all of the normal considerations given to a bill before it becomes law. The provisions of the bill itself exacerbate the egregious nature of the Government's actions. We are being asked to consider a bill to criminalise on the basis of association. The bill aims to overturn centuries of common-law rights and yet we are told it has to be done today; it cannot wait to be properly considered.

We know from the situation in South Australia that similar laws are under contest in the High Court and yet the New South Wales Government cannot wait for proper consideration to be given to whether or not the bill is constitutional. The Premier apparently does not care whether a law is constitutional or not, so long as it gets him the headline he needs—the same could also be said of the Attorney General and the Minister for Police. This is debased law-making, shortcutting proper consideration in the desperate search for favourable stories, and it shows just how low this Government has sunk.

Anticipating the intellectually dishonest but inevitable claims from both the Government and the Opposition that the Greens are soft on crime, I state in the strongest possible terms that the Greens do not condone organised crime and believe that those who engage in organised criminal activities, whether it be drug running, extortion, armed robbery, assault, affray or murder, should be arrested, tried and imprisoned if found guilty.

The Greens oppose the bill being passed because we do not believe that removing fundamental civil liberties from all residents of the State will result in a lessening of organised crime. What will reduce organised crime is more police resources and proper application of the existing criminal laws. If we want to arrest bikies it should be in relation to their involvement in crime, not because they have a beer together. We should not criminalise any citizen by way of declaration or proclamation, or on the basis of merely associating with a member of a proscribed organisation.

The State should only be able to send people to jail by proving them guilty of a criminal act, not because of whom a citizen mixes with. The law should not be used in such a loose manner. The law should not be used like a fishing trawler catching everyone in its net, big and small fish alike. Criminalising non-criminal activity is a misuse of legislative power. The Greens support the presumption of innocence, freedom from unlawful and arbitrary detention, freedom of association, and the right to a fair trial. This Government does not support those rights, nor it seems does the supposed party of individual rights and liberties, the Liberal Party.

Let us look at the history of the Government since it came to power in 1995, particularly in relation to the curtailing of civil liberties. It is a story of continual reactive passing of laws and the banging of the law and order drum, yet the basics fail. In the recent violent incident at Sydney's domestic airport security cameras were not coordinated or in the same format. The Australia Federal Police and the New South Wales police fought over who had jurisdiction at the airport. It took a significant amount of time for any police to come to the scene, although it remains unknown exactly when police received the first call and from whom. Despite all these laws, and the proliferation of terrorism laws, if a really serious incident did occur in the metropolitan area I wonder just how prepared police would actually be. Yet we have seen a series of laws imposed that have made very little difference to actual crime rates.

The first set of laws, brought in by the Carr Government in 1994, involved the Children (Parental Responsibility) Act 1994, which was targeted at young people. That legislation commenced operation as a pilot in Gosford and Orange in March 1995. Police were granted the power to remove young people aged up to 15 years from any public place at any time if they were not under the direct supervision or control of a responsible adult. Young people were to be taken to their homes and could be detained in a police station or juvenile justice detention centre for up to 24 hours. Young people would face criminal prosecution if they left, or attempted to leave, a prescribed place without authorisation. That was the beginning of the downhill slide of our civil liberties in this State.

The Law Enforcement (Powers and Responsibilities) Bill was introduced in 2002. This bill gave police broad move-on powers. It allowed police to take into account that a person was present in a location where there

was a high incidence of violent crime in determining whether there were reasonable grounds to suspect that the person had a dangerous implement in his or her custody—the so-called hotspot provisions. It allowed police, once again, to detain people for long periods. Also in 2002 we saw the introduction of new laws aimed at terrorism. The Tourism (Police Powers) Act 2002 gave police the power to raid suspects' premises. In 2003 people who were worried about the mandatory detention of asylum seekers decided to protest in front of the then Federal Attorney-General's house. Police sought an order prohibiting the holding of a public assembly, effectively to prevent the demonstration. So much for the freedom of movement and the right to demonstrate! The matter of *Commissioner of Police v. Ian Rintoul* was heard in court. Rintoul won and the planned demonstration went ahead. I note that police did prevent people from going near the Minister's home by placing a cordon across the road. Police are using that tactic more often. In effect, it prevents people leaving an area, and sometimes even entering the area. Police also used it for crowds gathered in Hyde Park during the APEC forum. The Greens consider penning people in and preventing them from leaving an area is a form of unlawful detention. If this police practice continues, I encourage citizens who have been so detained to take the Police Force to court seeking damages.

In 2004 two people who painted "No War" signs on the Opera House were duly convicted, heavily fined and required to undertake lengthy community service. In the aftermath the Government introduced the Crimes Legislation Amendment (Terrorism) Bill and the Sydney Opera House Trust Amendment Bill, which increased penalties for activities at the Sydney Opera House. A person who entered or remained in any part of the Opera House was considered to be a trespasser, made guilty of an offence and faced a maximum penalty of 200 penalty units or imprisonment for two years, or both. This was a further attack on the rights of people to demonstrate and to enter public spaces.

In 2005 there was another legislative flurry of activity. The Terrorism Legislation Amendment (Warrants) Act allowed police to apply for and use covert search warrants in relation to persons suspected of engaging in or planning terrorist offences. At the time we were told it was to deal with specific instances only, and there was no way it would be extended to the population at large. Of course, the events in the past week or so give the lie to that statement. The next terrorism law, the Terrorism (Police Powers) Amendment (Preventative Detention) Act 2005, provided that anyone over the age of 16 could be locked up on suspicion of terrorist activity and detained without charge for up to two weeks. Under this law the police, or the Australian Security Intelligence Organisation [ASIO], were given the power to detain persons on the grounds that they regarded them as suspicious, nothing more. People could be detained on the suspicions of police, and no more evidence was required.

Who can forget the case of Dr Mohammed Haneef? The detention of Dr Haneef, who had committed no crime, went on for days, even weeks. It was a classic case of abuse of individual civil liberties of residents of this country. The Haneef case illustrates how politicians—in this case the Howard Liberal Government—are prepared to use laws which have been introduced supposedly to deal with individualised circumstances to persecute, prosecute and attack innocent people. This legislation also provided that people who witness a terrorist attack could be detained as well. It even prevented solicitors from discussing the case of a person they represented with their colleagues. It provided that teenagers who were detained under the orders could be released to ASIO for questioning, without the teenager's parents having to be informed. At that time my colleague Ms Lee Rhiannon summed up the Greens' decision to amend the bill. She said:

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.

We always hear about the war on drugs and the war on terrorism. Now we have the war on organised crime. No wonder one is a pacifist. The fear of terrorism and crime are being used to justify the erosion of civil liberties and to promote a permanent state of emergency. Each time a bill about terrorism has been introduced in this place the Greens have warned that the powers in the bill will be extended. That is exactly what is happening now. The next law-and-order taxi off the rank was the Law Enforcement Legislation Amendment (Public Safety) Act 2005. This Act was another classic knee-jerk reaction to an event, in this case the Cronulla riots. It allowed police to lock down whole areas of New South Wales by declaring those areas. It allowed police to stop and randomly search anyone within, leaving or entering a lockdown zone. No reasonable suspicion was necessary for a search.

The provisions in the legislation relating to searching and seizing of vehicles were a reiteration of law that already existed. The police already had the power to stop and search persons and/or vehicles if they

reasonably suspected them of conveying anything stolen or otherwise unlawfully obtained, or any other thing used or intended to be used in the commission of an indictable offence. As usual, these laws followed the pattern of this Government: an event happens, the tabloids go into a frenzy, and the Government hysterically overreacts, beats the law and order drum and rushes through a new law that either replicates an old law or has the potential for misuse. Guess what? Police threatened to invoke those lockdown laws at the climate camp protests in Newcastle. So legislation introduced supposedly to deal with one specific set of circumstances provides police with the opportunity and power to apply those laws in a totally different set of circumstances. In doing so, they subvert, undermine and destroy our civil liberties.

Reverend the Hon. Fred Nile: It is to stop violent protests.

Ms SYLVIA HALE: There was no violent protest at the Newcastle climate camps.

The Hon. Greg Donnelly: What about the protests in London? Put that on the record.

Ms SYLVIA HALE: I will get to the London protests in due course. In 2007 we had yet more special powers bestowed on police—

The Hon. Greg Donnelly: Frighten the children who want to go.

Ms SYLVIA HALE: The incisiveness, the intelligence of these interjections is mind-boggling.

The Hon. Greg Donnelly: Put it on the record.

Ms SYLVIA HALE: I have put it on the record—it deserves to be preserved for posterity; it is such an infantile, futile and idiotic remark. In 2007 yet more special powers were bestowed on police in relation to the APEC meeting held here in Sydney. The bill gave the police powers that were disproportionate to the risk the city faced. It allowed areas to be designated restricted areas or declared areas; it prohibited persons carrying certain items into these areas; and it allowed police to search people for such items.

[Interruption]

The PRESIDENT: Order! Members wishing to engage in private conversations should do so outside the Chamber.

The Hon. John Hatzistergos: I was provoked.

The PRESIDENT: Order! I ask members not to be provoked. Ms Sylvia Hale will continue and should ignore interjections.

Ms SYLVIA HALE: It is difficult when one has the Attorney General muttering in one's ear.

The PRESIDENT: Please try.

Ms SYLVIA HALE: The legislation resulted in police doing silly things such as asking people to remove poles holding up banners and arresting Miranda Devine's friend for crossing a road. The worst aspect of the APEC legislation, and the most expensive for the New South Wales Police Force, was the designation of excluded persons. This provision of the Act allowed police to keep a secret list of persons who were ordered to remain outside declared and restricted areas. The people who were declared to be excludable included some anti-war activists and Greenpeace members. None of those on the secret list of people to be excluded—except for one person, who was not a political activist—had any previous convictions, or if they had, they were of a very minor nature.

At the APEC conference the policing was absurdly heavy-handed. Citizens who went to Hyde Park to make their views known on climate change and the war in Iraq were hemmed in by a police cordon, illegally detained and were not allowed to leave the area until the police eventually released them. One activist, Paddy Gibson, was illegally arrested in Hyde Park. Thanks to the incompetence of police, or their ignorance of their own laws—because Mr Gibson was not in a declared area, nor was he committing any offence; he was simply sitting on the grass drinking a cup of coffee—Mr Gibson was arrested and detained. The upshot of that was that

the police were forced to settle an action by Mr Gibson for unlawful detention, and I understand that that has been a very, very expensive exercise for the police and it is the first of a number of actions taken by individuals who were wrongfully detained by the police during the APEC conference.

The World Youth Day Act 2007 was another piece of "special event" legislation that attempted to diminish our civil liberties. It contained special provisions designed to protect Catholic youths from alleged offences, such as annoyance. The laws provided that persons could be fined up to \$5,500 for annoying Catholic pilgrims. Two Sydney activists very sensibly challenged that provision in the Federal Court, which ruled that legislation that would prevent ordinary people from handing out leaflets, such as leaflets that question some of the Catholic Church's rulings on contraception and HIV prevention, was invalid in law. In this instance the courts were prepared to uphold the right to freedom of expression, and there was a right to appeal. But in the proposed legislation there will be absolutely no right of appeal. We are seeing rights of appeal also being abolished in much of the planning legislation that is coming through the House this session.

The most recent piece of excessive legislation is the Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Act. We know, because we debated it only a week or so ago, that this legislation makes it legal for the police to masquerade as someone else not only to secretly search the premises of someone who is suspected of committing a crime but also to enter the premises of a next-door neighbour, if that is necessary to gain entry to the suspect's premises—known as, covert search warrants. It is a totally offensive piece of legislation and it detracts from fundamental civil liberties that were fought for, and finally obtained, over many hundreds of years.

The bill allows persons to be subject to control orders. Once a person is subject to a control order, associating with another person who is also subject to a control order becomes an offence. Within that offence is an assumption of guilt, and that turns the law on its head. The Greens insist that citizens should be found guilty of an offence prior to being subject to these unwarranted controls or, if a person is suspected of an offence and is arrested, he or she must be brought before a judge as quickly as possible. That is, of course, the fundamental premise of habeas corpus. The Government is imposing more and more restrictions on people through extending surveillance and covert search powers, placing control orders on people, arbitrarily searching and fingerprinting, taking DNA samples, and declaring lockdown areas. Declaring people excluded persons restricts their freedom of movement, as we saw in the APEC case. In short, the Government pre-emptively curtails people's liberties and rights based on so-called intelligence. I say so-called intelligence because that intelligence is never subjected to open scrutiny; it is what the police tell a judge, and there is no opportunity to counter that evidence or to hold it up to the light for proper examination.

The Greens say that our civil liberties are too important to surrender. It is certainly true that we must combat organised crime in this State, but we already have sufficient laws to do so. Biekie violence is not new. I return to the incident I referred to earlier. We remember well the 1984 biekie massacre, which occurred in broad daylight at a suburban tavern and led to the deaths of seven people. Yet governments, both Liberal and Labor, did not react after a very serious incident that involved not only the deaths of six bikies but also the death of a 14-year-old bystander—more deaths than occurred recently at an horrific event at Sydney Airport—but we did not have the same over-the-top response with legislation.

The correct response to these incidents is to bolster the investigative ranks of the police in relation to organised crime, and the Greens have already made it quite clear that we would support such a response. We believe that the Government should be investigating organised crime and prosecuting the perpetrators. As I mentioned earlier, Operation Ranmore, which is targeted at biekie gang violence, has resulted in 340 people being arrested and 883 charges being laid as at January 2008. The Queensland Police Service established Taskforce Hydra in February 2007, and police in that State have made 332 arrests and laid 931 charges, including charges relating to murder, arson, extortion, robbery and drug trafficking. That is where resources should be targeted, not on gimmicky, rushed and dangerous legislation like that which we have before us today. There can be no doubt that this legislation is dangerous. Undoubtedly that is why the Government does not want it to be scrutinised too closely. We will probably be told, as we are told so regularly, that "extraordinary times demand extraordinary measures". Of course, that was the rationale used by the Bush administration in the United States of America to justify torture and indefinite detention without trial. Obviously the Attorney General is heir to an extraordinarily dubious and despicable tradition.

Let us remember how some democratic countries have turned into police states. Bit by bit, new laws exempting certain people or groups of people or operations creep in. We are told that the police need special powers to respond to special circumstances. There are always references to an evil "other" in these times,

whether it be the Jew, the gypsy, the trade unionist, the homosexual or, more recently, the Muslim terrorist or the bikie gang member. These laws are inevitably extended to an ever-widening array of people—trade unionists, environmentalists and members of opposition political parties. Police powers expand as the net grows ever wider. I note that it is now an offence to film police in the United Kingdom. Police can attack protesters, use unreasonable force and engage in baton charges, and the protesters' most effective tool in protecting themselves from police violence—the video camera—has been outlawed. Despite all of these laws, criminal activities expand—drug importation and manufacture grow and police corruption spreads. These laws do not offer a path to a safer and more law-abiding society; they are a path to an oppressive state and an oppressed society.

Probably the saddest thing about this legislation is what it says about the modern New South Wales Labor Party. A Labor Government has introduced this legislation to declare organisations as criminal based merely on police intelligence. Dr Evatt must be spinning in his grave. He led the campaign to defeat the attempts by the Conservative Menzies Government to outlaw the Communist Party and criminalise its members and anyone who associated with them. Evatt was a Labor politician prepared to risk his political career to defend an important principle in a democratic society. This bill sees his legacy sold out by a generation of Labor politicians willing to sacrifice any principle on the altar of political expediency. This year is the 175th anniversary of the arrival in this country of the Tolpuddle martyrs, who were renowned for their defence of the right to associate and were transported for doing so. They suffered for the right to associate, and this Labor Government is dispensing with that right. As I said, it is a despicable act and it is unbelievable that anyone who had any concern for civil liberties in this country could do it.

The Hon. TREVOR KHAN [4.45 p.m.]: About a week ago I spoke on the Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Bill 2009, and I stand by my comments in that debate. I expressed my concern about that legislation and the need for the Government to attend to outlaw motorcycle gangs. What I said then was what I meant: it is time for the Government to move on motorcycle gangs. I cannot have it both ways, nor can Ms Sylvia Hale, who congratulated me on my speech on that legislation—although she was obviously not pleased about how I voted at the end of the day.

Ms Sylvia Hale: Nor were you I suggest.

The Hon. TREVOR KHAN: I have made no secret of that at all. However, let us be clear. We are not talking about a trade union-style organisation when we talk about outlaw motorcycle gangs. They are completely different. Shortly before I entered this place I had the pleasure of acting for a person who was appearing before the court on a domestic violence charge. I knew he was a member of an outlaw motorcycle gang because its members referred him to me, as they did various clients from time to time. On the first occasion I appeared for this gentleman I managed to get him bail. He looked reasonably healthy, although he did have some concerns because the back of the court was filled with various gentlemen with large dark beards. When I next saw him there was a difference in his appearance. That was because his jaw was wired. He made the mistake of having been at a local hotel where a member of a rival gang was also drinking. He failed to leave the hotel after being directed to do so by his serjeant-at-arms. In due course, having been released on bail, he attended at the clubhouse and received his punishment for his gross abuse of directions from the serjeant-at-arms. He was king hit and had his jaw broken. That was his comeuppance.

Members should understand that membership of these gangs is not something that someone falls into. It is not like filling in a union membership form and being issued with a card. This gentleman's initiation into the club was to be driven to the coast—he was from Tamworth—taken out to sea in a fishing boat, dropped in the water and told to remain afloat while the boat moved away and its occupants took pot shots at him. If he could get through the initiation ceremony, he would be in. Another initiation ceremony involved glass being broken on the clubhouse floor and potential members being required to roll around in it. We are talking about an unusual organisation that subjects people to these types of activities to be accepted as a member. Of course, the other hurdle for that gentleman and others is trying to leave the organisation. Members of a trade union can leave the union if they do not like it. The Hon. Mr Veitch is correct in saying that a trade unionist can tear up his card and leave.

The Hon. Charlie Lynn: Not if you are a member of the painters and dockers!

The Hon. TREVOR KHAN: I will not go into trade union matters. It is a bit different with outlaw motorcycle gangs. Sometimes they insist upon the retention of the bike, but they also insist that members retain their membership. I suggested to my client that because of the circumstances we could organise to get him into

hiding, perhaps interstate, with police assistance. The police were quite happy to assist, not on instructions but on the basis that I was concerned for my client because of his wired jaw. The gentlemen opined that that would not be enough because although bikies can hide from the police interstate, they can never hide from their outlaw motorcycle gang members. The message is: They will get you.

The story of that gentleman and the circumstances in which he found himself left me with the view at the time, and continues to leave me with the view, that we have a problem with outlaw motorcycle gangs. They are not trade unions. You cannot draw a comparison in that regard. They are not normal organisations. They are engaged in a variety of activities, not just merely motorcycle riding. They are heavily involved in the amphetamine trade, in kidnap, in rape and murder, and prostitution. Those activities are part of their bread and butter. They are involved in firebombing. In Tamworth they were involved in taking over tattoo parlours. They bought a hotel in the town. They did not buy the hotel for the simple purpose of supplying alcohol—they did that at their clubhouse anyway. It was all about providing a mechanism for the distribution of other things—clearly drugs.

In due course, after what I believe to be far too long, the police were able to move in, take away the hotel licence and deal with a number of the miscreants involved in the operation of that place. They are a problem in our society. Organised crime is a problem in our society. Whether this bill in its current form will do the job, one has to wonder. It has been introduced very quickly and, given the circumstances we are in, we are experiencing difficulty working out the full implications. However, the Government has chosen to act in this way. Having told the Government for so long that it had to take action, we now must say, "Let us get on with the job and see whether the bill does the job." I had expected to see some confiscation of assets provisions in the bill, but there are none.

The Hon. Michael Gallacher: It is the way it is worded.

The Hon. TREVOR KHAN: It may be the way it is worded. I must say, however, that I expected more. Last week I asked for action to be taken on this front. Some action has been taken and, of course, I congratulate the Leader of the Opposition in this House on his consistent efforts on this subject.

Ms LEE RHIANNON [3.52 p.m.]: The Crimes (Criminal Organisations Control) Bill 2009 should not be passed. This legislation is being rushed through just a few hours after the Premier told the public that it was so complex it could not come before the House before June. Today it has been brought on, and members found out about the change in the order of Government Business not from a meeting with the Minister, not from a phone call from a ministerial staffer, not from an email, but by reading about it in the daily newspapers. That is a disgraceful abuse of power. And who is the main spokesperson on the bill? Not the Attorney General but the Minister for Police. All week we have been hearing rumours that the Attorney General holds concerns about this bill—that there is a dispute between him and the police Minister.

The Hon. John Hatzistergos: Who said that?

Ms LEE RHIANNON: They were the rumours. Those rumours have been around the House all week, and today the Minister for Police gave the briefing to the crossbenchers and spoke on the bill.

The Hon. John Hatzistergos: I can't be everywhere.

Ms LEE RHIANNON: But the Attorney did not speak on the bill, and I challenge him to give one example of such far-reaching legislation that impacts on the delivery of justice in the State that the Attorney General has not spoken to.

The Hon. John Hatzistergos: I did speak to it.

Ms LEE RHIANNON: No, you did not open the debate. That is extraordinary. These developments give truth to the rumours that the Attorney General has had concerns with the legislation. I look forward to the Attorney General clarifying matters, but I put on the record the extraordinary position that the Minister responsible for such major legislation—in this case the Attorney General—does not enter the debate as the lead speaker for the Government. It is worth putting on the record what happened when we moved to the second reading phase of the bill. I understood the Attorney General asked for leave to incorporate the Premier's speech from the lower House. He was not seeking to incorporate his own speech, even though it is supposed to be his legislation. When I challenged this, the Attorney General squibbed, merely uttering that members should refer to

the agreement in principle speech in the Legislative Assembly. There was nothing else, no explanation of why the legislation was brought on a matter of hours after we were told it was too complex to rush through. The Attorney General did not take the opportunity to provide an explanation about the safeguards supposedly in the bill so that civil rights are not undermined. There was nothing from the Attorney General about how this legislation—

Reverend the Hon. Fred Nile: You are harassing and bullying the Attorney General.

The Hon. John Hatzistergos: She just misses me.

Ms LEE RHIANNON: I acknowledge all the interjections—which are shameful, trivial and juvenile, given the importance of the legislation before the House. There was nothing from the Attorney General about how this legislation is different from the South Australian law, which is clearly an abuse of civil rights and has been denounced as such by the majority of justice groups in South Australia. I put on the record again, so the Attorney General can be reminded of what has happened and so it is clear for the history books, that it was the Minister for Police who gave the first speech in this House on the bill.

The Hon. John Hatzistergos: No it wasn't. Mine counts as a speech.

Ms LEE RHIANNON: That is even worse. What the Attorney General has just said is extraordinary. He has said that the words, "I refer to the speech in the lower House" was his speech. You don't do justice to yourself.

The PRESIDENT: Order! I ask all members to speak through the Chair.

Ms LEE RHIANNON: I apologise, Mr President. I have to ask the Attorney General—I know he will be giving a speech in reply, which I hope is more than just five words—why he has changed his views? Is he now satisfied with this bill? Has he given up on his own Government and wants to be silent because he is in a difficult position, or is he worried about his career prospects with a possible place on the Supreme Court bench? Perhaps one day we will know, when the history of this deeply flawed Labor Government is written. As I said at the outset, the bill should not be passed. 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".

Crime linked to bikie clubs and biker clubs is the latest bad news story for the New South Wales Government, and it is attempting to deal with it by pushing through more law and order legislation. Public safety is always critical. It should be the driver for good government policy. The Greens will not support this legislation, because stripping away the rights of citizens with sweeping new laws is not the solution to gang-related crime. We need to get the balance right. Protecting public safety and safeguarding civil rights need to go hand-in-hand. Bad laws like the ones before us today can provide legal loopholes to cashed-up criminals.

We would have liked to have prepared more amendments to parts of this bill had we been given more than a couple of hours to look at it. The Government stands condemned for ramming this bill through the House in one day in an attempt to stifle meaningful debate or consultation on the issue. This morning members still had not seen the legislation. There had been no time to consult in detail with legal and civil liberty experts, who have serious concerns that the proposed legislation will be an assault on the basic rights that underpin our legal system.

The Greens share the concerns of the Law Society, the Bar Association and the Council for Civil Liberties that these laws go too far and could have wider and unintended consequences for legitimate biker groups and other groups such as sporting and community organisations and political groups, all of whom could be targeted under these new laws, despite the Government's claims and Mr Khan's claims that this is not their intention. The Law Society's Criminal Law Committee is aware that the Crimes (Criminal Organisations Control) Bill 2009 was introduced into Parliament today. I would like to read some of its comments:

[Law Society's Criminal Law Committee] The Committee is very disappointed that the Government has not consulted with stakeholders about the content of the Bill and has indicated that it intends to rush the legislation through Parliament.

The Committee is completely opposed to the Bill. The Bill is unnecessary as police already have wide powers to fight organised crime. There is no objective evidence to support the need for the proposed new offences. The proposed legislation will criminalise a person's associations and interactions rather than their conduct. The Bill constitutes a denial of the fundamental right of freedom of association.

The Committee regrets that it has not had sufficient time to review and make detailed comments on the Bill. On a cursory review the Committee notes:

- The offence of association and the penalty of imprisonment.
- The broad scope of persons who will fall within the definition of "membership", and the difficulties that will arise in determining with precision who is a member of a group and when membership begins and ends.
- The rules of evidence do not apply to the hearing of an application for a declaration.
- The judge making a declaration is not required to provide any grounds or reasons for the declaration or decision.
- The power of the Court to receive evidence and hearing arguments about information in private in the absence of the parties to the proceedings, their representatives and the public.
- The lack of a sunset clause.

The New South Wales Bar Association has also provided an analysis in the short time available. The association makes the obvious but important point that it is completely inappropriate that legislation infringing on recognised basic civil liberties should be passed so quickly, with no consultation or opportunity for debate. As a general comment, the Bar Association states:

Police resources would be better used fighting actual crime rather than people's associations. The legislation will not achieve anything other than to drive these organisations underground and make it more difficult to detect their existence and any associated criminal activities ...

It is concerning that control orders can be made based on confidential police "intelligence" rather than any publicly proven criminality. How could a person adequately challenge the making of such an order without access to the information on which it is based?

The Bar Association states that it is concerned at the anti-democratic nature of the legislation and the potential for abuse and injustices. It queries why the Court of Appeal is the court to handle appeals rather than the Court of Criminal Appeal. In relation to clause 11, the Bar Association notes that allowing the criminal organisation declaration to remain in force for three years without review is an unreasonably long period. As to clause 11 (3), the Bar Association queries whether it is appropriate to continue a declaration after an organisation has changed its name and membership, and whether it can really be said to be the same organisation. It shares concerns about the alarming nature of clause 13 (2), which allows a judge to make a declaration without requiring any grounds or reasons. The Bar Association asks how a party will know whether to appeal if reasons are not given. The Greens will move to delete this clause in Committee.

The association considers that the 28 days for service of an interim order in clause 16 is too long and should more reasonably be five days. Clause 23, which provides no specified term for the control order to remain in force, is remarkable. The Bar Association believes it would be more reasonable for the control order to be for a fixed term of 12 months and reviewable with provision for a further 12-month term. The Bar Association states that clause 24, which requires appeal rights be exercised within 28 days of the date of the decision, seems meaningless, given that there is no requirement for reasons to be given by the judge. Clause 27 bans the person under the control order from the activity set out in clause 27 (6), including working as a stable hand, selling liquor, operating a tow truck or owning a greyhound. This clause takes the operation of the legislation far further than merely banning the outlaw groups to potentially denying their members the ability to earn a living. The Bar Association believes there should be a connection between the carrying out of the prescribed activity and the participation of the declared organisation before this provision comes into operation. With respect to alternative verdicts, the Bar Association states:

If on the trial of a person for an offence under section 93T (2), (3) or (4) the jury is not satisfied that the accused is guilty of the offence charged but is satisfied that the accused is guilty of an offence under section 93T (1) it may find an accused not guilty of the offence charged but guilty of an offence under section 93T (1) and the accused is liable to punishment accordingly.

This bill blurs the separation of powers of Parliament and the judiciary by creating a list of consenting eligible Supreme Court judges to hear applications in relation to the proposed provisions and giving the Attorney General the power to remove judges from the list.

The Hon. John Hatzistergos: Come on! That is a red herring again.

Ms LEE RHIANNON: Okay. Why did you not give us the second reading speech in detail?

The Hon. John Hatzistergos: Because I didn't expect you to recite such nonsense, as usual.

Ms LEE RHIANNON: You know this is a problem and you know the bill is flawed.

Mr Ian Cohen: We are losing patience with fascism.

Ms LEE RHIANNON: I acknowledge the interjection. State terrorism laws may have introduced this provision, with the rationale that security checks were to be conducted with respect to judges, but there is no need for it in this legislation. The provisions are so widely drawn that they are open to abuse and will prevent adequate scrutiny, particularly by those who are the subject of these powers. For example, "criminal intelligence" means information relating to actual or suspected criminal activity, and the bill provides broad protections to prevent disclosure of the source of the information because it may prejudice criminal investigations or endanger a person's safety.

Any person could leak false information to form the basis of an application and that information would not be challenged properly. Criminal intelligence should be defined as information that is corroborated by at least one other independent source. Alternatively, or in addition, there should be more stringent requirements as to what should be an application for declaration or interim control order, or to the factors that a judge should take into account when considering an application—such as corroboration, the effect on innocent third parties such as family members of control members, and the effect on a person's legitimate occupation.

Notice of an interim control order to the person to whom it relates must, among other things, set out the grounds on which the order was made, except where there is a need for confidentiality in relation to criminal intelligence. This is open to abuse. It will also affect the already limited right of appeal against control orders. The legislation enshrines a totally unacceptable level of secrecy. If the Government intended to protect legitimate motorcycle clubs and their members it should have taken the time to draft the legislation properly so that there were adequate processes in place to make sure that only criminal groups will be subject to these laws. The Greens will move amendments in Committee to address this problem.

The Government is running true to form in its handling of this problem, given its track record of using criminal acts such as the Cronulla riots to rush through ill-advised law and order legislation. The bikie violence at Sydney Airport last week was horrendous but these new laws would not have protected those people exposed to the fight or saved the life of the young bikie who was killed. Stripping away the rights of all citizens to rush in new criminal laws will not reduce bikie gang related crime. That fact needs to be reiterated time and time again in the debate because there is a flaw in the arguments of Government and Opposition members. The police already have at their disposal a raft of criminal laws under which they can arrest people for illegal and violent behaviour. Laws were passed in 2006 to allow the police to go after members of criminal gangs. We already have laws that address organised crime, violence and drug-related crimes. We already have laws governing assaults, drive-by shootings, murders, drug dealing and gun running. Better policing and better intelligence is needed to fix these problems. The Government has not made a case for why these new laws are necessary, given the number of criminal laws currently on the statute books.

We need to have confidence that our police are implementing laws in a proper and contestable way. This will not be achieved with these new laws. The Government is trying to dress up these laws as setting out a rational, testable judicial process. The reality is far from that. At least the existing anti-gang legislation in New South Wales requires that the legislation be tested in the court system. Satisfactory evidence must be provided to the court, and tested in the court, before orders can be made. Under this bill, however, all the evidence is given in private. That is different from giving evidence in a closed court because it means that the evidence is not contestable. It appears that police can present evidence to a judge in his chambers. There is no need to follow rules of evidence or for a judgement to be handed down publicly.

In relation to evidence being given in private, there is no capacity to test who has given the so-called "evidence" leading to a group to be declared, or what motivations are behind the giving of information. So we will never be able to test the veracity of information supplied to the police. In reality, one gang could be using the process to give evidence against a rival gang. They could be seeking police favour, and therefore the police will be open to manipulation. In this way, the legislation will increase the possibility of police corruption and innocent people being subject to control orders.

I place on record that I am always horrified by the way members on both sides of this Chamber attempt to distort the Greens' position. Gang violence is extremely serious, and every effort needs to be made to ensure

that people's safety is put first, and that violent and illegal actions are stopped. But it needs to happen within a legal framework. The extraordinary measures in this bill should not lull anyone into believing the Government has dealt successfully with gang violence. The Government should direct its energies to examining why the existing raft of laws are not being utilised properly, and it should report this to the House.

The Minister for Police boasts regularly that we have one of the biggest police forces in the world. So why are these murders and acts of violence occurring? Are police resources being deployed to respond to this violence? That question has not been answered. Banning the importation and sale of handguns would be an effective way to reduce gang violence. I hope members are listening very carefully. Time and again the availability of guns has been raised in this House, and Labor and Opposition members and the Conservative crossbenchers have voted together to stifle any moves for gun reform. The Premier could deal with organised crime by moving on gun reform and calling for measures to reduce the legal supply of firearms, which in turn would reduce the flow of firearms onto the black market and into the hands of bikie gangs.

The Hon. Trevor Khan: It's pretty plain they're importing them from overseas.

Ms LEE RHIANNON: I acknowledge the interjection. Again, the Hon. Trevor Khan has got it wrong. I was disappointed with his speech. I felt he was trying to square off—

[Interruption]

I urge the Hon. Trevor Khan to listen. With regard to the importation of guns, the Australian Institute of Criminology has identified theft from the legitimate firearms market as one of the main avenues through which firearms come onto the black market. Illegal firearms start off as legal firearms. There is an attempt to blur the debate and to make out that firearms come into the country as illegal weapons. Again, we have evidence of the obsession on the part of Labor and the Coalition for not moving on gun law reform. Given that firearms are used regularly in gang violence, the failure of Labor and the Coalition to move to ban the majority of handguns is highly suspect and a reason for great concern. More than 800 different models of handguns can still be legally imported and sold in Australia.

I want to reinforce the argument about the need to ban many handguns. In New South Wales there have reportedly been more than 60 shootings in the past couple of months, yet not once has the Premier, the Leader of the Opposition or key figures in Labor and the Coalition raised limiting bikie gang members' access to firearms. Surely that would be a key way to remove their power. The Federal Attorney-General today indicated his support for a crackdown on bikies by suggesting broader police powers to tap the phones of people involved in gang violence. The Federal Attorney-General should also turn his attention—and he should be lobbied to do this by Labor and Coalition State leaders—to bringing in a ban on the importation and sale of handguns. That is needed urgently. I urge the Premier to raise this issue at the next Council of Australian Governments meeting, to be held at the end of this month, as a powerful measure to address gang violence.

Despite attempts by the Minister for Police to distance the bill from the South Australian legislation, there are disturbing similarities between the New South Wales bill and the South Australian Serious and Organised Crime (Control) Bill, which was passed in that State last year. Like New South Wales, South Australia has consorting laws aimed at restricting the activities and movements of suspected criminals, and laws to deal with criminal behaviour. South Australian police have struggled to control or curtail the illegal activities of motorcycle gangs, and the Government in that State introduced legislation to broaden police powers to tackle gang-related crime.

My colleague in the South Australian Parliament, Greens member Mark Parnell, in acknowledging the need to reduce gang violence, noted: "Whenever coercive action is taken to prevent individuals or groups from committing crimes, you end up infringing civil liberties." The right to freedom of association and freedom of movement is being undermined because of these excessive laws. Unlike what is happening here, South Australian members of Parliament had time to test their anti-gang legislation's aims to target the root causes of bikie gang related crime against important legal, democratic and human rights principles. The South Australian Greens, with adequate time to consider their bill, moved dozens of amendments to attempt to preserve some of those principles.

The tenor of the amendments was to limit the serious infringements of civil liberties and address the primary concern that, while the criminal elements in bikie gangs will work their way around these laws, innocent individuals and groups will be caught in this widely cast net of declared organisations and control

orders against people who associated with those organisations. Legal, human rights and social justice groups in South Australia opposed the South Australian bill. The South Australian Council of Civil Liberties wrote to South Australian members of Parliament expressing a host of concerns about it. Those concerns included the removal of basic freedoms—mainly the rights of people together in groups—the downgrading of the burden of proof to that of civil litigation, increased discretionary powers, and the enshrining of guilt by association laws in the criminal justice system.

When we met with the Minister for Police, Minister Kelly, he assured us that the New South Wales legislation would not erode civil liberties to the extent that the South Australian laws have, and that the bill would provide better protections for the majority of bikers who are law abiding. But with only a few hours between receiving the bill and voting on it, we cannot reasonably review the legislation and compare it with the South Australian laws. However, going on advice provided by the New South Wales Bar Association, there is every reason to doubt Minister Kelly's attempt to reassure the crossbenchers that everything is okay.

I also pose the question: What happens to the records collated on innocent people because of their association with a person who is a member of a group or the subject of a control order? What does a person's criminal intelligence record look like if he or she happens to live next door to, or be related to, a biker? Many problems arise from this legislation, and those problems should have been reviewed before the bill came before the House. But now that we are debating it, surely the Attorney General should be thorough in his reply and detail why the legislation is justified and why he is confident that it does not undermine basic civil rights.

The Minister for Police stated that his Government has gang violence under control, with Operation Ranmore targeting gang crime. That operation has been running for 18 months now and is ongoing. He explained that Operation Ranmore targets individuals but that the new laws will allow police to target groups also. The process to declare an organisation a criminal body under this bill is inadequate. A Supreme Court judge will make an administrative decision to declare a group a criminal organisation. What of the rights of members of a declared organisation to have the police intelligence and claims that inform the administrative decision tested in court? The Government is denying the right of appeal to its citizens. That goes to the heart of the sort of society we want to live in, and is one of the reasons the Greens oppose the bill.

Motorcyclists have contacted my office to express concern about the intent of the laws and their potential impact. They are rightly concerned that their civil liberties, through their right to associate and gather freely, are threatened by this bill. One of the key Greens amendments addresses the primary concerns of many bikers—namely, when declaring an organisation as criminal a judge may deem the organisation as criminal only if the sole or dominant purpose of its members is to associate for criminal purposes. As the bill stands, proposed section 9 is drafted so broadly that an organisation with two criminal members and hundreds of innocent members could potentially be declared a criminal organisation. That has very serious implications not only for law-abiding biker and motorcyclist groups, but also for any other group or organisation that the police commissioner seeks to apply these laws to. People are deluding themselves if they think laws such as these will not be abused. The history of the delivery of justice shows that where there are laws that can be used to penalise, discriminate, or spy on other organisations, they will be used. That is why the legislation should not be rushed through Parliament. A safeguard should be put in place, and all members should have confidence that that has occurred. It is not good enough to say that the laws are intended to target criminal gangs because they have a much wider reach.

The South Australian bill gave government and police extraordinary powers to target ordinary citizens, extending well beyond what many people regard as reasonable. The fundamental problems with the South Australian legislation also exist in this bill. These laws have the potential to target unfairly groups and organisations that are not engaged in criminal behaviour. That is why the Law Society of New South Wales has called this bill "the thin end of the wedge". Not all bikers are criminals, and honest citizens could be victimised by these laws. For example, a member of a South Australian Christian motorbike group, the Long Riders, told the story of how, when the anti-gang laws were being debated in South Australia, he was tailed by police for seven weeks because he went to the club rooms of another biker organisation. He was not a member of a criminal gang but the suspicion of his involvement was enough to give him a seven-week tail.

The Minister for Police ridiculed the community work performed by a number of bikie clubs to raise money for children's hospitals. Perhaps that is a cover for some clubs, but for the majority of motorcycle clubs that undertake charity work—and I understand most of them do—it is a legitimate endeavour that is appreciated enormously by those who benefit from their fundraising efforts. The Minister should be careful about making such comments because he will cause damage not only to the people who engage in legitimate fundraising

activities but also to those who benefit from those activities. The bikies who engage in many of these fundraising activities are not criminals and should not be exposed unnecessarily to these excessive police powers.

Guy Stanford, chairperson of the Motorcycle Council of New South Wales, told me earlier today that many council members are deeply troubled by this legislation because it does not distinguish between bona fide motorcycle clubs and criminal gangs. Mr Stanford raised the possibility that the legislation could be used against legitimate motorcycle clubs such as Ulysses, a club for riders over 40 years of age; Girls Ride Out, a large club for female riders; the Patriots, a club for serving and former members of the armed forces; and Dykes on Bikes, whose members participate in the annual Gay and Lesbian Mardi Gras, to much audience appreciation. All those groups could be targeted. Despite the assurances of the Minister for Police, and perhaps of the Attorney General, that possibility remains.

Many members of these groups wear a club patch on their backs, as they are proud of their clubs and what they do. They should not be victimised for that. Members of motorcycle clubs are concerned about the current vigilante mentality being whipped up by some Government and Opposition members and some sections of the media. There is a legitimate concern that such attitudes will have a negative impact on the safety of motorcyclists on our roads. That is why members who speak to the bill need to be responsible for the language they use and should be careful not to present the issues in an inflammatory way. Another Greens amendment that relates to the process of declaring an organisation seeks to allow parties other than the targeted organisation to make submissions in the public interest. In the event that these laws are used unfairly, it is important that people have the opportunity to speak to the reputation of an organisation.

But it has not been all roses on the Government benches with regard to this bill. Last Tuesday, when the Premier secured in-principle agreement for these laws from Cabinet, it was reported that Treasurer Eric Roozendaal emerged as a voice of moderation, nailing his colours to the mast at the Cabinet meeting. He argued that banning certain groups was wrong because it could lead to a breach of civil liberties. The Greens do not know whether that occurred but that is what was reported, and the corridors were alive with excitement at Mr Roozendaal's concerns. He must have been listening to the barrage of criticism directed at the Government by groups such as the Council of Civil Liberties and the Law Society of New South Wales. Who knows, the Treasurer may have a fellow traveller in the Attorney General. Hopefully the Attorney General will enlighten us about that when he at last replies to the debate.

Where does the Coalition sit on these laws? Not surprisingly, Coalition members have fallen into line behind Premier Rees. They have tried to outdo the Premier and make the sorts of blustering speeches that the Hon. Michael Gallacher is so expert at. But they have now fallen into line. The Leader of the Opposition, Barry O'Farrell, called for the introduction of South Australian style tough anti-bikie legislation as soon as possible. He said, "We need to stop pussyfooting around and fight fire with fire"—note the words, "fire with fire".

Dr John Kaye: That was a good contribution to the debate, wasn't it?

Ms LEE RHIANNON: Yes. I acknowledge the interjection from Dr John Kaye. It is interesting to compare the comments by Mr O'Farrell with those of Mr Greg Smith, the shadow Attorney General, in January this year. Perhaps it was a slow news day or perhaps he was really committed to it, but Mr Smith pledged to end the law-and-order auction on the basis that the hardline sentencing and prison policies were failing. Those comments were widely welcomed by many people who are deeply concerned about the damage that has been done to the justice system under the Labor Government. Some people actually expressed hope that something might change. But it appears that either Mr Smith was insincere in his comments or he was rolled, because Barry O'Farrell was keen to get back to fighting fire with fire and ignoring civil rights in outlining his approach to the complex issue of gang violence. We have seen the real opposition step forward here today, with the Coalition still locked in to extreme law and order legislation.

In Committee the Greens will move to insert a two-year sunset clause and require the Ombudsman's review of the legislation to be publicly available at the end of the two-year period. We will introduce a range of other amendments designed to increase judicial and police accountability and require judges to give reasons for a decision to declare a group a criminal organisation and to follow rules of evidence. Other Greens amendments lift the level of proof of criminal activity required before a judge can make a declaration and limit the duration of control orders. The Government is trying to dress up these laws as a rational, testable judicial process. As I have said, the Attorney General has not put that case, but it was the main tenor of the remarks of the Minister

for Police and, I understand, the Premier during debate in the lower House. The reality is far different. It is not a rational, testable judicial process; it is a crude piece of legislation and a knee-jerk reaction to a complex problem. The bill should not be passed.

The Hon. JOHN AJAKA [5.30 p.m.]: As members can see, I am still making notes on the bill because of the limited time that has been made available to us. I concur with the comments of the Leader of the Opposition, the Hon. Michael Gallacher, and my colleague the Hon. Trevor Khan. I do not intend to repeat the matters they have placed on record. For some considerable time the Opposition has demanded that the Government take action in relation to the problems of organised criminal gangs. We now have rushed legislation on the last day of sittings. Why was the legislation not introduced earlier? That is a reasonable question. There was ample time to do so. Notwithstanding the rush, the legislation is before us and we should deal with it. With all due respect to the Greens, we should not defer the legislation to May or June. If we did we would not be carrying out our responsibilities as members of Parliament in dealing with an important issue facing the people of New South Wales.

This legislation relates to organised criminal gangs. I want to place on the record some matters. This issue does not relate to the ethnic origin, religious belief, sexuality or any other aspect of individuals or organisations. I repeat: This legislation relates to organised criminal gangs. It is not to be used—and I would take exception if it were—for the purpose of ethnic, religious or other vilification or simply bashing of ethnic groups. I take great exception when one ethnic group is selected as the example of all motorbike gangs. It is a nonsense. I thank Government members for indicating their support for my remarks. They encourage me to continue. The names of the various so-called bkie leaders show that they are from all types of ethnic origin. To pick one group is offensive. It should not happen, and I believe it will not happen here. It is journalists who refer to ethnic groups. I wish they would wake up and stop doing it because it does not help anyone; it only makes the problem worse for everybody.

I understand the concerns raised by some members, but they go a little too far in their interpretation of the legislation and its effects. One must look at the elements of the bill that must be satisfied. They are basically pre-conditions that must be satisfied before the legislation becomes operative. When I break them down to their simplest form I come up with four basic conditions that have to be satisfied. Those conditions are: one, that members must be associating; two, for the purpose of organising or planning or facilitating or supporting or engaging; three, in serious criminal activity; and, four, and represent a risk to public safety and order in New South Wales. All these elements must be satisfied. If one of the elements is missing then an order cannot be obtained or made in any shape or form.

The fear that legitimate organisations and clubs will be victimised is without merit. I do not accept that proposition. The Commissioner of Police or one of his superior officers would not try to convince a Supreme Court judge that an order has to be made if they could not satisfy each and every one of those four elements. Clearly, the police would be unable to satisfy each and every one of the elements if they did not have the appropriate evidence to put before a Supreme Court judge. I have appeared on many occasions before Supreme Court judges. One could imagine the outcome of a police officer approaching a Supreme Court judge to seek an order against a trade union or religious organisation without evidence of an offence. I would pity the police officer because I know what the Supreme Court judge's response would be. This legislation empowers a Supreme Court judge; it does not empower a magistrate or a District Court judge. It deals with a superior court judge, and I have the utmost faith in the Supreme Court judges of New South Wales.

I have not referred to specific provisions as I want to give an overview of the legislation and I have concurred with the comments of previous Opposition speakers. Leaving aside interim control orders, the bill makes it very clear that, firstly, the officer must approach the judge. The bill enables the Commissioner of Police to apply for a declaration. It then requires a notice of the application to be published in the *Government Gazette*. It then allows any member of the organisation, the organisation or any other person who may be affected by the order, adversely or not, to make a submission to the judge. It goes one step further and allows those persons or organisations to appear before the judge and make further representations in person. It will not happen behind closed doors. Any organisation that considers that it is being unfairly treated has the right to appear before a judge, put its case and have the evidence heard.

The one exception is interim control orders. I use the analogy of an interim apprehended violence order where it is made in exceptional circumstances for public safety. Again, the four elements would have to be made out to the Supreme Court judge's satisfaction before the judge would consider making an interim order without affording a person the opportunity to be heard. It would have been preferable to have more time to examine the

legislation. But as the Leader of the Opposition in the other House and the Leader of the Opposition in this House have said, we are facing times where people should be able to walk down the street and not be worried about drive-by shootings or organised crime gangs taking over the streets or taking the lives of people. It is unacceptable behaviour. The legislation should pass through the House.

The Hon. GREG DONNELLY [5.39 p.m.]: I make a brief contribution to this very important debate on the Crimes (Criminal Organisations Control) Bill 2009. I do not intend to traverse in detail all the arguments presented by other members in this debate who have spoken in favour of this legislation, other than to say that I concur with the substance of what they have said. I make the following observations with respect to the Greens. The Greens' position on important matters to do with law and order legislation before this House has often created some interesting concepts for us to get our heads around. The challenge for us as a government is to deal with the real issues confronting our community, and what we are faced with time and again is the Greens presenting arguments in the House that are grossly misleading, exaggerated, and fundamentally flawed. The Greens talk with great shrillness along the lines of "the sky is falling down" if this House and this Parliament pass certain legislation.

Today Ms Hale gave an example of that when she went through this Government's history of dealing with important law and order matters in its tenure. What she said was misleading, exaggerated, flawed and shrill. The Greens condemn themselves on the basis that at no stage, as far as I know, have the Greens as a political party or as individual members of a political party spoken to any senior Government member—whether the Premier, the Minister for Police or the Attorney General—to put suggestions as to how we as a government could deal with this very live and real issue of motorcycle gangs. We do not find the Greens forthcoming.

Dr John Kaye: Point of order: The member is being grossly misleading. In fact, if he had listened to the speech of either Lee Rhiannon—

The PRESIDENT: Order! There is no point of order. Dr John Kaye is making a debating point.

The Hon. GREG DONNELLY: The Greens do not come forward with constructive suggestions or ideas to deal with the very real matters that this Government has to deal with. On that basis, together with the other reasons I have given, members are entitled to dismiss the Greens' arguments they have presented to the House today. I make it absolutely clear that this legislation is not designed to attack, undermine or remove in any way the civil rights of the vast majority of people in this State who ride motorbikes and who obviously have a passion for riding motorbikes. There is a whole range of reasons why people ride motorbikes, and they have been canvassed today in the House.

Indeed, a number of people who ride motorbikes belong to motorcycle clubs—there may be members in this House or in the other House who are members of motorcycle clubs. Those people, in the main, are decent, law-abiding people and no-one for a moment, notwithstanding what the Greens have suggested, should be afraid that this proposed legislation is designed in any way whatsoever to target those individuals: this legislation does not and will not affect them. Quite frankly, the police are not interested in those individuals unless, of course, those individuals break the road laws that we are all subject to. We understand that, and I am sure law-abiding motorcycle riders in this State also understand that.

The legislation does not mention motorbikes and it has nothing to do with ordinary motorbike-loving members of the public. This legislation clearly is designed to target hard-core criminal organisations that commit major crimes and threaten public safety. Tragically, we have seen over the past couple of months examples of that played out so terribly and how that violence is manifesting itself all around Sydney and even outside the metropolitan area. This legislation has sought to balance the issue of civil liabilities against the need to have laws to protect the citizens of this State. I urge members to support the bill.

Dr JOHN KAYE [5.45 p.m.]: I support my colleagues Ms Lee Rhiannon and Ms Sylvia Hale in their opposition to the Crimes (Criminal Organisations Control) Bill 2009. Having received the bill this afternoon and had totally inadequate amount of time to read through it, I can see why the Attorney General was clearly uncomfortable with the provisions in the bill and was not able to give a fulsome second reading speech. In fact, his second reading speech was about five words long, and that was only to refer to the debate in the Legislative Assembly. It was left to the Minister for Police, Tony Kelly, to address the bill in the way that we would normally expect in a second reading speech: an account of the provisions of the bill and an explanation as to how the bill operates. Perhaps the Attorney General is concerned about his prospects of becoming a Supreme Court judge if he so traduces the principles—

Reverend the Hon. Fred Nile: This is not your speech. You are reading Lee's speech.

Dr JOHN KAYE: I acknowledge the interjection by Reverend the Hon. Fred Nile. The Reverend should know by now that I am perfectly capable of writing and giving my own speeches.

Reverend the Hon. Fred Nile: You are reading Lee's speech word for word.

Dr JOHN KAYE: I am not repeating Lee's speech at all; I am giving my own speech. I thought honesty was part of your principles, Reverend. I was not repeating it word for word.

The PRESIDENT: Order! Dr John Kaye will speak through the Chair and ignore interjections.

Dr JOHN KAYE: I will ignore interjections. I will continue to say that perhaps the reason why the Attorney General was concerned was because he sees, like the Greens do, some major flaws in this bill and has some great concerns about the impacts it will have on freedom of association and on the basic principles of a right to a fair trial. Or perhaps the Attorney General was more concerned that he would tarnish his reputation and undermine his capacity to be appointed a Supreme Court judge, which he is clearly interested in.

Reverend the Hon. Fred Nile: It was Lee's suggestion.

Dr JOHN KAYE: Reverend the Hon. Fred Nile says it was Lee who suggested that. There are far more people than Lee who have identified the ambitions of the Attorney General not to spend time in opposition but rather to have himself appointed to the—

The Hon. Greg Donnelly: Point of order: The Attorney General is being misrepresented, because if he had real ambition he would be shooting for the High Court.

The PRESIDENT: Order! There is no point of order. I remind members of the importance of this debate. Although by tradition the contributions of members to debate on the second reading of a bill may be wide ranging, it is important that those contributions address the substance of the bill before the House.

Dr JOHN KAYE: The key problems associated with this bill are, firstly, that it creates a sense of guilt by association. By tarnishing an organisation—effectively criminalising an organisation—it creates guilt by association, which society has always avoided. Secondly, it takes us down the path towards proscribing organisations, which is extremely dangerous territory. We need to make a distinction between proscribing actions and proscribing organisations. In the past we have had a basic principle that we proscribe actions and we associate criminal penalties with certain actions. This bill takes us in a new direction and takes us towards the direction of proscribing organisations.

This bill walks all over basic civil rights. The basic civil right to associate with whomever one pleases; the basic civil right to a fair trial; the basic civil right to a presumption of innocence are all traduced by this piece of legislation. Fourthly, the legislation is probably not effective. It is likely to drive organisations underground, where they will be harder to monitor, and to make it harder to interrupt criminal activities within those organisations. This legislation undermines the basic tenets of the rule of law that protects individuals and citizens from state tyranny. That which keeps ours a free society is indeed highly fragile because it rests on conventions. This legislation creates a dangerous precedent.

The basic principle of a free society is a citizen's right to be present to challenge evidence when a case is brought against him. This legislation provides that the accused cannot be present if criminal intelligence is being used to mount the case. Given that on most occasions the case will rely on criminal intelligence, this legislation will result in secret hearings being held in which the accused—the person who stands to lose his or her civil liberties—will not be present, not only to challenge the evidence but also to present their own case and to defend themselves. Nor will the accused know the details of the accusation.

There is also no right of appeal to a declaration of an organisation. Similarly, control orders can be made in the absence of the person and they take away the right to associate with friends without the ability to challenge the evidence on which the order is based. That is imposing a penalty without a fair hearing or even the

ability to know what evidence was used to impose that penalty. This bill takes us in the direction of secret trials—that is, trials held in the absence of the person who could suffer as a result of the outcome. I was fascinated to read the test for the declaration of an organisation. Proposed section 9 provides:

- (1) If, on the making of an application by the Commissioner under this Part in relation to a particular organisation, the eligible Judge is satisfied that:
 - (a) members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity...

Members should note that the bill does not provide that all members of the organisation need to be thus engaged, only some members. This is made clear in proposed section 9 (4), which overtly states that not all members need to be engaged in such activities in order to have an organisation thus declared. It goes on to state that members do not even need to associate for those purposes in order to have the organisation thus declared. Paragraph (b) provides that it does not matter whether they associate for the purpose of organising to enact those prescribed activities, the organisation can still be declared. All that is needed is for a significant group within the organisation to be thus engaged.

A "significant group" is a highly subjective term. This is not good law because it does not lay down clear measures. It provides that the judge can determine what is a significant group. Perhaps it is not a significant group. A person seeking to join an organisation and wondering whether it could be declared would not be able to use this legislation to determine that. The second part of the test for declaration is contained in proposed section 9 (1), which provides:

- (b) the organisation represents a risk to public safety and order in this State,

How on earth is a judge to determine that? If some or a segment of its members engage in serious criminality and others do not, is it the organisation that presents a risk to public safety and order, or the members? In the end it will be a subjective assessment of the criminality of those who associate with the organisation or a group of members. It is clear that this legislation was drafted in a hell of a hurry. To leave legislation hanging in this fashion and for such an important test—which goes to the heart of our belief in a free society—to be written in such a sloppy fashion says that it was drafted in a hurry and it was never properly considered. It is precisely for that reason that the Greens want the legislation to be referred to the Standing Committee on Law and Justice. Provisions such as these should be assessed in the light of evidence given by experts who have a clear view on these things.

Proposed section 13 of the bill suspends the rules of evidence and proposed section 32 provides that the test will be on the balance of probabilities. Even though we are talking about criminality, this bill removes "beyond reasonable doubt" and replaces it with "balance of probabilities". Interim control orders can also be made in the absence of and even without the knowledge of the person against whom that order is being made. Again, there is no ability to challenge, to assess the evidence or to present a defence. That undermines a key protection of civil liberties within our society. The key to ensuring that governments do not go down the path of tyranny is to have a strong judicial system that respects the rule of law and the right of all people before that system of law to put forward their case and to challenge the evidence brought against them.

Although this legislation strikes at the heart of the freedoms that protect our society, it is being rushed through this Parliament with no time for analysis and debate. There is no way for members to assess how badly the protections within our society are being undermined. More importantly, this legislation creates a very dangerous precedent. By criminalising organisations and heading towards prescribing organisations we are moving down the path of guilt by association. That principle was rejected by the High Court with the defeat of the dissolution of the Communist Party. It should be rejected again because it says that innocent people can be tarnished under the law without ever having done anything wrong and without the right to defend themselves.

The Greens abhor violent behaviour. It is very important to build a society where violence within organisations and between organisations, and violence that affects others not involved in those organisations—the non-involved bystanders—is minimised. Mr Khan told the harrowing tale of his client and his involvement with an organisation that could be targeted by this legislation. The newspapers are full of similar stories. It is impossible not to find a double-page spread in any of the major daily newspapers in New South Wales at the moment that does not refer to the appalling behaviour of some individuals. All of this calls out very strongly for action to secure the safety of citizens and to stop violence within and between these gangs. Any attempt to say that the Greens do not believe that is misleading and mischievous, and does not live up to a proper standard of debate.

The Hon. Greg Donnelly: That is not what I said. I said that you have not come up with any suggestions to deal with it.

Dr JOHN KAYE: I will get to the member in a minute. I will finish this bit and then I will talk about what the Government Whip said.

The Hon. Greg Donnelly: I will sit down and wait.

Dr JOHN KAYE: I am glad. The fact that we need to act to minimise violence in our society leaves open two key questions. First, will the bill before us today be effective in achieving that? I doubt it. It has been argued elsewhere that these laws will make it harder to interdict criminal operations. It will do so because the risk is that by declaring organisations one drives them underground. Of course, that will make it harder to gather criminal intelligence. The last thing we want to do is to make it more difficult to gather intelligence. We should be doing things that make it easier to detect and disrupt the activities of these organisations.

The Hon. John Hatzistergos: This is what the bill does.

Dr JOHN KAYE: That may be so; it may not be so. I have heard opinions that say it is not so. The proper thing to do is to allow time for the bill to be debated properly, either by having it sent off to the Standing Committee on Law and Justice or by deferring debate on it until Parliament resumes in May. We need to understand the potential impacts of the bill. Clearly it has been rushed through. Obviously it was a fraught Cabinet decision; a long and painful Cabinet meeting. There is no question there was opposition to it within Cabinet. There is no question this legislation is highly controversial and therefore should not be rushed through this Chamber. It is being ramrodded through this Chamber with very dangerous consequences.

A number of questions arise from my original statement that we should be doing everything we can to stop violence, and that is: Are the existing laws adequate for the task? Is it an issue of how we apply the laws? Is it an issue of how the police use the laws or is it an issue of the laws themselves? Those questions are part of a rather large debate that we will never have because the debate has been cut off by pushing this legislation through. The Rees Government, in its rush to appease the vigilante mentality being stirred up in our society, is rushing this legislation through without rational and calm determination of whether it is effective and necessary.

I wish to briefly to address the comments of the Government Whip. He made the absolutely outrageous suggestion that the Greens should speak to the Minister and that the Greens had never made suggestions. Either he is being deliberately misleading in his remarks or he was not listening to the contributions of Ms Lee Rhiannon and Ms Sylvia Hale. If the Government Whip reads *Hansard* tomorrow morning, he will see the range of suggestions, including issues to do with gun control, that were made by Ms Lee Rhiannon. It is clear that my colleagues who are usually involved in law and justice issues for the Greens have made many suggestions. Normally when they make suggestions, people like the Government Whip go out of their way to say, "What would the Greens know? Leave it to the experts." Then they complain and say that the Greens do not make suggestions. The Government Whip went out of his way to say this legislation is not about motorcycle gangs, and that any suggestion to the contrary would be mischievous and misleading.

The Hon. Greg Donnelly: Criminal gangs.

Dr JOHN KAYE: Indeed. What the Government Whip has failed to do is read the newspaper articles that clearly identify this legislation, and the push for this legislation, with so-called bikie gangs. It is clear what is being debated here. As Mr Khan and others have said, this is about violence associated with bikie gangs.

The Hon. Greg Donnelly: Criminal activity also.

Dr JOHN KAYE: And criminal activity associated with bikie gangs. Mr Ajaka made the very sensible remark that he was concerned this legislation will target ethnic groups. That is an important matter. I genuinely believe that no member in this Chamber—in the Government or the Opposition—would seek to do that. I do not think there is that sort of ill will within this Chamber or within Parliament. But that is not relevant. Yes, we are members of this Chamber today, but one day all of us will be retired or will have lost our seats. As parliamentarians we are writing laws and, more importantly, we are writing precedent. We are creating a standard that will outlast us, and we are pointing the laws of the State in a particular direction. When we declare an organisation that contains a percentage of innocent members to be some way down the path towards criminality, and we restrict its actions, we are opening the floodgates. We are creating a precedent that allows

future governments and future politicians—possibly of less goodwill than the current generation—to do precisely that. So, by voting for this legislation Mr Ajaka will be voting for the very thing that he warned the House against.

The Hon. Christine Robertson: You are playing nasty games.

Dr JOHN KAYE: I am not; I am giving you my analysis of where I think this sort of legislation leads a democracy. We need to look at the way democracies in the past have undermined their standards of fair treatment of individual citizens. We need to understand that democracy is a very fragile entity. Things can happen. Governments of substantial ill will do come to power. Making it easier for future governments of ill will by creating precedents is the wrong thing to do, particularly when we have not fully assessed whether this legislation is appropriate and effective to deal with organised violence and organised criminality.

This is easy politics for the Government and the Opposition. It is not particularly hard to whip up moral panic. It seems there are elements within the media, and within society, that are quite happy to create a sense of moral panic. It is easy politics to appease that moral panic, but it is also lazy politics. It creates the appearance of acting to create security. It creates the appearance of creating a safer society when, in reality, all that is happening is the ongoing political law and order auction. When Mr Smith said in the other place he was opposed to law and order auctions, there was a sense that perhaps we could move beyond that position. But it did not take long for the Attorney General and the Leader of the Opposition to stymie a hopeful outbreak of peace and more rational debate—debate that talked about how to create a safer society, a society in which there is less risk of being engaged with violence.

That is not what is happening here today. There is no such rational debate in this Chamber, no such rational consideration of the way forward for our society. Instead, we are witnessing the undermining of the basic principles of a free society. There are much better ways to eradicate gang violence than to simply involve ourselves in the dog whistle politics of whipping up moral panic. This legislation is flawed in the way it has been introduced in the House, it is flawed in the way it is written, it is flawed in its intent and it is flawed in the way it will be implemented. It is essential that members of this House support the amendment of my colleague Ms Lee Rhiannon to refer the bill to the Standing Committee on Law and Justice so we can debate its effectiveness and potential impacts on civil liberties. I support the amendment of Ms Lee Rhiannon and oppose the bill.

Mr IAN COHEN [6.07 p.m.]: I support the contributions of other Greens members on this bill. I do not propose to reiterate all that has already been said in this debate. It is clear that the majority of members in this House are somewhat annoyed by the protests of the Greens. Nevertheless, it is important that we all have a say in this matter because, even putting aside the subject matter of the bill, the manner in which the Government has introduced it today is quite appalling. First of all, the Attorney General would not even read his second reading speech to the House to give members of this House of review an opportunity to listen to what the Government—

The Hon. Penny Sharpe: He circulated it to you.

Mr IAN COHEN: Yes, as the Hon. Penny Sharpe said, the Attorney General circulated it to us—afterwards. While we were sitting in the House listening to the contributions of others, a copy of the second reading speech is circulated to us—that is while the debate was on foot, while we were going through the process. That is put up as an example of the reasonableness of this Government!

It is completely ridiculous that this House should operate in such a fashion. It brings into question the purpose of this House of review. Are we a supine Chamber—a pale reflection of the lower House—where the bill was rushed through? When the bill comes before this House the speech of the Attorney General is passed around after it is referred to members. We had only a few minutes to look at it. In fact in my haste to read through it I tore a few pages, which I have had to tape together. Is that how this House should review legislation? It is a lot worse than a dog's breakfast! It is a shocking indictment of the Government and, in this case, the Opposition. The Government goes through the motions of making legislation when it suits it to do so, but the way it has rushed to deal with reports in the media, in an effort to look tough and to beat its chest about such important legislation, reflects appallingly on the civil liberties and history of this State.

I am reminded of the words of Billy Sneddon, who said, "The Labor Party is a gang of bikies, pack raping democracy." Members may remember that interesting reflection about the Whitlam Government 30 to

40 years ago. That time has passed, but again we see the appropriate, reasoned democratic process of dealing with a bill in this House of review, where everyone is supposed to have a fair go, has been abrogated. I do not deny that the majority of members are keen to let the bill pass. That is not the point. We have not had an opportunity for appropriate and reasoned debate on the bill. The Government's action on this occasion does this House and the democratic system of New South Wales an injustice. Quite often when I listen to the many arguments that are put forward by members in this House I think to myself: This is democracy; this is about as good as we can get; at least everyone has had a fair say.

But what has happened today has thrown all that out the window. I am not really proud to be a member of this House at the moment. The Government has rushed this bill through, basically to chest-beat for some gutter media, which is running the Government's agenda. The Government is so desperate that it is making stupid law on the run that will not hold up in the courts of the land. There will be many appeals as a consequence of this legislation. I will not go into the detail of individual cases—so much as been said already—but I ask members what will happen in the case of a legitimate registered motor vehicle repair company, for example, if one of its partners is a member of a targeted gang? What happens to the other partners, who may be decent, reasonable business people? What happens to the business? The business may fail. The legislation will be a shambles and legal challenges will be made to it. I suppose that in some ways it really will not matter because the point has been made via the media: Everyone can rest easy at night because somehow or other the Government is doing a great job. Everyone is geed up. This is fundamentalism at work, where reasoned argument is thrown out the window. We are acting like a fundamentalist regime.

The Premier highlighted Operation Raptor, which will unleash 125 police officers onto criminal gangs. And that is even before this legislation is enacted! The Premier has said that 12 members of various outlaw motorcycle gangs were arrested at Sydney airport. The Government can pat itself on the back for that because that was a horrendous situation. No member would regard what happened at the airport recently as reasonable. It was beyond the pale of civilised society. But those involved were arrested under existing laws. The Government and the police were successful. A 36-year-old Rockdale man has been charged with a range of firearm offences and has been locked up. My understanding is that he has not been granted bail. Officers of Strike Force Raptor carried out the arrests, all before this legislation was introduced. It is obvious that there is adequate law in New South Wales, including the recently introduced terrorism laws, to deal with such situations. Yet we have this bill, without proper debate or regulation, going through this House today.

The Premier said that the orders will force gang members to give up on a life of crime and intimidation. I believe that can be achieved in many ways. He said that the controlled member will not be able to associate with another controlled member of a gang. Does that mean they cannot exchange Christmas cards? This legislation is so over the top it is ridiculous. If controlled members associate, they risk two years jail for the first offence and, if they reoffend, they may spend five years behind bars. It is overkill. Members who are declared members of criminal gangs will be stripped of their licences. No-one denies that bkie gangs, organised criminal activities and violent behaviour must be controlled. But I see them going underground just as the mafia did in the United States of America. The main issue is to get rid of obvious bkie gangs. Amphetamine factories will move to the country regions and impact on those areas.

[Interruption]

I know they already exist, but that will be encouraged. It is the wrong way to go about it. No member condones organised crime, but this bill will gazump fundamental civil liberties. What has happened to the presumption of innocence? This attitude is being reflected throughout society where Greens, activists and environmentalists are targeted as environmental terrorists. The bill encourages this extremely dangerous attitude.

A previous speaker referred in detail to the 16 shootings, fire bombings and houses being gutted in 2008, and the lack of security at Sydney airport in March 2009. These are horrendous incidents but they do not necessitate a change in our fundamental values. These values, which have evolved through our legal system over many generations, are being brushed aside. I used to have discussions with the Hon. Jeff Shaw, a former Attorney General, a man for whom I have enormous respect. At the risk of paraphrasing him inappropriately, he would say to me that the worst examples make the most important cases—and this is a case in point. It is easy to have a go at bikies; Parliament is good at that. There is a major problem with the criminal element in bkie gangs, but despite the fact that such organisations lend themselves readily to attack—and they are mostly deserved—it is all the more important that we abide by fundamental aspects of law that give protection to all members of society. I believe this type of legislation is eroding civil society.

The Hon. Greg Donnelly: What about their respect for society?

Mr IAN COHEN: I am not in any way defending any criminal elements. This is typical of the superficial reaction I have been referring to. Members can disagree with me as they will, but I believe what Jeff Shaw has said and that what is happening in this place is a basic erosion of the fundamentals of civil society. I will leave it at that.

The Hon. CHARLIE LYNN [6.20 p.m.]: One of my major concerns about the introduction of the Crimes (Criminal Organisations Control) Bill 2009 is the amount of time it has taken the Government to do something about organised crime in this State. In January 2004 the *Quadrant* magazine published an article written by Tim Priest. The article reads:

I also predict that there will be a dramatic rise in gang shootings as rival gangs compete for turf and business. This will be done with almost complete disregard for police attention, as they are well aware that the New South Wales Police has to be rebuilt from the ground up. We have seen in the past three years the phenomenon of drive-by shootings, Los Angeles style. Not only are the increasing incidents a major cause of concern but they are also becoming more dangerous with the use of automatic weapons that spray hundreds of rounds at their targets. This is virtually unprecedented in this country.

Tim Priest is a former highly respected police officer with operational experience at the front line. I will again refer to Tim Priest later in my contribution. However, it is interesting that since 2004 this form of organised criminal activity has continued to develop yet the police and the Government have not done anything about it. Given that drive-by shootings are happening almost on a daily basis, we now have a situation where the Government has been forced to take action. I suppose on the one hand we must do something about such criminal activity—and we must do something about it now because that is what the public expects us to do—but, on the other hand, it would have been good to have more time to examine the legislation in detail.

The bill obviously targets motorcycle gangs or motorcycle clubs. I belong to a motorcycle club called the Harley Owners Group—hardly what one would call a bunch of outlaws. I have ridden with the Vietnam Veterans Motorcycle Club. I do not yet belong—I am not quite old enough—to the Ulysses Motorcycle Club, whose outrageous motto is "Grow old disgracefully". There is another club, the Blue Knights, which is a police motorcycle club.

The Hon. Michael Gallacher: Tony Lauer is involved with them.

The Hon. CHARLIE LYNN: Indeed, former police commissioner Tony Lauer rides with that club. These are the old-style motorcycle clubs. There is a very strong sense of brotherhood in those clubs. I recall that I rode with the Vietnam Veterans Motorcycle Club down to Canberra for the tenth anniversary of the re-dedication of the Vietnam War Memorial. We met at the Crossroads. I learnt about the various ranks and descriptors that motorcycle clubs have, and I positioned myself in the middle of the convoy and away we went down the highway. It was an interesting weekend. Many of the members of the Vietnam Veterans Motorcycle Club are suffering badly from post-traumatic stress syndrome, and a lot of them have physical and mental problems. But the club looks after them. It is as though the club has its own welfare system; it is family to them. Without that, the members would be lost individuals; indeed, probably many of them would not be around today. The brotherhood of that club gives them a purpose, a sense of family, and a sense of mateship. It is much the same in the Ulysses Motorcycle Club and other clubs, where like-minded people get together and share their common interest.

Then there are the one-percenters, the outlaw motorcycle gangs, who are the ones who cause the problems. But we have one-percenters in every aspect of society. We have them in politics—they are called Greens. The one-percenters are the people who are outside the main area of society. Of course, the bill targets organised crime. Recent articles I have been reading about outlaw motorcycle gangs say that the old-style bikie does not like what is going on today. Most of those blokes have walked from the clubs; they have left them. I know that the Rebels have a large group out in Camden, where I live. But we never have any problems from them. They ride as a club. They only wear their colours when they are riding their bikes. They do not wear them in the gym where I train, and I see them there. They also do not wear their colours when they go down the street, or when they visit business enterprises, and so forth. But within their organisation they have their own discipline.

One of the previous speakers in this debate referred to motorcycle club initiation ceremonies. I imagine they are pretty drastic. But I recall that when I was in the Army we had initiation ceremonies—it was called recruit training. No doubt the police have something similar. When we came out of that training our colours

were khaki. We have to understand the psyche of these people. Why do they belong to clubs like this? Why are they one-percenters? One-percenters will exist everywhere. What we need with respect to one-percenters is intelligence. We need to know what is their reason for being, what they are up to, and so forth. Intelligence is not simply observing and noting what they are doing; it is interpreting what they are doing.

The trouble with police intelligence now—and I think it changed when Peter Ryan took over the Police Force—is that instead of being proactive it has become reactive. Police intelligence is about infiltrating clubs, gathering information, joining all the dots together—anticipating what they are going to do and taking action before it happens. But what we have now with the lack of intelligence is very well-planned, illegal criminal activity. Today's gangs—and we are not just talking about motorcycle clubs but about organised criminal activity—using mobile phones and SMS messages can now bring their forces to bear quicker and in greater numbers than the police can.

I do not think we know nearly as much about these gangs now as we knew about them in the past. During the Cronulla riots we found that gangs were able to pull together a convoy very quickly. That convoy was able to go through the streets of Sydney, and all the police could do was back off and look. Of course, the riots then erupted. Those riots could have been nipped in the bud if there had been good intelligence. We allowed that problem to grow and fester, until it exploded. That has happened on a number of other occasions as well. I recall one day hearing a talk in this Parliament by a police officer. I cannot remember his name. He spoke about an incident at McDonald's in Minto in 1998. Local residents were being intimidated by a gang, and they called for police assistance. The police responded, as they are expected to do, to maintain law and order. From memory there were 17 gang members, and they got into a fight. A police dog bit one of the 17 gangsters. The police arrested them. The Greens speak about civil libertarians and so forth. The matter was taken to the Ombudsman. Over a period of years there were investigations and reinvestigations. At the end of the process, the dog handler was charged—when he was simply doing his job.

The Hon. Michael Gallacher: And the dog got food poisoning.

The Hon. CHARLIE LYNN: That is right, he got rabies. All those policemen are now ex-policeman. They all got out of the Police Force. They became disillusioned because the justice system failed them. Policing at the front line calls for people who have had experience at the front line. You do not get experience at the front line by reading books or going to courses. We talk about police numbers and so forth, but police numbers and effective police are two different things. You do not get front-line policing experience in a band, in a human resources department, or in an office; you get it out on the street.

[The President left the chair at 6.31 p.m. The House resumed at 8.00 p.m.]

The Hon. CHARLIE LYNN [8.00 p.m.]: Earlier I referred to a report I received from the New South Wales Law Society on its reaction to this bill. In that report the President of the Law Society said this legislation is not needed as sufficient laws already exist under the Crimes Act. I am sure that is correct. I have often wondered where the people associated with criminal gangs, who live in expensive properties and drive expensive cars, get their money from. Those of us who have been in business know that when the taxation office visits it examines the business in great detail. I have wondered what sort of questions the taxation office asks of those people, such as: Where did you invest your money? How did you get your money? Where do you work? What sort of businesses do you have? I have also wondered why the taxation office and other investigative agencies have not put these people under the microscope.

It is similar to the gun laws. The gun laws put honest brokers, such as farmers and the people who need to use guns, through the hoops, but criminals seem to have an abundance of guns—they probably have greater armouries than the police. I often ask myself why the police do not just go and collect them. The police know the hotspots and with a few search warrants the guns could be uncovered and the laws applied. This bill is in response to the rapid increase in drive-by shootings, mainly in south-western Sydney, and the attack on a peaceful Sunday morning at Sydney's domestic airport. The seeds were sown many years ago but the inaction of the Government has allowed the matter to reach this point.

Paul Sheehan wrote an article in the *Sydney Morning Herald* about ethnic crime. Ethnic crime is a bit like the elephant in the room: if you speak about ethnic crime you are immediately branded a racist and anti a particular ethnic group. I am anti-criminal. I do not care who the criminals are, what colour they are, or where they come from. If they are breaking the law and making the community unsafe then something has to be done. Paul Sheehan wrote—

Ms Lee Rhiannon: You are very selective, Charlie!

The Hon. CHARLIE LYNN: If you think this is fiction you can correct the record, but I am going to present the information I have come across as a result of the articles I have read and the police I have spoken to, and I do not think they are making it up. I quote from Paul Sheehan's *Sydney Morning Herald* article:

On ANZAC Day 1998, police were called to the Lakemba Mosque when a fight broke out between two groups of Muslims, some armed with knives and at least one brandishing a gun. One of the officers called to the scene was Detective Sergeant John Doran.

He is the detective sergeant who attended the crime scene—

"Pistols and knives were reportedly produced within the mosque and an ambulance was required following the fracas," Doran told me last week. The violence involved a dispute between members of the Lebanese Muslim Association and about 20 members of the Islamic Youth Movement.

"I went with Stewart Smith, now the Superintendent at Dubbo, and we interviewed the leader of the mosque, Sheikh [Taj El-Din] Hilaly, and [his spokesman-interpreter] Keysar Trad, in Hilaly's office", Doran said. "As witnesses, they were not helpful."

Well before the incident in the mosque, which disturbed him because of the violent fanaticism of some of the combatants, Doran had expressed concern to his superiors that a growing culture of lawlessness in Lakemba and adjacent areas was driven by ethnic crime and the failure to recognise and contain the threat. He wrote an official complaint, dated 23 February 1988, which I quote in part:

"I wish to make a formal complaint concerning resourcing of investigative staff attached to the Campsie Local Area Command. The staff of this office are not disillusioned, they are shell-shocked and burnt out. Investigations are not being conducted, are being glossed over, and major crimes in theft and drug dealing ignored because of the refusal to staff the command with a sufficiently resourced investigative team. No doubt, the fact that I raise these issues will result in some action against me, be it transfer or otherwise, but the situation is nothing short of a joke and must be remedied."

Doran was gone by the following year—retired. He was one of the hundreds of disillusioned senior police to leave the force in the wake of the Wood Royal Commission.

Paul Sheehan's article went on:

In the eight years since Doran's protest, a disconnected, violent, racist, criminal subculture has grown within Sydney's Muslim community, while denial and blame-shifting remained intact at police headquarters. This was personified by Commissioner Ken Moroney's removal of Detective Superintendent Dennis Bray from the command off Strike Force Enoggera, an action that has prompted open revolt by his command. As Doran told me yesterday, "His men are outraged because Dennis Bray is an excellent officer. There's no-one on the force with more competence or more integrity."

The treatment of Bray exacerbates the perception among police that while they do society's dirty work on the streets, the criminals they arrest have a gold-plated complaints system to manipulate, a system absurdly vulnerable to vexatious complaints. Police must also endure rulings from members of the judiciary that they should expect to be abused and insulted in the course of their duty. Police based in the electorates of Lakemba and Bankstown endure open contempt on a daily basis.

There also remains questions about the Government's priorities after the Cronulla riot and the revenge attacks that followed. Police were quick to subpoena the Herald for photos taken during the paper's coverage of the violence in Cronulla on December 11. Strangely, no subpoena has ever been received for the Herald's images taken the following night, December 12, when convoys of revenge attacks formed in Lakemba and Punchbowl before going on a largely unchecked rampage.

The big questions therefore remain: when is the penny finally going to drop for the NSW Government about the problems coming out of the subculture centred in [former Premier] Lemma's electorate? When are they going to realise that the gang rapes, the anti-terrorist sweeps by ASIO, the drug trade, the gun trade, the car rebirthing trade and the thousands of incidents of harassment and intimidation are all linked, all part of the same cultural source?

That is the elephant in the room: we do not want to discuss that because we are immediately branded as racist. This is at the front of the problem, particularly in south-western Sydney. Six years later, in 2004, Tim Priest had the temerity to write a paper entitled "The Rise of Middle Eastern Crime in Australia". In that paper he wrote:

In 1996, with the arrival of Peter Ryan, and the continued public humiliation of the New South Wales police through the Wood Royal Commission, a chain of events began that have affected the police so deeply and so completely that, as far as ensuring community safety is concerned, I fear it will take at least a generation to regain the lost ground.

The first problem that Tim Priest saw was the dismantling of crime intelligence. He wrote:

Crime intelligence, the eyes and ears of all police forces throughout the world, was dismantled overnight and a British style intelligence unit was created. ... The new Crime Intelligence and Information Section became completely reactive.

It received crime intelligence from the field and stored it. Almost no relevant intelligence was ever dispensed to operational police from 1997 until I [Tim Priest] left in 2002.

One of the fundamental problems that arose out of the new intelligence structure was that it no longer had a field capacity or a target development capacity. With the old BCI there were field teams that were assigned to look into emerging trends. Vietnamese, Romanian and Hong Kong Chinese groups were all targeted after intelligence grew on their activities. When the alarm bells went off over growing intelligence concerns about a new or current crime group, covert operations were mounted.

That is what police intelligence is about. Priest wrote:

When the Middle Eastern crime groups emerged in the mid to late 1990s no alarms were set off. The Crime Intelligence unit was asleep. I know personally that operational police in south west Sydney compiled enormous amounts of good intelligence on the formation of Lebanese groups such as the Telopea Street Boys and others in the Campsie, Lakemba, Fairfield and Punchbowl areas. The inactivity could not have been because the intelligence reports weren't interesting, because I have read many of them and from a policing perspective they were damning. Many of the offenders that you now see in major criminal trials or serving lengthy sentences in prison were identified back then.

But even more frustrating for operational police were the activities of this ethnic crime group, activities that set it apart from almost all others bar the Cabramatta 5T. The Lebanese groups were ruthless, extremely violent, and they intimidated not only innocent witnesses, but even the police that attempted to arrest them.

As these crime groups encountered less resistance in terms of police operations and enforcement, their power grew not only within their own communities, but also all around Sydney except in Cabramatta, where their fear of the South East Asian crime groups limited their forays. But the rest of Sydney became easy pickings.

The next area that he examined was police leadership, because Ryan went the theoretical way with police where operational experience did not really count. Tim Priest said:

The impact that this leadership team had on day to day operational policing was disastrous. In many of the key areas that were experiencing rapid rises in Middle Eastern crime, these new leaders became more concerned with relations between the police and ethnic minorities than with emerging violent crime. The power and influence of the local religious and minority leaders cannot be overstated. Police began to use selective law enforcement. They selected targets that were unlikely to use their ethnic background and cultural beliefs to hinder police investigations or arrests. It was mostly Anglo Saxons and Asians that were the targets, because they were under represented by religious leaders and the media. They were soft targets.

An example of the confrontations police nearly always experienced in Muslim-dominated areas when confronting even the most minor of crimes is an incident that occurred in 2001 in Auburn—

He backed it up with a practical example—

Two uniformed police officers stopped a motor vehicle containing three well known male offenders of Middle Eastern origin, on credible information via the police radio that indicated that the occupants of the vehicle had been involved in a series of break-and-enters. What occurred during the next few hours can only be described as frightening.

We do not have any feeling for what he is writing about from the comfort and safety of the surrounds in which we live. Priest wrote:

When searching the vehicle and finding stolen property from the break-and-enter, the police were physically threatened by the three occupants of the car, including references to tracking down where the officers lived, killing them ...

And abusing their girlfriends—

The two officers were intimidated to the point of retreating to their police car and calling for urgent assistance.

When police back up arrived, the three occupants called their associates via their mobile phones, which incidentally is the Middle Eastern radio network used to communicate amongst gangs. Within minutes as many as twenty associates arrived as well as another forty or so from the street where they had been stopped. As further police cars arrived, the Middle Eastern males became even more aggressive, throwing punches at police, pushing police over onto the ground, threatening them with violence and damaging police vehicles.

When the duty officer arrived, he immediately ordered all police back into their vehicles and they retreated from the scene. The stolen property was not recovered. No offender was arrested for assaulting police or damaging police vehicles.

But the humiliation did not end there. The group of Middle Eastern males then drove to the police station, where they intimidated the station staff, damaged property and virtually held a suburban police station hostage. The police were powerless. The duty officer ordered police not to confront the offenders but to call for back up from nearby stations. Eventually the offenders left of their own volition. No action was taken against them.

In the minds of the local population, the police were cowards and the message was, Lebs rule the streets. For a number of days, nothing was done to rectify this total breakdown of law and order. To the senior police in the area, it was more important to give the impression that local ethnic relations were never better. It was also important to Peter Ryan that no bad news stories appeared that may have given the impression that crime in any area was out of control. Had these hoodlums been arrested they would have filed IA complaints immediately via their Legal Aid lawyers and community leaders. To senior police, this was a cause for concern at the next Op Crime Review.

So the incident was covered up ...

Priest then wrote about how the spread of criminal gangs was aided by incompetent police leadership at the time:

... the reforming of Criminal Investigations into a centrally-controlled body called Crime Agencies. All the specialist crime squads were done away with: Arson, Armed Robbery, Drugs, Organised Crime, Special Breaking, Consorting, Vice, Gaming, Motor Vehicle Theft were wrapped up into one size fits all. Ryan once boasted that by the time he finished retraining the New South Wales Police, constables could investigate a traffic accident in the morning and a homicide in the afternoon, a statement that summed up his Alice-in-Wonderland policing theories. All expertise and experience evaporated overnight.

But the Operational Crime Review that Ryan and his executive team devised was even better. Priest wrote:

It was loosely based on the groundbreaking Compstat program of the New York Police Department, the brainchild of Commissioner William Bratton. The difference between Ryan's OCR and the NYPD Compstat was that the NYPD model covered everything on the criminal waterfront. The Ryan-inspired OCR had just six crimes ... included domestic violence, random breath testing, theft, robbery, assaults and motor vehicle theft—no drugs, organised crime, firearms, shootings, attempted murders or homicides.

At the time I remember that statistics showed that Vaucluse was more violent than Cabramatta. He continued:

The crimes that instil fear into the average citizen were ignored, and with plenty of innovative answers as to why. The OCR focused police attention on a limited number of crimes and allowed far more serious and deadly crimes to get out of control.

So with a police force on the verge of bankruptcy, the Middle Eastern crime problem was an explosion waiting to go off. I had observed the beginnings of Asian organised crime whilst at the Drug Squad and later at the National Crime Authority where I worked on two task forces, one of which was on Chinese organised crime.

When I look back on the influence of Chinese organised crime in Australia, I see a gradual but sustained trend, not one of high peaks in terms of activity or incidents, but one of a well planned criminal enterprise that attracts little attention. It's there but you can't always see it.

It probably took twenty years for the Chinese to become a dominant force in crime in this city. But Middle Eastern crime has taken less than ten years. So pervasive is their influence on organised crime that rival ethnic groups, with the exception of the Asian gangs, have been squeezed out or made extinct. The only other crime group to have survived intact are the bikies, although the bikies these days have legitimised many of their operations and now make as much money from legal means as they do illegally. In many ways they have adopted US Mafia methods of legitimate businesses shrouding their illegal operations.

With no organised crime function, no gang unit except for the South-East Asian Strike Force, the New South Wales Police turned against every convention known to Western policing in dealing with organised crime groups. In effect the Lebanese crime gangs were handed the keys to Sydney.

Since Priest wrote that article ethnic crime gangs have infiltrated many of the major bkie gangs, using them as a vehicle because they know that the police will not touch them. He also wrote of many other crimes, extortion, racial attacks against Australians, and the extent of their focus and movement into the drug market in Sydney. He said:

Middle Eastern crime gangs ... are now the main suppliers of cocaine in this city and are now developing markets in south eastern Queensland and Victoria. They are major suppliers of heroin in and around the inner city, south-western Sydney and western Sydney.

In his paper Priest spoke about his experience with ethnic crime in Cabramatta and the change that had occurred in the police academy under Ryan. He said:

The Police Academy was changed from a police training college into a university teaching social sciences and very little else. Constantly I would see young police emerge from the academy with a view—

Dr John Kaye: Point of order: I ask that the attention of the member be drawn to Standing Order 91 (4), which states:

A member may read reasonable lengths of extracts from books, papers, publications or documents.

Although I have been unable to follow when the member goes in and out of quotes, I get the impression that he is reading long sections of newspaper articles into *Hansard*.

The Hon. CHARLIE LYNN: To the point of order: I have referred to a couple of newspaper extracts, not many. I am referring to sections of a report, which is relevant to this debate.

The PRESIDENT: Order! Members should not read their speeches. They certainly should not read lengthy extracts from books, documents or other articles. Extracts should be read in as precise a manner as possible. However, as is the convention in this place, members may refer to copious notes.

The Hon. CHARLIE LYNN: I appreciate your ruling, Mr President. If the standing order were applied strictly in this House we would adjourn much earlier and there would not be much debate from the Greens.

The PRESIDENT: Order! I am delighted to apply it. I suggest that the Hon. Charlie Lynn continue using his copious notes.

The Hon. CHARLIE LYNN: In February 2001 when Priest appeared before the Cabramatta inquiry he said:

I said that this city is going to be torn apart by gang warfare, the likes of which we have never seen before. In 2003 I was finally proven right, but I take no comfort from that. However, the criticism I received was unprecedented.

The criticism came from people like the Greens, civil libertarians and all the other do-gooders who live in a state of Alice in Wonderland. Priest continued about the criticism:

I was a nutter, a liar, a racist, a disgruntled detective—but I was right.

I take issue with Tim Priest. He was only half right: it is much worse than it was in 2003. Priest continued:

The critics still refuse to concede that we have a problem.

He said:

When I gave evidence to the Cabramatta inquiry, I risked my career and my safety in coming forward. I did it because I had sworn an oath to protect the community I served. That community was Cabramatta. Cabramatta is made up almost entirely of residents born outside this country, mostly South East Asians, and their children. But when I went forward and exposed the shame of Cabramatta, the residents were not Asians in my eyes, but Australians no matter where they came from. It was my duty to speak up for them and to protect them. Race was never an issue. I have received many awards in my police career but the ones I hold dearest are those I received from the Cabramatta community.

One old man who had spent seven years in refugee camps in South East Asia before coming to Australia said the day he landed in Australia was like dying and coming to heaven. Cabramatta was a community of ordinary people like that old man, who recognised the problems of drugs and organised crime in their community and spoke up and agitated for change. It was a slightly built Vietnamese man named Thung Ngo who led the charge on behalf of a community that had had enough of crime and forced a parliamentary inquiry into Cabramatta which ultimately saved their community from destruction. Not once during that inquiry did I hear any member of the Cabramatta community—apart from the Anglo Saxon local member—

That would have been the member from Coogee—

complain that they were being racially discriminated against because of the inquiry or its aftermath. They wanted change; they wanted a safe law-abiding community. It was my duty to do everything I could to honour my pledge to protect and to serve.

Those comments by Priest apply to every ethnic community that forms part of the fabric of this great country. Priest finished his report with the prediction, with which I began my speech:

There will be a dramatic rise in gang shootings as rival gangs compete for turf and business.

That has happened, and that is why we are here tonight debating the Crimes (Criminal Organisations Control) Bill 2009. The Law Society of New South Wales considers that we do not need the bill because we have sufficient laws under the Crimes Act to deal with these issues. I would be interested to hear the Attorney General's view on that in his speech in reply. When there was a problem with car hoons, the same thing happened. Legislation was rushed through Parliament and we were told that their cars would be crushed. I am not aware of one single car having been crushed, and the hoons are still out there. I hope that this legislation is not window-dressing. I hope that the law-abiding citizens—in particular, the law-abiding motorcycle riders, motorcycle clubs and other organisations—will not be targeted or stigmatised by this legislation. The Opposition does not oppose the bill, but we remain sceptical until police are given the political and judicial support they need to seriously tackle organised crime in New South Wales.

The Hon. JOHN HATZISTERGOS (Attorney General, and Minister for Industrial Relations) [8.26 p.m.], in reply: I thank all members for their contributions to the debate. I appreciate the House's willingness to deal with this legislation in a shorter time frame than would otherwise have been the case. I want to make a number of comments on the Crimes (Criminal Organisations Control) Bill 2009. Before I commence my remarks in relation to the substantive legislation, I want to say by way of introduction that there is no truth in

the suggestion of disagreement between me and the Minister for Police, who has the principal responsibility for preparing the response to recent events and the type of organised violence we have seen most recently at Sydney Airport and its aftermath. Those who write such material do so because conflict sells; it promotes the sale of newspapers. It would serve the Greens well—if they were not so gullible and naïve—to believe that the Minister for Police and I have not done anything other than work together constructively in the past two weeks to achieve the bill before us.

I acknowledge also that work was done prior to the past two weeks. We have done a great deal of work since the end of last year. The timetable has been compressed in a desire to have the legislation before the House prior to adjourning for the Easter break. It is important to place those matters on the record and reject entirely the Greens' spurious suggestions that I am reticent in my support for this legislation. They will see that I support this legislation very strongly when I go through the details. Unfortunately the Greens, who are philosophically obsessed in their opposition to legislation of this kind, have failed to weigh up this legislation properly, to put it into perspective and to understand that we are trying to achieve an appropriate and balanced response.

Ms Lee Rhiannon: The Bar Association, the Law Society and everybody else are wrong?

The Hon. JOHN HATZISTERGOS: You had your turn. We have achieved an appropriate and balanced response to an extremely serious issue. Yesterday the Government agreed to the legislation and this morning I was involved in consultation in our party room and in the caucus committee. We also had a briefing with the Opposition. My staff and the police Minister's office circulated a copy of the bill and arrangements were made to provide a briefing for those who were interested. I noticed that Ms Sylvia Hale said that she was not contacted and was not aware of any briefing. That is very interesting because I happen to have an email that was sent from the office of the Minister for Police at 10.38 a.m. to all crossbench members, including Ms Sylvia Hale. It states:

Attached is a copy of the Crimes (Criminal Organisations Control) Bill for your perusal.

I am advised that the AGs office will be contacting you shortly, to arrange a briefing.

At 10.39 a.m., within one minute, we got the following response from Ms Sylvia Hale:

Thank you for contacting me.

I or a member of my staff will endeavour to reply as soon as possible.

For urgent matters please phone my office ...

The phone and fax numbers are provided.

Dr John Kaye: That is an automatic reply.

The Hon. JOHN HATZISTERGOS: Well, the office was contacted. A briefing was provided at 11.45 a.m.

Dr John Kaye: It wasn't in that room; it wasn't in 814-815.

The Hon. JOHN HATZISTERGOS: A briefing was provided and if persons wanted further information—we have spent all day on this—

Dr John Kaye: It was not in that room. I went there; it wasn't there.

The Hon. JOHN HATZISTERGOS: Staff would have been more than prepared to provide further information. The Greens have moved an amendment that seeks to refer the bill to the Standing Committee on Law and Justice for consideration. We have been through these sorts of situations before. The Greens are completely inflexible on matters of this kind. They are not interested in proper and thorough debate. On the one hand, the Government is being criticised—the Opposition has criticised us also—for not moving fast enough on this issue and, on the other hand, the Greens are saying that there must be more thorough consideration and more opportunities for analysis and debate. We can have detailed consideration of legislation but it will not shift the Greens. It will not change them—we know that.

Reverend the Hon. Fred Nile: It is ideological.

The Hon. JOHN HATZISTERGOS: It is completely ideological. We can have committee inquiry after committee inquiry—

Dr John Kaye: It is principle.

The Hon. JOHN HATZISTERGOS: It is principle. You see? So what are the tactics? The Greens divide on every particular aspect of the passage of the bill—the contingency motion, the first reading, anything. Four members read basically the same speech—even the errors were the same—in a bid to delay the passage of the legislation. The Greens talk about democracy, but how often have we seen legislation pass through both Houses of Parliament and a request is made to the Governor: "Don't sign this legislation into law." These people profess to value democracy but are urging some sort of royal delinquency—do not sign off on legislation.

Dr John Kaye: You are telling untruths. That is a complete untruth.

The Hon. JOHN HATZISTERGOS: The Greens talk about democracy all the time. But, for them, democracy is the old Stalinist way: our way or no way.

Dr John Kaye: Rubbish.

The Hon. JOHN HATZISTERGOS: You have to understand that we have left the Soviet Union far behind. It is finished; it is over.

Ms Lee Rhiannon: It's Michael Costa.

The Hon. JOHN HATZISTERGOS: I know you like to relive the old days, Lee. The nostalgia that you feel for the old Soviet Union infected all aspects of your behaviour in this debate. Quite frankly, you have to move on. The Greens have to understand what democracy is and not just talk about it when it suits them. Let us examine the legislation so that members can be clear what it is about. I make the point that the bill is not about outlawing criminal organisations; it is about ripping them apart. Let us get that quite clear: the bill is about ripping those organisations apart—taking apart their membership, taking apart their assets, and taking apart the industries in which they are involved and which sustain their illegal operations. That is what this legislation is about.

People say we have not balanced and considered the civil liberties issues. Let us consider what the provisions are about, and compare them with the South Australian legislation. Let us look at the first stage of the legislation. An application has to be made by the Commissioner of Police. That application has to go not to a politician but to a Supreme Court judge. It has to be advertised in the *Government Gazette* and in a newspaper, and persons affected directly have the opportunity to go before the judge and to make a relevant submission. They can even make a protected submission if they do not want to have the contents of their particular submission disclosed. The judge, having considered all the relevant material, can then make a declaration. What is the basis for making that declaration? The legislation makes it quite clear that the eligible judge has to be satisfied as to the following:

- (a) that members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity, and
- (b) the organisation represents a risk to public safety and order in this State.

That is the relevant provision. Serious criminal activity is defined in proposed section 3. We are not talking about people who hold Monopoly competitions; we are talking about serious criminal activity, which is defined in proposed section 3 as follows:

- (a) obtaining material benefits from conduct that constitutes a serious indictable offence,
- (b) obtaining material benefits from conduct engaged in outside New South Wales (including outside Australia) that, if it occurred in New South Wales, would constitute a serious indictable offence,
- (c) committing a serious violence offence,
- (d) engaging in conduct outside New South Wales (including outside Australia) that, if it occurred in New South Wales, would constitute a serious violence offence.

If the judge is satisfied of those two factors in relation to proposed section 9 (1)—that members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity, and the organisation represents a risk to public safety and order in this State—the judge can make a declaration and, in considering that assessment, proposed subsection (2) has provisions as to the information that the eligible judge must have regard to. It is an inclusive definition. It includes:

- (a) any information suggesting that a link exists between the organisation and serious criminal activity,
- (b) any criminal convictions recorded in relation to current or former members of the organisation,
- (c) any information suggesting that current or former members of the organisation have been, or are, involved in serious criminal activity (whether directly or indirectly and whether or not such involvement has resulted in any criminal convictions),
- (d) any information suggesting that members of an interstate or overseas chapter or branch of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity,
- (e) any submissions made in relation to the application by the Attorney General or as referred to in section 8,
- (f) any other matter the eligible Judge considers relevant.

Dr John Kaye: So?

The Hon. JOHN HATZISTERGOS: So they are all the matters that the eligible judge has to consider.

Dr John Kaye: That is not true; it says "may" consider.

The Hon. JOHN HATZISTERGOS: I said it was an inclusive definition. You did not listen before so I will tell you again: it is an inclusive definition.

Dr John Kaye: It says the "eligible Judge may have regard".

The Hon. JOHN HATZISTERGOS: Let me make it quite clear: once a declaration is made, it has to be published in the *Government Gazette* and at least one newspaper.

Ms Lee Rhiannon: It does not have to be corroborated. That is where you are diverting from basic justice principles. You must know that.

The Hon. JOHN HATZISTERGOS: Let us take it slowly, Lee, so that you understand it. There is an application made by the police commissioner. That application is made to an eligible judge. Incidentally, contrary to Ms Lee Rhiannon's suggestion—an insulting suggestion that she keeps recycling in this place—I do not pick and choose eligible judges; they are all offered the opportunity to be an eligible judge and then they are declared. What happens then is that the judge considering the matters I have referred to can make the relevant declaration. When that occurs it has to be advertised in the *Government Gazette* and in one newspaper in the State.

Let us make a comparison with the South Australian situation. The Greens asked me to do that. There is no process. In South Australia there is the police commissioner and the Attorney-General, and there is no process in between. Here we have an eligible judge making the relevant decision, information being given by the police commissioner, and a right by the Attorney General to request the information and to make submissions to the relevant judge. The important thing to understand is that the declaration in itself does not lead to legal consequences. The declaration is simply a precursor for the next application that occurs.

Dr John Kaye: You have just misled the House. Section 5 (3) says, "The Attorney General may, by instrument in writing, declare Judges in relation to whom consents are in force." So you actually do pick and choose.

The Hon. JOHN HATZISTERGOS: There is no picking and choosing.

Dr John Kaye: According to section 5 (3) you do.

The Hon. JOHN HATZISTERGOS: Everyone is offered the opportunity—

Dr John Kaye: Read section 5 (3).

The Hon. JOHN HATZISTERGOS: I know the honourable member is a legal novice but it is pretty easy; most people understand it.

The Hon. Amanda Fazio: Point of order: Dr John Kaye is not at this stage of the proceedings, or at any stage of the proceedings, supposed to be having a conversation with the Minister. The Minister is giving his address in reply to the second reading. I ask you to remind Dr Kaye that interjections are disorderly at all times and that he should just plain stop.

The PRESIDENT: Order! I uphold the point of order. Interjections are disorderly. The Chair is listening keenly, as I am sure are all members, to the speech in reply of the Attorney General.

The Hon. JOHN HATZISTERGOS: All judges are offered the opportunity to be an eligible judge. These sorts of provisions exist not only in relation to this legislation but also to surveillance legislation and the terrorism police powers legislation. I am not aware, certainly not in my time in this office or in the time of my predecessors, that any judge who has signed a consent has been declined the relevant approval. It is a process that is adopted to distinguish it from the judicial process, so that the eligible judge is making an administrative decision as distinct from exercising a function of the court.

After the declaration has been made there are no legal consequences from that declaration. However, there is a capacity at any time for the declaration to be revoked, either on the application of the commissioner or on the application of a member of the group. The application must be in writing and it must set out the grounds on which revocation is sought. The distinction with the South Australian legislation is quite clear. It is a process that involves an eligible judge making the decision and it involves an opportunity for submissions to be made. It is an administrative process but it involves a proper balance between the interests of law enforcement and the rights of citizens.

We then go to the next process, which is the application for a control order. In our legislation we have a process for making an interim control order. However, the application for an interim control order must be made to the court, not to the eligible judge. The court has to hear the application of the commissioner, and the commissioner can provide information by way of affidavit. It is true that there is no requirement for a notice to be given to persons who will be the subject of a relevant control order. However, once the interim control order has been granted, it is necessary for it to be served upon the relevant parties. In the meantime, the relevant statutory licences, which are referred to in section 27 (6), are suspended. Then, of course, there has to be a final hearing in front of the judge and persons who are involved have the opportunity to go forward to make the relevant submissions. The judge hears those submissions and frames the order in light of those submissions.

Section 26 (5) exempts certain associations: associations between close family members; associations occurring in the course of a lawful occupation, business or profession; associations occurring at a course of training or education; associations occurring at a rehabilitation, counselling or therapy session; associations occurring in lawful custody or in the course of complying with a court order; and other associations of a kind prescribed by the regulations. If submissions are made to the judge and the judge thinks it is reasonable, they also can be excluded from the scope of the relevant order. Under section 19 (1), when the court has to consider making a control order, the court has to be satisfied that the person is a member of the particular declared organisation—following on from the declaration that had been made earlier by the eligible judge—and there are sufficient grounds for the making of a control order. In making that relevant decision the court is to take into account the affidavit of the commissioner, the affidavit of any person with a notice of objection, referred to in section 16, and any other information provided by the commissioner or person to whom the order relates.

The critical distinction between New South Wales and South Australia in this legislation is that in South Australia the application for a control order is made to a magistrate and in New South Wales the application will be made to the Supreme Court. Again I make this point clear: The proper balance between civil liberties and the rights of citizens and, of course, the interests of law enforcement, are not only founded in the format by which these orders are made but, moreover, in the high level of scrutiny which has been applied to them by the seniority of the judges who are making the relevant decision. I believe that provides a proper reassurance for citizens who go about their lawful business that they do not have anything to be concerned about with this legislation.

Of course there is protection in relation to criminal intelligence, but if one reads the provisions one will see that criminal intelligence is defined as information that might prejudice an ongoing investigation,

information that might threaten the safety of some individual or information that would enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement. If information is provided in the course of the application and that information is found by the court not to be appropriate intelligence, the commissioner's representative can be advised and he or she then has to make a decision as to whether to proceed on the basis of that information or withdraw the application. Once again, there is an appropriate balance between the interests of law enforcement and the interests of the rights of the citizen.

The Attorney General will be notified in relation to an application and has the right to request information that can be sought. The legislation provides for two reviews, including an Ombudsman's review and a ministerial review under section 40. This legislation represents an appropriate balance. We have clearly looked at the South Australian legislation and we have sought to improve it. We are not going to give people multiple warnings. If a judge of a Supreme Court thinks it appropriate that a control order should be made and that order is violated, then the appropriate sanctions will apply under the law—for a first offence two years and for a second offence five years—and there will be no presumption in favour of bail. These are serious matters.

I make the point again that this legislation seeks to dismantle the membership, strip away the businesses and take away the profits of motorcycle gangs. I acknowledge that other issues have to be addressed, and the Premier stated that this morning. However, we are anxious to have something done before the parliamentary break. Other issues will require examination and consideration and they will have to come before the House in May. The Standing Committee of Attorneys-General will meet in Canberra on 16 April, and this matter has been put on the agenda. I have already had discussions with Robert McClelland, the Federal Attorney-General, who assured me of his cooperation in relation to a variety of issues that we will discuss. I will also be meeting with two colleagues tomorrow, the South Australian Attorney-General and the Queensland Attorney-General, and we will discuss this issue further. This is an important issue. South Australia has passed the first piece of legislation and we will pass the second. Three other jurisdictions, to my knowledge, have indicated that they intend to follow suit, including the Australian Capital Territory, Queensland and the Northern Territory.

Reverend the Hon. Fred Nile: It's good to have uniform legislation.

The Hon. JOHN HATZISTERGOS: Yes, Reverend the Hon. Fred Nile is correct. It is important to have uniform legislation. Down the track we will have legislation that recognises respective declarations and control orders, and I would like to move in that direction. But we have to do something now. This is our response. I thank honourable members who have supported the legislation for their indulgence in ensuring that it is navigated through the House in this limited time. I thank honourable members who have made constructive contributions to the debate.

Question—That the amendment of Ms Lee Rhiannon be agreed to—put.

The House divided.

Ayes, 4

Mr Cohen
Ms Rhiannon

Tellers,
Ms Hale
Dr Kaye

Noes, 29

Mr Ajaka
Mr Brown
Mr Catanzariti
Mr Clarke
Mr Colless
Ms Cusack
Ms Fazio
Ms Ficarra
Mr Gallacher
Ms Griffin

Mr Hatzistergos
Mr Kelly
Mr Khan
Mr Lynn
Mr Mason-Cox
Reverend Nile
Ms Parker
Mrs Pavey
Mr Pearce
Mr Robertson

Ms Robertson
Ms Sharpe
Mr Smith
Mr Tsang
Mr Veitch
Ms Voltz
Ms Westwood
Tellers,
Mr Donnelly
Mr Harwin

Question resolved in the negative.

Amendment negatived.

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

Division called for and Standing Order 114 (4) applied.

The House divided.

Ayes, 29

Mr Ajaka	Mr Hatzistergos	Ms Robertson
Mr Brown	Mr Kelly	Ms Sharpe
Mr Catanzariti	Mr Khan	Mr Smith
Mr Clarke	Mr Lynn	Mr Tsang
Mr Colless	Mr Mason-Cox	Mr Veitch
Ms Cusack	Reverend Nile	Ms Voltz
Ms Fazio	Ms Parker	Ms Westwood
Ms Ficarra	Mrs Pavey	<i>Tellers,</i>
Mr Gallacher	Mr Pearce	Mr Donnelly
Ms Griffin	Mr Robertson	Mr Harwin

Noes, 4

Ms Hale
Dr Kaye
Tellers,
Mr Cohen
Ms Rhiannon

Question resolved in the affirmative.

Motion agreed to.

Bill read a second time.

In Committee

The CHAIR (The Hon. Amanda Fazio): I propose that the Committee deal with the bill by parts and schedules. There being no objection, I shall proceed.

Ms LEE RHIANNON [9.00 p.m.], by leave: I move Greens amendments Nos 1 to 7, 10 and 13 to 20 in globo:

No. 1 Page 2, proposed section 3 (1), lines 19–26. Omit all words on those lines.

No. 2 Page 6, proposed section 6 (3), lines 7 and 8. Omit all words on those lines.

No. 3 Page 6, proposed section 7. Insert at the end of 23:

, and

(d) inviting other persons wishing to make submissions in the public interest to the eligible Judge to do so at that hearing.

No. 4 Page 6, proposed section 8 (2), line 29. Omit "and any". Insert instead ", any".

No. 5 Page 6, proposed section 8 (2), line 30. Insert "and any person referred to in section 7 (d)" after "application".

No. 6 Page 6, proposed section 8 (3), lines 33–36. Omit all words on those lines.

No. 7 Page 7, proposed section 9 (1) (a), line 14. Insert "dominant" before "purpose".

- No. 10 Page 8, proposed section 9 (4), line 3. Omit "may". Insert instead "must".
- No. 13 Page 11, proposed section 16 (3), lines 10-12. Omit all words on those lines.
- No. 14 Page 11, proposed 16 (4), lines 14-16. Omit "unless disclosure of information included in the affidavit would be in breach of section 28".
- No. 15 Page 11, proposed section 16 (5), lines 17-20. Omit all words on those lines.
- No. 16 Page 13, proposed section 21 (2), lines 16-18. Omit all words on those lines.
- No. 17 Page 13, proposed section 21 (3), lines 20 and 21. Omit "unless disclosure of information included in the affidavit would be in breach of section 28".
- No. 18 Page 13, proposed section 21 (4), lines 22-25. Omit all words on those lines.
- No. 19 Page 19, proposed section 31 (2), lines 26 and 27. Omit "(including any information classified by the Commissioner as criminal intelligence)".
- No. 20 Page 20, proposed section 33, lines 2-7. Omit all words on those lines. Insert instead:

The Commissioner may not delegate any function of the Commissioner under this Act except to a senior police officer.

There should be more stringent requirements in relation to what should be an application for a declaration or an interim control order, or to the factors that a judge should take into account when considering an application, such as corroboration and the effect on innocent third parties, such as family members. These amendments relate to the process of declaring an organisation. In the event that this legislation is used unfairly, it is important that people have the opportunity to speak to the reputation of an organisation. A number of organisations, such as the Law Society and the Bar Association, have identified serious flaws in this legislation. Clearly, we must build some protection into the legislation. If these amendments are not accepted, it raises concerns about the Government's true intent. If they are not passed this legislation will appear to be a public relations exercise rather than an attempt to get the law right. We are clearly dealing with a very complex issue in terms of reining in gang violence.

The CHAIR (The Hon. Amanda Fazio): Order! Members should either cease chatting or leave the Chamber. Members who are trying to follow the debate are having difficulty hearing the member with the call.

Ms LEE RHIANNON: These amendments also seek to prevent any organisation with as few as two criminal members but perhaps hundreds of innocent members from potentially being declared a criminal organisation. It is essential that these amendments be passed to ensure that the organisation must be deemed to have the dominant purpose of criminal activity. Removing the current broad definition could see a legitimate and lawful organisation unfairly targeted because of the bad credentials of only a handful or even two of its members. I again draw members' attention to the weaknesses in this bill. The Greens are attempting to ensure that the law works effectively without undermining civil rights. A theme of the contributions made by Greens members is the need to get the balance right. As the legislation stands, that has not been achieved. We urge members to support the amendments.

Reverend the Hon. FRED NILE [9.04 p.m.]: The purpose of the amendments is obviously to remove the heart of the bill. The first amendment deletes all reference to criminal intelligence, which is a key to the legislation. If the amendments were carried this bill would be a whitewash or a public relations exercise. It would have no purpose.

Dr JOHN KAYE [9.04 p.m.]: I will correct Reverend Nile's misunderstanding. The deletion of the definition of "criminal intelligence" ties into a further proposed deletion relating to the exclusion of people who are confronted with a control order and excluded from hearing evidence against them when it raises criminal intelligence. It is not about demolishing the entire bill as he suggests; it is purely about allowing people to hear all the evidence presented against them. It is not as though the deletion of the definition of criminal intelligence prevents the collection of criminal intelligence; it simply refers to its later use in the legislation.

Reverend the Hon. Fred Nile: Amendment No. 2 deletes it as well.

Dr JOHN KAYE: That is precisely right: that is exactly what I was referring to. Other amendments change "suggesting" to "establishing", particularly in respect of proposed section 9 (2) (c) and (d). That is an

important advance in terms of protecting the sort of information that an eligible judge may consider. It is important that we make these amendments. I draw members' attention to proposed section 5 (3), which provides:

The Attorney General may, by instrument in writing, declare Judges in relation to whom consents are in force under subsection (2) to be eligible Judges for the purposes of this Part.

Despite the assurances that the Attorney General gave in his reply, judges are hand-picked—

The Hon. John Hatzistergos: Come on!

Dr JOHN KAYE: The Attorney General will have the right to pick and choose between judges who apply to be eligible judges.

The Hon. John Hatzistergos: I will draw them out of a hat.

Dr JOHN KAYE: The Attorney General says that, but he must point to the section providing that he or subsequent Attorneys General would draw them out of a hat.

The Hon. JOHN HATZISTERGOS (Attorney General, and Minister for Industrial Relations) [9.09 p.m.]: I understand the motivation behind these amendments: They are designed to gut the bill. The amendment I find really peculiar is amendment No. 3.

The Hon. Michael Gallacher: Any person can turn up.

The Hon. JOHN HATZISTERGOS: That is right. It provides:

- (d) inviting other persons wishing to make submissions in the public interest to the eligible Judge to do so at that hearing.

I wonder who that might be!

The Hon. Michael Gallacher: Justice Action.

The Hon. JOHN HATZISTERGOS: I am sure that Justice Action would be there. One can only imagine who the other groups would be. This would turn the whole process into a complete circus. I reiterate the point that I made earlier: The criminal organisation declaration does not in itself lead to consequences; the application for the control order leads to consequences. That has to be particular to an individual. The court has to be satisfied, after hearing from all the relevant parties, firstly, that the person is a member and, secondly, that sufficient ground exists for the making of the order. Protection exists for those persons who claim that they are not involved to be able to articulate that case and for the judge to make an appropriate order.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [9.10 p.m.]: I concur with the Attorney General's comments relating to Greens amendment No. 3. The inviting of other people would turn the whole process into a farce. The amendment does not even detail who the other people might be. Basically, on the day anyone who is interested can turn up and have a say. Greens amendment No. 3 really stretches the imagination. The Greens approach to this whole issue of intelligence is that somehow some sort of sinister thing is happening. This involves the use of informants who might well be ongoing informants in relation to a number of investigations. It also involves people who might well be working under cover. It might also involve people who have been able to provide other information in the knowledge that in providing the information to police their safety is guaranteed.

As these informants are not registered under current legislation they do not qualify within the context of a registered informant. However, because they are concerned about their wellbeing or the wellbeing of others they come forward with information that might be crucial to enable police and other authorities to restrain the conduct of those involved in criminal organisations. Quite simply, the Greens are putting that at risk. I believe that is their intention: these amendments are not an innocent mistake. As the Attorney General said, these amendments are designed to gut the intent of this legislation. All these amendments are selective but they will have the effect of watering down, weakening or introducing doubt about the effectiveness of this legislation. I am glad that the Greens moved these amendments in globo because the Opposition will vote against them in globo.

Ms SYLVIA HALE [9.12 p.m.]: Particular attention has been paid to amendment No. 3. Proposed section 7 refers to the "Publication of notice of application" and states:

If the Commissioner makes an application under this Part in relation to an organisation, the Commissioner must as soon as practicable (but no later than 3 days) after the application is made publish a notice in the *Gazette* and at least one newspaper circulating throughout the State:

- (a) specifying that an application has been made for a declaration under this Part in respect of that organisation, and
- (b) describing the consequences for a member of the organisation if the declaration is made and an interim control order is made in relation to the member, and
- (c) inviting members of that organisation and other persons who may be directly affected (whether or not adversely) by the outcome of the application to make submissions to the eligible Judge ...

It is nonsense to say that somehow amendment No. 3 would endanger offenders or discouraging people to provide information. This provision specifically invites those people who are directly affected by it to do so. Greens amendment No. 3 recognises that there is real public interest. If we are to have a violation of what many people consider to be a fundamental civil liberty, that is, the right to associate, this amendment will at least give those persons who wish to make submissions in the public interest an opportunity to do so. If this is a pretence at introducing an acceptable procedure the very interest that needs to be represented is the broader public interest that should look at the civil liberty aspects of it.

One does not need to repeat ad nauseam the details of the Haneef case, but in that case police authorities deliberately misled the public, gave false evidence, were prepared to smear an individual in the interests of the Federal Government's political reputation, and tried to substantiate or give some justification for the terrorism laws. Given that the public will be informed by the *Government Gazette* and the people immediately affected by it will be told, at the very least there should be an opportunity for more general interest, which would be represented by members of the legal fraternity and other interested groups, to have the right to make submissions.

Question—That Greens amendments Nos 1, 2, 3, 4, 5, 6, 7, 10, 13, 14, 15, 16, 17, 18, 19 and 20 be agreed to—put and resolved in the negative.

Greens amendments Nos 1, 2, 3, 4, 5, 6, 7, 10, 13, 14, 15, 16, 17, 18, 19 and 20 negatived.

Clauses 1 to 4 agreed to.

Ms LEE RHIANNON [9.16 p.m.], by leave: I move Greens amendments Nos 8, 9, 11 and 12 in globo:

No. 8 Page 7, proposed section 9 (2) (c), line 28. Omit "suggesting". Insert instead "establishing".

No. 9 Page 7, proposed section 9 (2) (d), line 32. Omit "suggesting". Insert instead "establishing".

No. 11 Page 8, proposed section 9 (4), line 4. Insert "dominant" before "purpose".

No. 12 Page 9, proposed section 12 (4) (a), line 12. Insert "dominant" before "purpose".

These amendments show a number of weaknesses in the bill, in particular, the reference to the fact that a relevant authority "may" make a submission. Clearly, a relevant authority "must" make a submission. As that appears to be a basic requirement why put those measures in the bill in the first place if it is not to be clarified? Clear and solid evidence should be presented as the basis for declaring a targeted group.

Reverend the Hon. Fred Nile: The word "may" is not in these amendments.

Ms LEE RHIANNON: It is referred to in amendment No. 10.

Reverend the Hon. Fred Nile: It is not in amendments Nos 8, 9, 11 and 12.

Ms LEE RHIANNON: I apologise. Clear and solid evidence should be presented as the basis for declaring a targeted group as a criminal organisation. It is not acceptable to base a declaration on the suggestion of criminality alone. This section of the legislation should be of great concern to members. It is outside the realm of what is warranted in this bill. The Greens amendments would restore the applications of the rule of evidence to any hearings of applications for the declaration of a group or organisation under the bill. At present,

the existing gangs legislation in New South Wales requires that legislation to be tested in the court system. We know, as a result of debating that legislation in 2006, that there are many weaknesses in it. However, at least it has to be tested in a court system. Satisfactory evidence must be provided to the court and tested in the court before orders can be made. Again, the Attorney General has not established why such a fundamental tenet of the justice system should be wiped out by this legislation. I commend the amendments to the Committee.

The Hon. JOHN AJAKA [9.18 p.m.]: The Opposition does not support these amendments. I will break my contribution into two parts. I refer to the amendment seeking to replace the word "suggesting" with the word "establishing". As I indicated earlier, it would be necessary for the Commissioner of Police or his delegated officer to establish clearly to a Supreme Court judge—a superior court judge—that the four elements are satisfied before a judge would make such an order. These amendments require a court to establish a case beyond a reasonable doubt. As the Attorney General said earlier, that would cut the guts out of the legislation.

I turn to amendment No. 12, which seeks to insert the word "dominant" before "purpose". With respect to the Greens, to insist it be the dominant purpose as opposed to a purpose or a major purpose or one of the many purposes would again fundamentally destroy the legislation. A tattoo parlour may well have the dominant purpose of tattooing people, but if the parlour, as one of the other aspects of its business, is seen as organising, planning, facilitating, supporting or engaging in serious criminal activity—and we are talking about serious criminal activity—do we suddenly say the legislation does not apply because it fails the dominant purpose test? I think that is a nonsense. As indicated, the Opposition does not support the amendments.

The Hon. JOHN HATZISTERGOS (Attorney General, and Minister for Industrial Relations) [9.20 p.m.]: The Government also does not support the amendments. In effect, what the Hon. John Ajaka said is correct. These amendments seek, effectively, to license Trojan horses, which have a veneer of legitimacy while beneath them there is criminal activity.

Ms SYLVIA HALE [9.20 p.m.]: The Hon. John Ajaka may speak at length about the onus on the police who are putting evidence to the judge, but proposed section 9 (2) clearly says:

In considering whether or not to make a declaration, the eligible Judge may have regard to any of the following:

- (a) ... any information suggesting ... a link ...
- (c) ... any information suggesting that current or former members of the organisation have been, or are, involved in serious criminal activity ...
- (d) ... any information suggesting that members of an interstate or overseas chapter or branch of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity ...

Regardless of what the police produce, it seems the judge can have regard to and take into account hearsay, rumour and third-hand evidence. This is absurd. This is a fundamental breach of the rules of evidence. To empower a judge to be able to take this into consideration in deciding whether he is going to make a declaration in the absence of any fair and open trial and in the absence of the ability of anyone to challenge the accuracy or otherwise of what the police have said, is reprehensible in the extreme. I do not think Mr Ajaka has gone anywhere near substantiating his case, let alone the Attorney General.

The Hon. JOHN HATZISTERGOS (Attorney General, and Minister for Industrial Relations) [9.22 p.m.]: Ms Sylvia Hale simply does not understand, no matter how many times I have said it. For the edification of other honourable members I will explain it once more. The way the legislation works, under proposed section 9 (1) the eligible judge has to be satisfied:

- (a) members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity, and
- (b) the organisation represents a risk to public safety and order in this State,

If the judge is satisfied of those two things, he has the discretion to make a declaration for the purposes of the legislation. The matters he has regard to are set out in subsection (2) of proposed section 9. They are a broad range of factors and they are inclusive. The rules of evidence do not apply. That is made quite clear in proposed section 13. What is happening here is an administrative process towards the formulation of a declaration. The consequences of that declaration do not apply unless a control order is made, which is the next stage of the process. All that will happen is a foundation will be made for the next stage of the process, which will be the

control order. That requires a further test to be carried out and that is in front of a court. I wish the Greens would focus on what I have been saying all this time—both in reply to the second reading debate and now in Committee.

Ms Sylvia Hale: We have.

The Hon. JOHN HATZISTERGOS: Well, you do not seem to understand. You are talking about fundamental rights. Once a declaration for a criminal organisation is made, no consequences directly flow from it until such time as a control order is made.

Dr JOHN KAYE [9.23 p.m.]: We have been listening closely to the Attorney General's words. In fact, he referred to the declaration of a criminal organisation—"criminal" is not used in the bill. It is interesting what has the Attorney General's attention. The bill refers to a declared organisation, not a declared criminal organisation. Be that as it may, once an organisation has been declared it is the first step towards control orders against members of that organisation. Therefore, it becomes a stigma before the courts and a stigma before the community. The purpose of these amendments, as I think Mr Ajaka outlined fairly accurately, is to insert the word "dominant" before "purpose" so a judge cannot make a declaration lightly—it makes it clear it is the dominant purpose, the purpose that dominates the existence, the reason people are in that organisation.

The reason for putting the word "dominant" before the word "purpose" is to defend the innocent members of that organisation, to ensure that is the *raison d'être* of the organisation and not some by-product of some minor group of members within it. The problem with paragraphs (c) and (d) of proposed section 9 (2) is that they are an invitation to smear. They are an invitation for any information that vaguely suggests that current or former members of the organisation or that members of an interstate or overseas chapter or branch of the organisation have been or are involved in a serious criminal activity. "Suggestion" is a very weak word and it basically opens up the floodgates for judges to consider evidence that is below the usual standard of evidence or information that would not be acceptable under the usual standard of evidence and that merely suggests an activity.

I thought we had courts of law that did not work on the basis of rumour and innuendo but worked on the basis of standards of evidence. It is alarming to see that organisations can attract to themselves the stigmata of being, as the Attorney General used the words, criminal organisations just on the basis of evidence that might suggest that possibly a current or former member of the organisation might have been involved in some serious criminal activity. We need standards of proof to apply if we are going to go down the route of taking the first step towards control orders. Therefore, all four of these amendments are important protections of the rights of members of those organisations.

Question—That Greens amendments Nos 8, 9, 11 and 12 be agreed to—put and resolved in the negative.

Greens amendments 8, 9, 11, and 12 negatived.

Clauses 9 to 12 agreed to.

Question—That clause 13 be agreed to—put.

The Committee divided.

Ayes, 27

Mr Ajaka	Mr Kelly	Mr Smith
Mr Brown	Mr Khan	Mr Tsang
Mr Catanzariti	Mr Lynn	Mr Veitch
Mr Clarke	Reverend Nile	Ms Voltz
Mr Colless	Ms Parker	Ms Westwood
Ms Ficarra	Mr Pearce	
Mr Gallacher	Mr Primrose	
Miss Gardiner	Mr Robertson	<i>Tellers,</i>
Ms Griffin	Ms Robertson	Mr Donnelly
Mr Hatzistergos	Ms Sharpe	Mr Harwin

Noes, 4

Dr Kaye
Ms Rhiannon
Tellers,
Mr Cohen
Ms Hale

Question resolved in the affirmative.

Clause 13 agreed to.

Clauses 14 to 27 agreed to.

Ms LEE RHIANNON [9.35 p.m.], by leave: I move Greens amendments Nos 21, 22, 23, 24 and 25 in globo:

No. 21 Page 22, proposed section 39 (1), line 3. Omit "2 years". Insert instead "18 months".

No. 22 Page 22, proposed section 39 (4), lines 17–19. Omit all words on those lines.

No. 23 Page 22, proposed section 39 (5), line 21. Omit "2-year". Insert instead "18-month".

No. 24 Page 22, proposed section 39 (6), lines 25 and 26. Omit "as soon as practicable after the Attorney General receives the report". Insert instead "before this Act is repealed under section 40".

No. 25 Page 23, proposed section 40, lines 5–16. Omit all words on those lines. Insert instead:

40 Repeal of Act

This Act is repealed on the day that is 2 years after the date of assent to this Act.

These amendments serve to strengthen the provision in the bill for review. The legislation currently provides for a review after two years. The Greens propose that the review should be after 18 months and that a sunset clause should be included. When the issue was being tossed around in the media by various Labor Ministers who have been running with it, the proposal came up to include a sunset clause.

The Hon. John Hatzistergos: No, it did not.

Ms LEE RHIANNON: The Attorney General said it did not.

The Hon. John Hatzistergos: None of us ever spoke about it.

Ms LEE RHIANNON: Okay.

The CHAIR (The Hon. Amanda Fazio): Order! The Minister will cease interjecting.

Ms LEE RHIANNON: I am happy to place it on the record: I thought it had been raised. A sunset clause certainly is worthy of attention and is needed in such far-reaching legislation as this. It would be the responsible thing to do. A sunset clause would ensure that when the legislation expires the Parliament would have a thorough review to consider any further legislation. Members concerned about such legislation expiring because they take a law-and-order approach to this matter should be reminded that the Crimes Legislation Amendment (Gangs) Bill enacted in 2006 and other legislation contain strict provisions. I shall remind members of those provisions because they are relevant to this part of the debate and highlight the need for a sunset clause. The requirements those members believe should be in place will remain.

Section 21A (2) of the Crimes Sentencing Procedure Act already lists committing a crime as part of a group as an aggravating factor to be taken into account when sentencing. Paragraphs (a) and (b) of section 93T (1) of the Crimes Act create a new crime for participating in criminal groups where there is either knowledge by the accused that the group is a criminal group or the knowledge or recklessness of the accused in their participation contributes to the occurrence of any criminal activity. Because that information has not been supplied to us by the Attorney General or the Minister who seems to be senior to him on this occasion, the Minister for Police, I remind members of the extensive aspects of current criminal law that cover issues related

to gangs. This legislation needs a sunset clause because of its far-reaching nature, which has been the subject of criticism. A sunset clause will allow us to learn from the review to improve on this legislation. In the meantime, other Acts contain provisions that give strength to the law that a number of members desire.

The Hon. JOHN AJAKA [9.38 p.m.]: The Opposition does not support the amendments. In reference to amendment No. 21, section 39 states:

(1) For the period of 2 years from the date of commencement of this Act,

It sets out certain powers that the Ombudsman may exercise for the entire two-year period, including the calling of reports and the obtaining of information during that two-year period. The Ombudsman does not have to actually wait for the expiration of the two-year or 18-month period. The Ombudsman could seek the reports after four weeks, six weeks or a year. The Ombudsman is under a strict duty to bring any adverse information to the attention of the Attorney General and the Parliament. I see no sense in reducing the period from 2 years to 18 months. I am confused as to why the Greens would want amendment No. 22. Clause 39 (4) states:

The Ombudsman must maintain the confidentiality of information provided to the Ombudsman that is classified by the Commissioner as criminal intelligence.

Surely the Ombudsman should not be put in a position of releasing criminal intelligence to the public and possibly destroying any police investigation. The Ombudsman should not be given that responsibility.

The Hon. JOHN HATZISTERGOS (Attorney General, and Minister for Industrial Relations) [9.40 p.m.]: The Government also does not support the amendments.

Question—That Greens amendments Nos 21 to 25 be agreed to—put.

The Committee divided.

Ayes, 4

Ms Hale
Ms Rhiannon

Tellers,
Mr Cohen
Dr Kaye

Noes, 28

Mr Ajaka	Mr Kelly	Ms Sharpe
Mr Brown	Mr Khan	Mr Smith
Mr Catanzariti	Mr Lynn	Mr Tsang
Mr Clarke	Mr Mason-Cox	Mr Veitch
Mr Colless	Reverend Nile	Ms Voltz
Ms Ficarra	Ms Parker	Ms Westwood
Mr Gallacher	Mr Pearce	
Miss Gardiner	Mr Primrose	<i>Tellers,</i>
Ms Griffin	Mr Robertson	Mr Donnelly
Mr Hatzistergos	Ms Robertson	Mr Harwin

Question resolved in the negative.

Greens amendments Nos 21 to 25 negatived.

The CHAIR (The Hon. Amanda Fazio): Order! The Committee will now consider clause 28.

Ms LEE RHIANNON [9.48 p.m.]: The Greens propose that clause 28 be deleted in total because "criminal intelligence" should be defined as information corroborated by at least one other independent source. Under this clause that measure will be removed. It is a damaging aspect of the bill that undermines the basic tenets of our justice system. The removal of this clause of the bill will revoke all provisions that allow evidence

classified as criminal intelligence to remain confidential. For example, it requires that the judge hear the evidence and argument about the information in private, in the absence of the public and parties to the proceedings as well as their legal representatives.

When this matter was discussed earlier, some Government and Opposition members ridiculed arguments about the probable consequences of that clause. They forget what justice is about and how damaging their actions tonight will be. The provisions are not just about allowing evidence to be given in secret. They mean that the police can present evidence to a judge alone without witnesses or scrutiny or accountability. That is how serious what the Government and the Opposition propose to do to our justice system. The effect of the clause will be that evidence that is the basis for making declarations and control orders is not contestable. As previously discussed, the logical conclusion is that there will be no capacity to test the veracity of the so-called evidence leading to a group being made the subject of a declaration and control order.

The Committee should not pass clause 28. There is no capacity to test the motivation behind the information that has been given, and there is no capacity to collaborate evidence. In reality, one gang or an individual could use the process to give evidence against a rival gang or individual. This clause should not be passed because the inclusion of the clause will allow criminals to seek police favour. Therefore, the police could be set up and manipulated. We would never know. We would never be able to find out whether that was the case.

I challenge the Attorney General to deal with the very problem the Greens have identified, which is having one gang playing off against another. If the Attorney General is serious about getting on top of gang violence, he should address that point. There is increasing concern about the legislation being rushed through tonight and creating legal loopholes. The concern is that cashed-up criminals who seek to have this legislation enforced could tie up the justice system. The legislation would then become unworkable. The clause should not be passed because it contributes to undermining public confidence in the Police Force and our criminal justice system.

At least the existing gangs legislation in New South Wales requires legislation to be tested in the courts system; but that is a failure of the legislation that is before the Committee. There is no provision in this bill for evidence to be provided in a court and tested in court before declarations and orders are made. That is a serious problem and highlights why the Committee should not pass the clause.

The Hon. JOHN AJAKA [9.52 p.m.]: The Opposition opposes the Greens call for clause 28 not to be passed. Clause 28 clearly states that the determining authority, which is defined as the eligible judge in court, must take steps to maintain the confidentiality of information that the determining authority considers to be properly classified by the commissioner. The Supreme Court judge and the court as a whole would first have to give consideration to whether the information that the commissioner as classified as criminal intelligence is properly classified. Clearly the Supreme Court judge has a discretion in that regard and must be satisfied regarding confidentiality and proper classification. It is not a matter of the commission forcing the judge or insisting that the judge make a declaration or order. Ultimately the decision remains with the Supreme Court judge.

Question—That clause 28 be agreed to—put.

Division called for and Standing Order 114 (4) applied.

The Committee divided.

Ayes, 27

Mr Ajaka	Mr Kelly	Mr Smith
Mr Brown	Mr Khan	Mr Tsang
Mr Catanzariti	Mr Lynn	Mr Veitch
Mr Clarke	Reverend Nile	Ms Voltz
Mr Colless	Ms Parker	Ms Westwood
Ms Ficarra	Mr Pearce	
Mr Gallacher	Mr Primrose	
Miss Gardiner	Mr Robertson	<i>Tellers,</i>
Ms Griffin	Ms Robertson	Mr Donnelly
Mr Hatzistergos	Ms Sharpe	Mr Harwin

Noes, 4

Mr Cohen
Ms Rhiannon
Tellers,
Ms Hale
Dr Kaye

Question resolved in the affirmative.

Clause 28 agreed to.

Clauses 29 to 40 agreed to.

Schedule 1 agreed to.

Title agreed to.

Bill reported from Committee without amendment.

Adoption of Report

Motion by the Hon. John Hatzistergos agreed to:

That the report be adopted.

Report adopted.

Third Reading

The Hon. JOHN HATZISTERGOS (Attorney General, and Minister for Industrial Relations)
[9.58 p.m.]: I move:

That this bill be now read a third time.

Ms LEE RHIANNON [9.58 p.m.]: This bill should not be passed. It represents a serious attack on the basic tenets of justice. As members of Parliament our job should be to safeguard and enhance our justice system, not dismantle it, but that is what this bill does. When this bill is passed it will undermine the current rules of evidence—rules that have evolved over centuries to give confidence and surety to those involved in the justice system. When this bill passes it will criminalise a person's associations and interactions rather than their conduct.

The legislation constitutes a denial of the fundamental right of freedom of association. When this bill passes it will work to drive criminal gangs underground and make it more difficult to detect their existence as well as any associated criminal activities. There are many grounds for opposing this bill, including that it will discourage people from reporting crime. Many offences committed by groups are reported to the police by people who were present at the time the crime was committed. That occurred in the gang rape involving Bilal Skaf. This proposed legislation actively discourages people from reporting crime to the police because effectively it makes an innocent member of a group guilty of a criminal offence. The Greens definitely want a safer community. But we acknowledge that the causes of crime are complex and varied. We need to ensure we get the balance right to maintain, develop and promote public safety while protecting our civil rights. This bill is not the answer.

The Hon. ROBERT BROWN [10.00 p.m.]: I will be brief. We should support this bill. I think tomorrow morning's headlines will read: "Sense wins out". Once again this proves that the Greens are soft on crime.

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

The House divided.

Ayes, 29

Mr Ajaka	Ms Griffin	Ms Robertson
Mr Brown	Mr Hatzistergos	Ms Sharpe
Mr Catanzariti	Mr Kelly	Mr Smith
Mr Clarke	Mr Khan	Mr Tsang
Mr Colless	Mr Lynn	Mr Veitch
Mr Della Bosca	Mr Macdonald	Ms Voltz
Ms Fazio	Reverend Nile	Ms Westwood
Ms Ficarra	Ms Parker	<i>Tellers,</i>
Mr Gallacher	Mr Pearce	Mr Donnelly
Miss Gardiner	Mr Robertson	Mr Harwin

Noes, 4

Mr Cohen
 Ms Rhiannon
Tellers,
 Ms Hale
 Dr Kaye

Question resolved in the affirmative.

Motion agreed to.

Bill read a third time and returned to the Legislative Assembly without amendment.

SPECIAL ADJOURNMENT

Motion by the Hon. Tony Kelly agreed to:

That this House at its rising today do adjourn until Tuesday 5 May 2009 at 2.30 p.m.

TABLING OF PAPERS

The Hon. Tony Kelly tabled the following paper:

Report of the Community Relations Commission entitled "Joining Our Neighbourhood", dated 2008.

Ordered to be printed on motion by the Hon. Tony Kelly.

CHILDREN LEGISLATION AMENDMENT (WOOD INQUIRY RECOMMENDATIONS) BILL 2009**Second Reading**

Debate resumed from an earlier hour.

The Hon. TREVOR KHAN [10.09 p.m.]: Earlier I spoke about the tensions between the various parties involved in child protection proceedings. I could go on at considerable length about that, but at this stage, taking into account the hour, I turn to some of the specifics of the Children Legislation Amendment (Wood Inquiry Recommendations) Bill 2009. I was fortunate enough to be briefed by the New South Wales Bar Association and the Law Society of New South Wales on some of the implications of the bill, and I thank those two bodies for assisting me in better understanding those issues. It is apparent that the Wood inquiry greatly benefited the vulnerable children of this State by identifying current practices and legislation that must be modified. As we know, the inquiry heard evidence of systemic mismanagement of case files, and of failures to respond to reports and to care properly for children entrusted to the care of the director general.

Those shortcomings have existed in the Department of Community Services for many years, and through this legislation there is an opportunity to overcome some of them. None would quibble with the exemplary work done by all those involved with the Wood inquiry, and it is good to see that Wood's recommendations underpin this bill. However, what was made plain to me by the Bar Association and the Law

Society, whose members have extensive experience in this area of the law, was that the fundamental objective identified in the Wood inquiry was the need for greater transparency and accountability in the Department of Community Services. While the Bar Association and the Law Society agree with the general tenor of the bill, they identify some flaws in the bill in its current form.

Indeed, I find little justification in the Wood report for some of the proposed changes, which themselves are seen as restricting the department's accountability and transparency. Specifically, at least four areas of amendments to the existing legislation do not reflect the tenor or substance of the Wood report. The first area relates to the Ombudsman oversight amendments. Essentially, this bill will remove the automatic review function currently conducted by the Ombudsman of child deaths where the child is known to the Department of Community Services. I suggest that this change is contrary to Wood's recommendations, which focus on greater scrutiny and accountability by the department. In respect of the oversight issue, I acknowledge and agree with the contribution made by the Hon. Robyn Parker on this point.

The second area relates to the disclosure of notifications to the police. The new amendments provide that the department, in sharing information with the police, can disclose the details of a notifier. The capacity to disclose the notifier does not appear to arise from any recommendation made by Wood and potentially may discourage notifications made for child welfare purposes. What impact will the new amendments have on notification? What, for instance, will happen when the notifier is a next-door neighbour in, say, a public housing estate? What if the notifier is one party in a household and the other party in that household is not aware of the notification being made about a neighbour? What ramifications will outing the notifier have on that notifier? What potential impact will the circulation of the details of the notifier have within the community? What impact will the effect of one or more instances of the outing of a notifier have on future notifications to the department? I submit that the amendment that is sought to be made in this respect potentially falls outside the necessary scope of the legislation and may have serious ramifications for both the notifier and, if it discourages notifiers, any child who may be the subject of abuse.

The third area relates to section 82 reports. Currently under the legislation the court has the capacity to order reports from the department after the making of final orders to check that appropriate follow-up—for instance, of counselling, medical appointments and the like—is being undertaken in respect of a child placed in care. This goes back to the very issue I raised earlier: we are not simply talking about protection but the ongoing care of children who are placed in the care of the director general following the making of final orders. The new regime will limit reporting to one report within 12 months. Both the Law Society and the Bar Association consider that this one-size-fits-all approach is inconsistent with not only the substance but also the tenor of Wood's recommendations. It is worthwhile looking to a briefing note provided by the Law Society and the comments made therein. It states:

As currently drafted the Bill limits the provision of section 82 reports to one report in any particular matter and limits the provision of these reports to within 12 months of the making of the final care order. The Wood Inquiry made no such recommendations.

Section 82 reports provide the main mechanism by which the child's representatives in particular, but also the Court, can be informed about whether or not the proposed care plan for the child is actually being implemented. In many cases, unforeseen problems arise and children who are meant to be living with one carer end up in multiple placements, siblings who were envisioned to be living together are separated and permanent placements are not found. Whilst in most cases only one report is ordered at about 12 or so months after the orders are made, in some cases—particularly where it is clear that difficulties can be anticipated—more than one report is ordered and they are spread out over 18 months to 2 years (it would be a rare case that required reports more than 2-3 years after final orders).

The requirement of providing reports to a court at several intervals after final orders are made is a means of ensuring that a caseworker somewhere is actually looking at and thinking about what is happening with a child.

When Professor Parkinson recommended the implementation of section 82 he submitted that it provided a mechanism of ongoing review to enable the court to monitor the care arrangements for a child. Given that such arrangements change over time, it is essential that the Court retain the power to order more than 1 report and make them returnable over a longer period than 12 months in appropriate cases.

I now provide one example of where multiple reports may be appropriate. Let us suppose that we are confronted with a child or children who have been the subject of sexual abuse over a period and part of the plan put to the court provides for sexual assault counselling for the child or children. Because of the complexity of the child's problems and the time it will take for those issues to be dealt with, a court may consider it appropriate that an early report be obtained not to gain information as to the final disposition of the child but, for instance, to ensure that the counselling has commenced. It may also be the case that the court orders that further reports be obtained to ensure that the counselling continues to be undertaken over a period and as to the position of a child or children once that extensive period of counselling has been undertaken and completed.

If there is only one report at up to 12 months, as proposed in this legislation, one might find that a child who has been the subject of serious sexual assault over a period falls between the cracks because of changes in caseworkers or changes in foster arrangements, and the court finds out only after 12 months that the counselling proposed in the plan—the counselling that was seen as so necessary for the future care and welfare of that child—has not occurred at all.

That circumstance borders on the criminal but regrettably it can, and does, happen. The limitation to one report may lead to a loss of accountability and transparency and, most importantly, to a loss of certainty in ensuring that a child who has been neglected over a period has been taken in hand and cared for appropriately. Wood did not propose the limitation to one report, and in those circumstances it is inexplicable that this amendment would limit the capacity for oversight.

As the Law Society of New South Wales pointed out, section 82 reports are an important mechanism for the person who is the child representative. In many cases because of the fallibility of the parents—or regrettably, in some instances the sheer disinterest of the parents once a placement has been made—the only people outside the department who can provide oversight are the courts or the child representatives who may maintain a watching brief for the period that the section 82 reports are in place. I suggest that the amendment dealing with section 82 is flawed and should be considered carefully by the House.

I move to new section 151, temporary care placements. In circumstances where no parent can be found, or where a parent is incapable of making an informed decision, the new provision allows for a temporary care placement to be made administratively. It does not involve the necessity of taking the matter before a court—be it within 24 hours or 72 hours—and a placement of that sort can be for up to six months. It is proposed that a temporary care placement be made without the oversight of the court and without the oversight provided by the appointment of a child representative. Wood did not envisage that proposal and it is inconsistent with the tenor and substance of Wood's recommendation regarding transparency and accountability on the part of the department.

A circumstance in which it is said that a parent is incapable of making an informed decision—without appearing to be too cynical—is likely to be when either parent, but most likely the mother, suffers from a drug or alcohol problem and/or some level of mental disability. But I suggest that there is another circumstance where the director general could conclude that the parent is incapable of making an informed decision. Namely, it is where the drug- or alcohol-affected and/or mentally disabled parent is not in agreement with the department on the question of the child going into care. One might think if that parent accepted that the child should go into care there would not be a determination that the parent is incapable. In fact, it is quite the reverse. A determination would be made in circumstance where the parent bucks up and says, "No, I do not really agree with you taking my child." In those circumstances, it may well be decided that the parent is incapable of making the decision, and there will be implications.

For example, if the department decides that a mother who has a drug or alcohol problem and/or suffers from a mental disability is incapable of making a decision and places the child in temporary care, what arrangements will then be made to search for the other parent? Perhaps the child's father is around. What arrangements will the department make to search out grandparents or other people who may otherwise care for the child? If the matter went before a court that is precisely the sort of inquiry the court would make: What is being done to find the father? What is being done to find other parties who may have an interest in caring for the child? If it is to be an administrative process there is no guarantee that anything like that will occur. If it is done administratively then clearly, of necessity, no child representative will be appointed. The child representative is there to assist in representing the interests of the child, irrespective of age. In a sense, we are leaving it up to the department to place the child, without any oversight or overview. Wood did not consider that, and it is entirely inconsistent with his recommendations. It is also entirely inconsistent with the problems identified to date. I suggest that the capacity to make temporary care placements in those circumstances is dangerous in the extreme.

Finally, I move to new section 86, contact orders. A great deal has been said about this. Mr Ian Cohen referred to new section 86 and the appropriateness of alternative dispute resolution procedures. Wood clearly saw that it was appropriate to consider other means of dealing with contact arrangements apart from the litigation process in place under the current Act. But it must be remembered that the court obtained the capacity to make contact orders when the current legislation was enacted—it did not exist under the previous Act. Parliament made the considered decision, based on inquiries conducted before the Act was proclaimed, to give the court the capacity to make contact orders. The reason for that decision was considered and sensible.

Contact orders are important. It is necessary to ensure that children maintain contact with a variety of people. That does not only mean parents. In some circumstances a child does not benefit just from regular contact—for instance, on each alternate weekend—with their parents. There are also grandparents. Contact arrangements can be put in place for siblings, particularly when it is difficult to find foster parents who are able to care for multiple children. I have more than 20 years experience in this jurisdiction and I have observed that the department plainly has an interest in ensuring that children maintain contact with their parents. But the department looks also at other conflicting issues and policy objectives. For instance, it considers the conflicting issue of the resource allocation involved in maintaining the contact.

One constantly hears proposals in courts that contact with the parents, for instance, will be once every three months or once every six months. If that is the proposal how do a parent and a child maintain a reasonable bond, irrespective of whether the child is to be returned to care? Indeed, why are those arrangements proposed? I suggest there are two reasons. The first is the allocation of resources. Do we have enough people to make the arrangements? Added to that is the difficulty of dealing with the conflict and tensions that sometimes exist between the department and the parents. The second is the inconvenience to foster parents. One wonders whether limiting contact visits because they inconvenience foster parents is done necessarily in the best interests of the child or whether it is done to maintain the relationship between the foster parents and the department.

In essence the department has conflicting objectives that may not necessarily work in the interests of the child. It is for those sorts of reasons that years ago contact orders were put in place. Whilst Justice Wood recommended that alternative dispute resolution procedures be adopted, it is my understanding of his report that he did not see that as the final outcome: he expected that once an alternative dispute resolution process had been gone through and failed there would be some other mechanism at the end. There must be some fallback position, otherwise one might think that in some instances it may work in the department's favour simply to be recalcitrant in discussions during the alternative dispute resolution procedure. I will quote a briefing note:

In summary the reasons why this recommendation is opposed are as follows:

1. There needs to be an independent mechanism of review of any decision made by the Director-General to alter or reduce a child's contact with his or her family. Such review mechanism must be accessible and transparent. The Children's Court has been providing that mechanism for many years and should continue to do so in the future.
2. Any agreement made about contact between the child's representative, the parent and the Director-General that is not able to be enshrined in court orders lacks certainty and clarity ...
- ...
4. After final orders are made about a child in the Children's Court the management of the case is transferred to the Out of Home Care Team within the Department. This means the delegates of the Director-General who proposed and, or agreed to the care Plan about the child (generally "front line" child protection caseworkers) will hand the matter over to other delegates of the Director-General (the out of home care team) or to external agencies (e.g. ... Life Without barriers etc). Those persons who were not a party to the negotiations about the child's contact with the birth family may well take an entirely different view as to what is appropriate contact for that child. In the absence of any court orders about contact, the latter caseworkers will be able to completely vary the contact arrangements that were proposed at court. If the Court is deprived of jurisdiction over contact disputes, the family will have nowhere to go to enforce the contact arrangements agreed to when final orders were made. The effect of this will be that the child will see the birth family less than was envisaged by the child's lawyer and the Court at the time the Care Plan was approved and the family will have no remedy to go to about this. Such an outcome will be disastrous for many children in long term Out of Home care.
5. The fact that a parent is found by the court not to be capable of raising the child full time does not necessarily mean the parent has nothing to offer the child as a contact parent. This is particularly the case with slightly older children who have had the time to bond and attach to their birth family. The maintenance of such a bond is essential for the child's sense of self and of self worth. Children need to be able to maintain a connection with their primary attachment figure who is almost invariably a member of their birth family—be it mother, father, and older sibling or a grandparent. It is unconscionable to allow the maintenance of that important relationship (through contact arrangements) to be subject only to administrative whim rather than judicial assessment. Further to allow it to be subject to mere administrative assessment with absolutely no access to an avenue of review or appeal is the antithesis of making the child's welfare the paramount consideration.
6. The absence of court ordered contact also disadvantages birth families who are not experienced in engaging with or advocating a position with bureaucracies. Indigenous children make up more than 30% of children in out of home care. Indigenous families and non-English speaking families traditionally have difficulty in dealing with Government and near-Government agencies in terms of advocating a position—such as the desire to see their children. In the absence of court orders, a family will have to put their own "case" to the Department about their desire to see their children. This will significantly disadvantage indigenous families and families from non-English speaking backgrounds. Currently, such families are entitled to representation and advocacy by legal representatives in the court process to produce contact orders. This recommendation will remove that right.

7. If contact is decided administratively rather than judicially then there will be a strong tendency for the adoption of a "one size fits all" approach. Proposed contact standards already exist with the Department and it can reasonably be anticipated that if the decision making power is vested solely within the Department then these will be applied across the board. The current approach of the Court determining contact allows a detailed consideration of each child's needs on a case by case basis. Each child and each family are different. What suits one family may be wholly inappropriate for another. The power to make contact orders allows this individual assessment of each child's contact needs.
- ...
9. The Court's ability to monitor the progress of a child in his or her placement through the use of section 82 reports will be significantly compromised if the court has no power to make orders about one vital aspect of a child's life—contact with significant persons. If a concerning issue about contact appears in a section 82 report then the child's representative, the parents and indeed the court will be powerless to do anything about it. Only the Director-General will have any power to Act. This undermines the safeguards provided by the section 82 reporting system.

Both the New South Wales Bar Association and the Law Society of New South Wales have given great assistance to the Liberal Party and The Nationals in consideration of this bill. Their attention to the detail of the matter has been extraordinary given the limited time they had available to address the matters in the bill, and the considerable volume of the bill. I understand that both the Bar Association and the Law Society have given significant and extensive briefings to the crossbenchers, and I congratulate them on their diligence in this matter. Their commentary on the matters and their long-term commitment to these issues should be recognised and considered very carefully by this House.

Reverend the Hon. FRED NILE [10.38 p.m.]: On behalf of the Christian Democratic Party I support the Children Legislation Amendment (Wood Inquiry Recommendations) Bill 2009. This bill seeks to give effect to the recommendations of the Special Commission of Inquiry into Child Protection Services conducted by the Hon. James Wood. The bill deals only with those recommendations requiring legislative change. The most important aspect of this new approach embodied in this legislation is, first, to raise the reporting threshold before a report of a child is made from risk of harm to the level of significant harm. Secondly, it establishes an alternative mandatory reporting scheme for principal government mandatory reporters so that those government agencies can respond promptly to the needs of children where those needs do not require a statutory child protection response. In October 2007 I raised this issue in the House when it became clear that the department was being swamped by a huge response regarding suspected abuse or neglected children. On that occasion I asked the Minister for Roads, representing the Minister for Community Services, a question without notice:

Has the Department of Community Services Helpline had a dramatic increase in calls regarding suspected abuse or neglect of children, from 108,000 calls in 2001 to 240,000 in 2006? Does the mandatory reporting by police, mainly in domestic abuse cases, constitute the bulk of reports to the department's Helpline?

Then I proposed a solution:

Will the Government reorganise the priorities and operation of the department's Helpline, which has been described as "child protection by computer", to prevent cases of child abuse and even murder, as occurred recently in the tragic murder of Dean Shillingsworth?

The Hon. Eric Roozendaal responded:

This is a very important matter and I will pass on the question to the Minister for Community Services for an appropriate response.

A month later on 28 November 2007 I received a response, which stated:

Yes. The Department has received a significant increase of child protection reports from 107,394 in 2000-01 to 241,003 in 2005-06.

During 2005-06, the largest number of child protection reports came from Police (33.4% of all reports). Reports received from Police involving domestic violence as the primary reported issue constitute 19.5% of all reports to the Helpline.

That is violence to children. The response continued:

The Government has initiated a Special Commission of Inquiry, headed by the Hon. James Wood, AO, QC, to examine how child protection services in NSW can better deal with the increasing number of child protection reports and improve the care of vulnerable children. Helpline operations will be examined as part of the review.

The figures have jumped from 241,000 in 2005-06 to the current level of more than 300,000 in 2008. The Department of Community Services was swamped. The problem was that such a large number of reports—

many of them minor and not requiring investigation—concealed the serious cases, now described as cases involving significant harm. The challenge was how to separate the cases and identify those that were serious and in need of a prompt response from the Department of Community Services. Hopefully, under this new arrangement the children who have been abused, physically or sexually, or neglected will not slip through the cracks, but will be identified and receive the care they need. For those reasons, I am very pleased to support the bill.

The bill limits the powers of the court to make orders governing how the Department of Community Services exercises parental responsibility. The bill includes a limitation on the court's power to order contact. I note that these changes can be implemented only when an alternative method of dispute resolution is determined. The Government has announced that proclamation of this section will be postponed subject to the Attorney General obtaining advice on possible alternative dispute resolution processes. That is a correct policy. This matter must be carefully examined so that we get the right solution.

A further initiative in the bill expands the range of people who are subject to background checks to include people such as adult household members in a carer's home and volunteers in high-risk situations. I have raised that issue many times as a member of the Committee on Children and Young People. I am pleased that this proposal has been adopted. It will involve additional costs and additional staff. The Government must ensure that the budget meets those needs. The bill will address the inability of any single child welfare agency to respond effectively to the present level of reporting of child abuse and neglect. It will ensure that services for children can be provided by those agencies in closest contact with the children. It will enable the Department of Community Services to respond to the needs of children at risk of significant harm. That means bringing into the picture all the various departments that are involved with the welfare of children. The onus will not rest solely on the shoulders of the Department of Community Services but spread across the relevant departments.

The bill will focus the Ombudsman on reviewing deaths where there is a causal link between a child's death and the operations of the child protection system. I support that proposition. A number of serious cases provided the initiative for the Government to establish the inquiry, including the tragic case of Dean Shillingsworth, whose body was found stuffed in a suitcase that was floating on a Sydney duck pond in October 2007, and a month later the case of a seven-year-old girl weighing just nine kilograms found dead in her home. These cases indicated there were problems and that the Department of Community Services was not coping. The Wood inquiry found that only 13 per cent of reports of at-risk children resulted in a home visit by a Department of Community Services caseworker, another 13 per cent of children reported were not at risk of harm, and 21 per cent required further assessment but received none. Another 33 per cent received some attention but were not visited by a caseworker.

Mandatory reporting saw an 80 per cent increase in the number of phone calls to the department's hotline, which ended up at more than 300,000. The reason for that large number of reports is that, firstly, it was mandatory and, second, a fear by teachers, police officers and others that they should err on the side of safety and report all cases. Rather than miss a situation where they may be accused of not doing their job, they adopted the safe policy of reporting everything. That meant a great deal of cases were reported that did not require any action at all. Further, fines could be imposed on teachers, police officers and other members of the community who work with children. The Minister for Community Services, Linda Burney, said that the inquiry had been initiated following the deaths of young children in tragic circumstances. Mrs Burney said:

We will never forget the suffering of these children.

Their deaths prompted a thorough re-examination of our practices and how we as a community address child protection.

Mrs Burney said that New South Wales, like other developed countries, was dealing with complex underlying issues such as mental illness, substance abuse and domestic violence. She made the important point:

We are seeing parents who themselves received inadequate parenting and we are encountering communities where isolation and disadvantage are entrenched.

As I said, the number of reports to the helpline in 2007-08 reached 303,121. I refer to an issue that has been raised, which I do not believe has received a satisfactory explanation. The inquiry received more than 600 submissions but, as far as I am aware, only 47 have been made public. There is an issue as to whether more submissions should be made public. Many submissions were received from former Department of Community Services caseworkers, some of whom resigned after years of working under stress at the child welfare coalface. They are amongst the submissions being kept secret. I do not understand why a submission from a Department

of Community Services caseworker would be kept secret, as they may provide valuable information that could assist in rectifying the problems. It is not appropriate to keep those submissions secret. The new system will bring in other departments, so that cases will be handled not only by the Department of Community Services.

One issue that has caused concern is the role of the New South Wales Commissioner for Children and Young People, and I think Gillian Calvert is still acting in that role until a new person is appointed. To improve the system so that children get the help they need, this legislation will cut the number of calls to the Department of Community Services. The threshold for mandatory reporting of children at risk of harm has been raised to significant risk. The definition of "significant" will be further clarified. This will be an improvement as now most of the children reported to the Department of Community Services do not get help and many reports of children in imminent danger are lost in the pile.

Under this plan the New South Wales Police Force is amongst six departments to set up a specialist Child Wellbeing Unit to help filter children-at-risk cases. At this stage police officers make about 100,000 reports a year to the Department of Community Services. Virtually every child they encounter at a domestic violence incident has been deemed at risk. The new police specialist unit will be expected to act as a filter for officers' reports. More than that, it will be expected to refer families whose children are below the threshold to appropriate services for help, either in the community or to other departments. Spreading responsibility and referral to specialist units in half a dozen departments, including Health, Education and Housing, must be an improvement, although it will need to be monitored. The new model will require unprecedented levels of cooperation between bureaucracies, a very efficient information technology [IT] system and information-sharing laws to prevent children from falling through the gaps. If no-one picks up a story of accumulating harm because information is scattered, lives will be lost. Duplication of effort may also be problematic.

I believe this is a step in the right direction and from my investigation there has been widespread support in the community for this initiative. For example, the Association of Children's Welfare Agencies chief executive Andrew McCallum welcomed the Government's realisation that child protection matters were not just for the Department of Community Services. He said that the non-government sector was best placed to deliver non-statutory services and that there was no reason why that could not start straight away. A number of other bodies have made positive statements, such as the following from UnitingCare Burnside:

The NSW Government today responded to the Wood Report on Child Protection with *Keep Them Safe: a Shared Approach to Child Wellbeing*. UnitingCare Burnside welcomes this new approach to children's safety and wellbeing.

Burnside CEO Jane Woodruff was pleased to see that the NSW Government will be investing in children and families in need, early in the life of the child and early in the life of the problem.

The Council of Social Service of New South Wales welcomed the release of the report of the Wood Special Commission of Inquiry into Child Protection Services, and stated:

The community sector has been waiting for the Report to be handed down so that it could work with Government and the general public to fix a system that is failing far too many children, families and communities ...

NCOSS will work with the sector and Government to ensure that the Report's recommendations are properly assessed.

The executive officer of the Secretariat of National Aboriginal and Islander Child Care said:

SNAICC supports the central recommendation to only have issues of significant harm referred to the Department of Community Services. We have to support all non-government and government agencies that work with children to act earlier and support vulnerable families to minimise the harm to children and end the flood of child protection notifications to DOCS.

One controversial issue relates to the role of the Ombudsman. I have received a copy of the letter that he sent to the Premier in which he raised his concerns about the decision not to implement fully Mr Wood's proposed reforms in relation to child death reviews. I will not read the whole letter; I assume other members have seen a copy of it. The Ombudsman indicates that he is very unhappy with the approach adopted by the Government and wrote to the Premier to complain that the Government had ignored a recommendation that would give him more power to investigate child deaths. This has become one of the controversial matters in the legislation.

I have had discussions with the outgoing Commissioner for Children and Young People about the issue of the Child Death Review Team and the commission, and I understand that those two bodies agree with the Government not implementing the recommendation in the Wood report. The Child Death Review Team is responsible for collecting information on child deaths, including those children who may have died in accidents

or from natural causes. This team identifies trends and patterns and makes recommendations to prevent those deaths. It reports annually to Parliament. Additionally, every three years the team tables a special report that looks at an aspect of child deaths in detail, including sudden unexpected deaths of infants. Because the Child Death Review Team is a committee of the commission, an independent agency reporting directly to Parliament, every Child Death Review Team report is oversighted by the parliamentary joint Committee on Children and Young People. The Commission on Children and Young People can work across systems and sectors to advocate for and extend the implementation of the Child Death Review Team recommendations. Keeping the Child Death Review Team with the commission rather than the Ombudsman means that the commission can follow through on implementing the Child Death Review Team's recommendations through its relationship with community groups, the non-government sector, professional associations and the Government, and research, policy, training and community education functions.

The Child Death Review Team continues to be oversighted by the parliamentary joint Committee on Children and Young People. This seems to be the better parliamentary committee rather than the Committee on the Office of the Ombudsman and Police Integrity Commission. The Committee on Children and Young People focuses on children. This means it has built knowledge and understanding about children's lives, the causes of their deaths and the services they use. This strengthens its oversight of the Child Death Review Team. The Committee on the Office of the Ombudsman and Police Integrity Commission, on the other hand, has a legal anti-corruption focus. Corruption and poor governance rarely cause child deaths in New South Wales or play a major role in preventing them. This makes that committee's oversight potentially less relevant than that provided by the Committee on Children and Young People.

The separation of roles between the Child Death Review Team supported by the commission and the Ombudsman's reviewable deaths function has worked well since 2002. For that reason I support the legislation as proposed by the Government. I am pleased to support the bill before the House. Like all other legislation, but especially in the very specialised area of the welfare of children, this legislation needs to be monitored carefully to ensure that every aspect works according to the best possible services for children. Children are at the centre of this legislation and they must remain there and receive all the protection and help that they may need.

The Hon. PENNY SHARPE (Parliamentary Secretary) [10.59 p.m.], in reply: I thank all members who have contributed to this debate. There have been some very well considered contributions and I believe that a genuine debate has been had canvassing the issues. I particularly acknowledge the contributions of Mr Ian Cohen, the Hon. Robert Brown and Reverend the Hon. Fred Nile on this important piece of legislation. I also acknowledge the thoughtful contributions by the Hon. Robyn Parker and the Hon. Trevor Khan. The bill contains significant reforms and has required close attention by all members. The Government has responded very carefully to all the matters raised. I note that the Opposition has welcomed the bill as a comprehensive response to the Hon. James Wood's special commission of inquiry. These landmark reforms are vital to the future wellbeing of children and it is critical that they are enacted and implemented without delay.

As a result of the Government's comprehensive response to the special commission of inquiry we are entering a new era in child protection. This new phase of reform follows a very significant change that has occurred over the past several years as a result of the \$1.2 billion reform package that the Government introduced in 2002. Justice Wood acknowledged in his report the progress that has been achieved as a result of that package. He found that enormous gains had been made despite the Department of Community Services dealing with an increasingly complex client base and a spiralling number of reports.

Justice Wood concluded that the contemporary challenge facing the child protection system in New South Wales is no different from that facing all child protection systems across Australia and overseas. New South Wales is not alone in facing a rising number of reports of children in need of help or protection. Those reports concern families who are confronted with serious challenges—problems that are usually interrelated and often intergenerational. Such problems include domestic violence, drug and alcohol abuse, mental illness and socioeconomic disadvantage.

It is important to note that many parents who have difficulty caring for their children were abused themselves as children. The Government's response to the Wood inquiry—known as Keep Them Safe—is aimed at breaking the cycle. As the Minister for Community Services has said on many occasions, the best protectors for a child are the child's parents. This is a critical point. Parents are responsible for the care, love, nurturing and protection of their children. When parents experience difficulties relatives, friends and local communities step in. When the child still faces the risk of harm government must intervene. But child protection is not the sole domain of a single agency, and nor can it be. Justice Wood made that clear, and the Government agrees: it is a shared responsibility.

Agencies such as Health, Disability Services, Education, police and Juvenile Justice are at the front line in connecting children and young people to help and support as early as possible. Prevention and early intervention are key themes in the Government's response to the Wood report. We need to get help to families early, before their problems escalate, and we need to make a special effort to support Aboriginal children, who are so dramatically overrepresented in our child protection system. Under the new threshold contained in this bill only those cases where children are at risk of significant harm will be reported to the Department of Community Services helpline.

The special commission made some very pertinent points about our current threshold for mandatory reporting. Justice Wood stated that around 30 per cent of reports currently made to the Department of Community Services did not warrant statutory intervention, that New South Wales has the lowest reporting threshold of anywhere in Australia, and that the level of cooperative response to the needs of children was low. In response to these legitimate concerns the changed reporting threshold is about getting all relevant government agencies involved in working with children and families who need additional support. Contrary to the Opposition's comments, it is not about lessening accountability; it is about getting services to families who currently have little or no assistance, and getting them there sooner. It is not about lessening the workload of the Department of Community Services.

Under these proposals the Department of Community Services will continue to work with children in need of statutory protection. A change in definition will not alter the reality of when the department has to intervene and take a matter before the Children's Court. What will change is the additional support available to those children and families who have been identified by child wellbeing units as needing help but who do not require statutory intervention. What will change is that the Department of Community Services will have better information coming to it from child wellbeing units about those families needing statutory intervention. Information about children coming to the attention of these units will be shared to make sure that children do not fall through the cracks. I note that all speakers in this debate have worried and deliberated about that issue but it is not the case, and it is wrong to suggest that less significant incidents will be "unmarked and unrecorded".

The bill also gives effect to Justice Wood's finding that barriers to the sharing of information need to be overcome. There are other changes in this bill that will improve the court process in relation to the care and protection of children. The issue of how child deaths are reviewed and monitored has attracted a great deal of attention and I will make some comments on that. First, let it be clear to all members that the Government believes that a rigorous external review of child deaths is an essential part of the child protection system. Secondly, members should be aware that all of the Government's proposals are motivated by a desire to see improvements in the operation of our child protection system.

The Ombudsman currently has responsibility for the review of seven different categories of deaths, known as reviewable deaths, under the Community Services (Complaints, Reviews and Monitoring) Act 1993. Those categories of reviewable deaths are: children in care; children reported to the Department of Community Services in the previous three years; the siblings of children reported to the Department of Community Services in the previous three years; children whose deaths are or may be due to abuse or neglect or that occur in suspicious circumstances; children who are inmates of a detention centre, correctional centre or lock-up; persons living in, or temporarily absent from, certain residential care; and persons who receive certain disability services.

The special commission recommended removing the category of children reported to the Department of Community Services in the previous three years, and the category of the siblings of children reported in the previous three years. The special commission's view, which the Government supports, was that the automatic review of a child death by the Ombudsman simply because the child or the child's sibling was reported to the Department of Community Services within the previous three years does not improve our understanding of the relationship between child fatalities and the child protection system. The Opposition pointed to recent increases in the "known to DOCS" category of child deaths. The Wood report states that this is not a reflection on the child protection system. In his report Justice Wood stated:

In his report of reviewable deaths in 2006, the Ombudsman said that in most cases the circumstances of the child's death had no connection to reported child protection concerns".

For example, there is little to gain from an Ombudsman's review of the death of a child from leukaemia just because his or her sibling happened to have been notified to the Department of Community Services for a minor matter two years earlier. The bill implements the special commission's recommendation 23.2 by removing the two categories of reviewable deaths relating to children reported to the Department of Community Services in

the past three years from the definition of "reviewable death". This will mean that the Ombudsman will no longer review those deaths that fall solely within those categories. However, if the death also falls within one of the other remaining categories within the definition the Ombudsman would still review it.

I emphasise that the Ombudsman will continue to review the deaths of children whose deaths are, or may be, due to abuse or neglect or that occur in suspicious circumstances. The Coroner advises the Ombudsman of deaths that fall into these categories. Contrary to assertions made by the Leader of the Opposition in question time on 5 March, the tragic death of Dean Shillingsworth would certainly have been a reviewable death under an amended Community Services (Complaints, Reviews and Monitoring) Act 1993. I emphasise the point that reviewable deaths that are investigated by the Ombudsman will continue to include children in care and children whose deaths are, or may be, due to abuse or neglect or that occur in suspicious circumstances.

This amendment was recommended by Justice Wood and supported by the Children's Guardian and the Coroner, yet the Opposition has opposed it. On the other hand, the Opposition has said it does not support departures from the recommendations of Justice Wood. The Opposition cannot have it both ways. As the Opposition is aware, where a child is reported to the Department of Community Services the report may or may not be substantiated. The role of the Ombudsman in reviewing child deaths is to identify systemic issues that, if addressed, might prevent future deaths. Automatically including the death of every child "known to DOCS" as reviewable, does not add to our understanding of these systemic issues.

The Opposition and other parties have also made comments about the Government's decision to retain the Child Death Review Team in the Commission for Children and Young People. The Government made this decision after very careful and serious deliberation. The views of Justice Wood, the Ombudsman, the Commission for Children and Young People, the Child Death Review Team and peak groups such as the Council of Social Service of New South Wales, the Association of Child Welfare Agencies and the Aboriginal Child, Family and Community Care State Secretariat [AbSec]—the peak group for Aboriginal out-of-home care agencies—were sought and taken into account. It was not a decision taken lightly. The Government refutes absolutely the Opposition's effort to somehow make this out as an attempt by the Government to reduce scrutiny for political purposes. The Government rejects that suggestion and finds it offensive. I acknowledge the contributions from Mr Ian Cohen and the Hon. Robert Brown, who noted that the decision we have come to on this matter is not politically motivated and has been considered thoughtfully and genuinely.

The decision to leave the team in its current location was based on the view reached after careful consideration that the team would be better able to carry out its important functions under the existing arrangements. While the Ombudsman's function is to oversee Government activity, the Child Death Review Team has a much broader research role in relation to the deaths of children. The Commission for Children and Young People is much better placed to give effect to the findings of the team, for example, by working with groups in the community who are able to influence the safety and wellbeing of children. They have done this successfully, for example, in working with the NRMA and other groups to bring about various changes in response to a series of deaths of young children in driveways when parents were reversing their four-wheel drive cars. The Commission for Children and Young People is simply far better placed than the Ombudsman to review deaths overall, and then to work with different groups to bring about changes to reduce deaths.

The team is working well now. There has been a 38 per cent reduction in child deaths over the past 10 years, which is something we all welcome. After careful analysis of all the arguments and the evidence, the recommendation to move the team from the Commission for Children and Young People to the Ombudsman could not be supported by the Government. The Child Death Review Team will continue to carry out its role in relation to the review of child deaths other than those that fall within the Ombudsman's reviewable deaths jurisdiction. This would include deaths that fall within the categories that will no longer be reviewable by the Ombudsman.

The Opposition's claim that "children will die and no-one will know about it" is false. As to the matter of the Ombudsman's annual report into child deaths, the Government is implementing the special commission's recommendation that the report now be delivered every two years. The special commission was of the belief that biennial rather than annual reporting would provide a better overview of trends in child death data and result in a more meaningful discourse about what those trends mean in relation to the operation of the child protection system. It would also enable more meaningful comment about progress by agencies in implementing changes recommended by the Ombudsman.

I come now to other issues raised during the debate. It should be noted by all members that the majority of the legislation will not commence until January next year. This will allow sufficient time for everyone

involved to prepare for the new system. This will be particularly important for working out the innovative approaches to be adopted for resolving disputes about contact between children in care and their families. The special commission identified that a court is not the best place to work out local, flexible and responsive ways to deal with disputes over contact between a child and his or her birth parents. The Government supports that conclusion. However, the Government further believes that an alternative dispute resolution process should be devised to assist here. The exact nature of this process needs further work and an expert advisory group appointed by the Attorney General is a starting point for that work. This group will include representation by the legal fraternity. This part of the legislation will not be proclaimed until a satisfactory system has been developed, which will include an appropriate review mechanism where alternative dispute resolution is unable to resolve a contact dispute.

The Government notes the Opposition's comments about consideration of Aboriginal children in the bill and the Government response to Justice Wood's report. The Government's response, while providing significant initiatives, does recognise that legislation is not needed to introduce them. Rather, the Government will work with Aboriginal organisations to build their capacity to provide services earlier to Aboriginal children and families and play a bigger role in the provision of out-of-home care. The special commission emphasised the many reasons for the over-representation of Aboriginal children in the system and the need to tackle systematic disadvantage to improve outcomes for Aboriginal children. The Government's action plan "Keep Them Safe" outlines a comprehensive set of special measures to work towards reversing the current intolerable trends and a commitment to consider how all actions in the plan will contribute to improving outcomes for Aboriginal children.

The Opposition has raised concern that there is not more in the bill for non-government organisations. This is because the special commission's recommendations about an enhanced role for non-government organisations [NGOs] do not require legislative change to be implemented. The Government values the contribution of non-government organisations in providing services and supports an expansion of their role. The Government has committed more than \$100 million in the stage one funding package to the non-government sector. It is claimed that the previous \$1.2 billion budget enhancement provided little additional support to the non-government organisations sector. This is simply wrong.

More than \$200 million of this money was spent on the non-government organisations sector in providing early intervention and out-of-home care services. As a result, expenditure on non-government organisations services increased by 27 per cent between 2002-03 and 2008-09. Justice Wood acknowledged the significant progress achieved through the 2002 package. I have sought to respond comprehensively to particular issues raised by the Opposition, which has acknowledged the general merit of this bill. I have done so in detail and will further set out reasons why the amendments are being sought during the Committee stage. I thank everyone again for their contributions. I commend the bill to the House.

Question—That this bill be now read a second time—put and resolved in the affirmative.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 3 agreed to.

The Hon. ROBYN PARKER [11.16 p.m.]: I move Opposition amendment No. 1:

No. 1 Page 8, schedule 1.2 [7]. Insert after line 31:

- (3) The Director-General must, if the Director-General declines the request for assistance, provide written reasons for declining the request to the person or body that made the request. Those reasons may, despite any other provision of this or any other Act, be disclosed in any manner by any person.

The reasons for a number of amendments that the Coalition will move relate to transparency, accountability and greater scrutiny, and making sure that all the checks and balances and reporting mechanisms are in place. This amendment is about improved cooperation in the sector, which is imperative. Although bodies including non-government agencies are required to take reasonable steps to coordinate decision-making and the delivery

of services for children and young people, there is a limit on the amount of cooperation that non-government organisations [NGOs], which will be the main service coordinators, can expect from the Department of Community Services [DOCS].

The director general is not specifically required to do anything more than receive requests for support from non-government organisations with whom the Department of Community Services has service contracts. At present the director general is not required to take any action other than assessing the request for assistance. Given some of the history between the Department of Community Services and non-government organisations we felt the director general should be required to give written reasons for not providing assistance as requested and to report regularly to the Parliament on outcomes for requests for assistance from non-government bodies. In essence, we are talking about reporting back and some transparency and accountability.

Mr IAN COHEN [11.18 p.m.]: The Greens do not support Opposition amendment No. 1. What on the surface appears to be a sensible amendment is unfortunately unworkable in our opinion. The amendment seeks to require the director general to provide written reasons if the director general declines a request for assistance. Proposed section 22 states the director general must—I emphasise the word "must"—provide either advice or material assistance or make any such referral considered necessary in response to a person or non-government agency seeking assistance. In discharging the duty created by proposed section 22 (1), which is "to provide assistance in the form of advice, material assistance or referral", the director general is fulfilling his statutory duty to respond to the direct request for assistance.

The director general has no discretion as to whether he or she provides any of these forms of assistance. They must provide a response to a request for assistance. This is an important point. This would mean, technically speaking, that the director general would have to breach his or her statutory duty in order to trigger a written report under the proposed Opposition amendment. I can see where the Opposition is coming from with its amendment seeking the director general to provide reasons in situations where a non-government organisation comes to the director general with a child who is not necessarily the subject of a mandatory report and the non-government organisation is seeking the provision of particular services for that child. However, I think the non-government organisations have a range of issues in dealing with the Department of Community Services at various stages within the child protection system and I do not think the majority of those difficulties are related to a section 22 request for assistance.

I found the diagram at the start of the chapter 3 in the current Act helpful in demonstrating where section 22 requests for assistance sit in the broader child protection system. There are many other stages at which non-government organisations and the department would be at loggerheads. In summary, a decline as described in the Opposition's amendment would equate with a breach of statutory duty and more than written reasons would be required to remedy that situation. Therefore, the Greens cannot support the amendment.

The Hon. PENNY SHARPE (Parliamentary Secretary) [11.21 p.m.]: The Government opposes this amendment. The amendment seeks to require the Director General of the Department of Community Services to provide written reasons for declining a request for assistance. As pointed out by Mr Cohen, the Act requires the director general to provide whatever advice or material assistance, or make a referral or take whatever action the director general considers necessary, to safeguard or promote the safety, welfare and wellbeing of the child or young person. The department's resources need to be focussed on providing services to children and young persons and their families and not on paperwork. The department needs the discretion to set its own priorities and to apply resources where they are needed most. The proposed amendment imposes an unnecessary burden of more paperwork on the department. The Government also believes that it incorrectly assumes and is at odds with what this legislation is about, which is that the department remains at the centre of all service delivery, and it is seeking to have that shared.

Question—That Opposition amendment No. 1 be agreed to—put.

The Committee divided.

Ayes, 11

Mr Ajaka
Mr Clarke
Ms Cusack
Ms Ficarra

Miss Gardiner
Mr Khan
Mr Lynn
Ms Parker

Mr Pearce
Tellers,
Mr Colless
Mr Harwin

Noes, 21

Mr Brown	Mr Macdonald	Mr Tsang
Mr Catanzariti	Reverend Nile	Ms Voltz
Mr Cohen	Mr Primrose	Ms Westwood
Mr Della Bosca	Ms Rhiannon	
Ms Griffin	Mr Robertson	
Ms Hale	Ms Robertson	<i>Tellers,</i>
Dr Kaye	Ms Sharpe	Mr Donnelly
Mr Kelly	Mr Smith	Mr Veitch

Pairs

Mr Gallacher	Mr Hatzistergos
Mr Gay	Mr Obeid
Mr Mason-Cox	Mr Roozendaal
Mrs Pavey	Mr West

Question resolved in the negative.

Opposition amendment No. 1 negatived.

Mr IAN COHEN [11.29 p.m.], by leave: I move Greens amendments Nos 1 to 3 in globo:

No. 1 Page 10, schedule 1.2. Insert after line 36:

[13] Section 65A

Insert after section 65:

65A Referral of matters before the Court to ADR

- (1) The Children's Court may make an order that the parties to a care application attend an alternative dispute resolution service in relation to the proceedings before the Court or any aspect of those proceedings.
- (2) The Children's Court may make an order under this section:
 - (a) on its own initiative, or
 - (b) on the application of a party to the proceedings.

No. 2 Page 11, schedule 1.2. Insert after line 3:

[14] Section 71 (1A)

Insert after section 71 (1):

- (1A) If the Children's Court makes a care order in relation to a reason not listed in subsection (1), the Court may only do so if the Director-General pleads the reason in the care application.

No. 3 Page 12, schedule 1.2 [21], lines 30 to 36. Omit all words on those lines. Insert instead:

- (7A) For the purposes of subsection (7) (a), the permanency plan need not provide details as to the exact placement in the long term of the child or young person to whom the plan relates but must provide the further and better particulars which are sufficiently identified and addressed so the Court, prior to final orders being made, can have a reasonably clear plan as to the child's or young person's needs and how those needs are going to be met.

Greens amendment No. 1 clarifies an issue in proposed section 86 (6). It appears on some interpretations that proposed section 86 (6) may inadvertently restrict alternative dispute resolution [ADR] to proposed section 86 contact orders. In simple terms this amendment will make it clear that alternative dispute resolution can be used in all care and protection proceedings in the Children's Court. I refer next to Greens amendment No. 2. The proposed amendments in the bill expand on the grounds or reasons upon which the Children's Court may make a care order. The bill states that the court can make a care order based on the list in section 71 (1) of the Act in conjunction with any other reasons not contained in the grounds listed.

This amendment simply requires the director general to plead grounds that are not included in section 71 before the court can make a care order based on something not contained in the list in section 71. The purpose of the amendment is simply to ensure that the basis upon which a care order is made is clearly evidenced in pleadings, affording procedural fairness and reducing parental misunderstanding about the grounds upon which the care application was made.

I deal next with Greens amendment No. 3. Before a court makes final orders giving effect to a care plan, the general concept is that the court must have a degree of confidence in the certainty and permanence of the proposed care arrangements. We do not want courts making final orders on a care plan when details relating to that plan are not particularised to the degree that the court has a picture of how the child's needs are to be met. If permanency planning is not provided with a degree of detail, the court cannot make final orders or, worse, if the court accepts non-particularised plans for the child, the care plan may not deliver the child's required needs.

The difference between the version in proposed section 83 (7) (a) in the bill and the version proposed by the Greens, as contained in Greens amendment No. 3, is only slight. However, there may be some practical differences in application. The key difference is that the Greens amendment requires "further and better particulars which are sufficiently identified so as to provide the court with a reasonably clear plan", whereas the current version in the bill requires "details sufficiently clear and particularised so as to provide the court with a reasonably clear picture".

In one sense we might be splitting hairs, but I categorise the Greens amendment as being more specific about what is required of the director general. Many in the Chamber with legal backgrounds would be familiar with requests for further and better particulars in the legal process. I think that the use of this language more precisely identifies the level of detail required in line with the decision in both *Re Rhett* and *Re Ashley*. I commend Greens amendments Nos 1, 2 and 3.

The Hon. ROBYN PARKER [11.33 p.m.]: The Liberal-Nationals Coalition supports these amendments, which summarise the recommendations made by the Bar Association and the Law Society. We think that they enhance and strengthen the bill.

The Hon. PENNY SHARPE (Parliamentary Secretary) [11.34 p.m.]: The Government does not oppose Greens amendments Nos 1, 2 and 3. We believe that essentially they are refinements to the existing intent of the bill. Amendment No. 1 provides that the Children's Court may order that parties to a care application attend an alternative dispute resolution service in relation to any aspect of the proceedings before the court. The order may be made on the court's own motion or on the application of any party to the proceedings. The Children's Court already has the power to make directions as to how the proceedings are to be conducted, including ordering the parties to participate in alternative dispute resolution processes.

In relation to Greens amendment No. 2, the bill makes it clear that the reasons specified in section 71 (1) of the Children and Young Persons (Care and Protection) Act for making a care order are not exhaustive. The proposed amendment provides that if the Children's Court makes a care order in relation to a reason that is not specified in section 71 (1), the Director General of Community Services must specify the reason in making that care application.

In relation to Greens amendment No. 3, the proposed amendment is a redrafting of the existing provision in the bill that implements recommendation 11.16 of the Wood inquiry. That recommendation provides that amendments should be made to ensure that the judgement of *Re Rhett* 2008 is followed. *Re Rhett* addresses the information to be put before the Children's Court about the planning for long-term out-of-home care arrangements for a child. In substance, the Government believes that the proposed amendment has the same effect as the bill.

Question—That Greens amendments Nos 1 to 3 be agreed to—put and resolved in the affirmative.

Greens amendments Nos 1 to 3 agreed to.

The Hon. ROBYN PARKER [11.37 p.m.], by leave: I move Opposition amendments Nos 2 to 5 in globo:

No. 2 Pages 11 and 12, schedule 1.2 [20], line 28 on page 11 to line 27 on page 12. Omit all words on those lines.

- No. 3 Page 18, schedule 1.3 [8], line 20. Omit "a parent of the child consents". Insert instead "the parents of the child consent".
- No. 4 Page 18, schedule 1.3 [8]. Insert after line 25:
- (4) If the Director-General makes a temporary care arrangement without the consent of the parents of the child, the basis on which the Director-General formed the opinion that the parents were incapable of consenting to the arrangement must be set out in a written statement by the Director-General. A copy of that statement must, despite any other provision of this or any other Act, be provided to any person who requests a copy of the statement.
- No. 5 Page 33, schedule 2.2 [7]. Insert after line 10:
- (1B) Subsection (1A) does not apply in relation to a person who, immediately before the commencement of that subsection, was employed as a Children's Registrar.

Opposition amendment No. 2 relates to proposed section 82. The Coalition agrees with the Wood commission, in that section 82 in the original Act should remain the same. The Government's proposal will limit the reporting period to 12 months. There is far more flexibility in the current Act and the reports can be made more often. We need a mechanism to enable the court to monitor ongoing arrangements for a child. It is often the case that care arrangements change over a period. It is vital that the court has the ability to order more than one report over a period that is longer than 12 months. The original Act states:

- (1) The Children's Court may, in making an order allocating parental responsibility of a child or young person to a person (including the Minister) other than a parent, order that a written report be made to it within 6 months, or such other period as it may specify, concerning the suitability of the arrangements for the care and protection of the child or young person.

In essence, amendment No. 2 will provide more flexibility in reporting. Amendment No. 3 will ensure that both parents are involved in the process. A temporary care arrangement is a contract. If a temporary care arrangement is in place, attempts should be made to involve the other parent in the decision-making process. This amendment will ensure that both parents are involved in that process. Amendment No. 4 will provide oversight, overview and reporting mechanisms. If the director general makes a temporary care arrangement without the consent of the parents of the child, the basis on which the director general formed that opinion must be set out in a written statement. We are saying that there should be a written reason for not providing assistance, thus ensuring that there is accountability and transparency.

Amendment No. 5 refers to staff currently working with the Children's Registrar who have a number of years of experience but who do not have the legal qualifications currently required under this legislation. This grandfathering clause will enable those staff members to up-skill by training in dispute resolution and mediation so they can perform the tasks that are required of them.

Mr IAN COHEN [11.39 p.m.]: Reluctantly, the Greens do not support Opposition amendment No. 2. We have not come to this decision easily. I will explain why. Proposed section 82 limits the provision of reports under this section to one report within a 12-month period after final care orders, and invites—not allows—applications under section 90 of the Act. This appears to be broadly within Wood's recommendation 11.1 (14). The tenor of Wood's statement is that the Children's Court is not, and should not be, an oversight body and the original intention of the creation of section 82 was to give the court a degree of assurance as an incentive to make final orders earlier. The Government and the Minister have outlined how the Children's Guardian currently audits a quarter of all care plans on an annual basis alongside the current system of Children's Court reviews under section 82.

We need to consider seriously whether the provision of section 82 reports is a duplication of what the Children's Guardian is already doing. I am not sure exactly how we answer this, and maybe the Parliamentary Secretary could elaborate. I certainly understand the sentiment of the lawyers representing the children, that they have a more intimate knowledge of that child's specific circumstances as opposed to the Children's Guardian, who only audits the report from care agencies. Certainly the removal of a continual power to order and receive multiple section 82 reports could be equated as a measure that reduces judicial oversight. However, I think the secondary issue of the process in re-listing a matter is more important. I feel it is equally important that reports from agencies that reveal similar details to section 82 reports need to trigger leave provisions in section 90.

A second problem with the bill in relation to the changes to section 82 is that in order to resolve an issue that arises from section 82 a party will need to make a section 90 application, which requires a party to demonstrate a significant change in any relevant circumstances since the care order. This invitation to make an application under proposed section 82 (3) does not mean the court will automatically grant leave to hear a matter stemming from a section 82 report issue, and it is not certain the non-fulfilment of care plan requirements will satisfy the threshold requirement in section 90.

The current situation, where a matter or issue arising from a section 82 report can be re-listed to review the care plan, is more procedurally equitable and sensible compared with the proposed section 90 route. I can see why Wood made the recommendation and why the Government has sought to implement the recommendation. I will be moving an amendment that I think accepts the concerns of both Wood and the legal fraternity and attempts to find a balance that still ensures we maintain a degree of judicial review.

Again, at first glance Opposition amendment No. 3 seems fair and sensible. It seeks to amend the bill and the position of the current Act in respect of parental consent to temporary care orders. Under proposed section 151 (3) (a) the consent of one parent is satisfactory for a director general to make a temporary care arrangement where a permanency plan involving restoration of the child is in place. The Opposition amendment would require the consent of both parents under section 151 (3) (a). Theoretically, I am somewhat sympathetic to the concern emanating from this amendment.

My office has had discussions with Burnside advisers who expressed two important concerns about changing the requirement to the consent of both parents. Firstly, in instances where one parent is abusive or neglectful towards a child, it is important that that child is protected from harm under a temporary care arrangement. It would be problematic to ask a parent who is abusing a child to consent to a temporary care arrangement. Secondly, in many instances, one parent cannot be located. Should a child be stopped from going into temporary care because one parent cannot be located, when the sole care giver or responsible parent does give consent? The Greens cannot support this amendment, as securing both the short-term and long-term rights of the child should come before short-term parental rights. The temporary incursion on parental rights is a small price to pay for a reassurance that the best interests of the child are being satisfied.

The Opposition certainly has the right intention with amendment No. 4. A director general determination that parents lack the capacity to provide consent is a significant determination and it should not be made lightly. Built into that concern is the length of time before the temporary care arrangement expires, and that, under the bill, can be as long as six months. The power under section 151 is a significant statutory power. In principle, the Greens support the provision of written reasons in relation to this significant statutory power. However, the question must be asked where the provision of these reasons leaves us? For example, if the parents were determined by the director general to be incapable of providing consent, and reasons outlining why in the opinion of the director general the parents were deemed incapable were provided, what avenues and remedies are open to those parents?

Do the parents who have been deemed incapable of consent head off to the Administrative Decisions Tribunal to argue that the determination of the director general as to incapacity was based on manifest unreasonableness? Put another way, do we want those parents to be involved in a protracted debate about their capacity or would we prefer the parents to focus on having the Children's Court consider the issues of restoration or protection as soon as possible to address the best interests of the child? My attention has been drawn to proposed section 152 (6), which allows parents to initiate proceedings to review a temporary care agreement. Initiation of such proceedings will hopefully reveal the basis on which the director general made the determination as to capacity and allow much broader discussion about care arrangements for the child. I accept that parents who have been deemed incapable of providing consent may have difficulties initiating such proceedings. Further, it would be more equitable to have reasons provided to a parent before making an application under proposed section 152 (6).

However, in bringing an action under section 152 (6) the director general would have to give reasons and justification for the determination of incapacity. Ideally, we might dissuade an application under section 152 (6) if these reasons are given separate from any application under section 152 (6). Unfortunately, there is a problem with the Opposition amendment in that anyone can access the director general's reasons for finding incapacity. This gives rise to significant privacy concerns, especially where the information contains sensitive personal information. I have suggested to the Opposition that the second sentence in the amendment is problematic. I would think that only the parents the subject of the director general's determination or their appointed agent should be able to access the written reasons for the determination. As such, the Greens cannot support the amendment in its current form and will address these issues in Greens amendment No.7.

The Greens do not support Opposition amendment No. 5. A number of legislative reforms to tribunals such as the Consumer, Trader and Tenancy Tribunal and the Administrative Decisions Tribunal have increasingly sought to appoint legally trained persons to previously non-legally trained positions. The increasing professionalism of our tribunals, specialist commissions and courts is something we should be encouraging.

Communities, policy makers and the judicial system have recognised the importance of more informal legal forums to resolve disputes, but with the increasing recognition and work volume comes an equal need for procedurally consistent process.

In the context of the Children's Court, decisions made by registrars about case management and procedural applications have significant impacts on a child. While non-legally trained registrars have an important contribution and role in some courts, I understand Wood's recommendation 13.12, as the nature of the court's work and its decisions have life-altering consequences for children and young people in the child protection system. In this sense, Wood recommended that Australian lawyers fill the registrar roles for very important reasons, and these reasons will be even more apparent with the increasing use of alternative dispute resolution. Accordingly, the Greens cannot support Opposition amendment No. 5.

The Hon. PENNY SHARPE (Parliamentary Secretary) [11.48 p.m.]: The Government opposes all the amendments. I will deal with them in turn. Opposition amendment No. 2 will reject recommendation 11.1 (14) of the Wood commission. The recommendation changes the focus of the Children's Court power to order reports concerning the suitability of the out-of-home-care arrangements for a child following the making of final care orders. The recommendation refocuses the court on considering the effectiveness of those care orders. This amendment would shift the court from monitoring out-of-home-care arrangements, which the special commissioner said was not an appropriate judicial function.

The refocusing of the section is achieved in the bill by linking reporting to the matters arising directly from the final orders and placing an onus on the parties to the care proceedings to apply to vary or rescind those final care orders instead of the court being allowed to make new orders on its own motion. This amendment retains the position of court oversight for children in out-of-home care; this is contrary to the explicit comments of the Wood commission. This would involve the court in non-traditional functions and would permit the court to bring forward matters on its own motion. The amendment seeks to perpetuate a one-off system of review initiated by applications to the court rather than support a systemic view of the needs of all children in out-of-home care set out in the Government's response.

Opposition amendment No. 3 provides that the Department of Community Services cannot make a temporary care arrangement for a child unless both parents of the child consent to the arrangement rather than as currently provided in the bill where one parent of a child consents to this arrangement. The Government believes this amendment fails to recognise the nature of families within the child protection system. In these families the father cannot always be identified. Even where identified, the father may not always have had any dealings with or knowledge of the child. This amendment also assumes that both parents are still alive. Temporary care arrangements can only be made if the child or young person is, in the opinion of the Director General of the Department of Community Services, in need of care and protection. The amendment will require the department to locate and obtain the consent of both parents prior to entry into temporary care arrangements for the child. For this reason the Government cannot support the amendment.

Opposition amendment No. 4 requires that where a temporary care arrangement is made in relation to a child without the consent of the child's parents on the basis that the parents of the child are incapable of consenting to the arrangement, the Director General of the Department of Community Services must provide a written statement setting out the basis on which the opinion was formed that the parents are incapable of consenting to the arrangements. The written statement must be supplied to any person who requests a statement. This is the biggest issue with the amendment, and was well argued by Mr Ian Cohen. Significant privacy concerns come into play as the amendment would allow any person to view personal information about the parents' health or mental wellbeing—for example, the media could be able to access the information.

Opposition amendment No. 5 seeks to allow a person to be employed as a children's registrar if that person has previously been employed as a children's registrar, even if that person is not legally qualified. The special commission of inquiry recommended explicitly that children's registrars be legally qualified. The bill implements this recommendation by providing that a children's registrar must be an Australian lawyer, that is, someone admitted to the legal profession. Legally qualified and experienced children's registrars can ease the burden of Children's Court magistrates in procedural and consent matters, and can perform alternative dispute resolution functions. This amendment would undermine the inquiry's recommendation. Therefore, the Government does not support it.

Question—That Opposition amendments Nos 2 to 5 be agreed to—put.

The Committee divided.**Ayes, 11**

Mr Ajaka
Mr Clarke
Ms Cusack
Ms Ficarra

Mr Gallacher
Miss Gardiner
Mr Khan
Mr Lynn

Ms Parker
Tellers,
Mr Colless
Mr Harwin

Noes, 21

Mr Brown
Mr Catanzariti
Mr Cohen
Mr Della Bosca
Ms Griffin
Ms Hale
Dr Kaye
Mr Kelly

Mr Macdonald
Reverend Nile
Mr Primrose
Ms Rhiannon
Mr Robertson
Ms Robertson
Ms Sharpe
Mr Smith

Mr Tsang
Ms Voltz
Ms Westwood

Tellers,
Mr Donnelly
Mr Veitch

Pairs

Mr Gay
Mr Mason-Cox
Mrs Pavey
Mr Pearce

Mr Hatzistergos
Mr Obeid
Mr Roozendaal
Mr West

Question resolved in the negative.**Opposition amendments Nos 2 to 5 negatived.**

Mr IAN COHEN [12.00 a.m.], by leave: I move Greens amendments Nos 4 and 5 in globo:

No. 4 Page 13, schedule 1.2 [22], lines 3 to 9. Omit all words on those lines. Insert instead:

- (1A) The Children's Court may make an order of the kind referred to in subsection (1) (a) that involves contact between a child or young person and his or her parents only if:
- (a) proceedings are currently before the Court and the order is made as an interim order, or
 - (b) the Court has, under section 83, approved a permanency plan involving restoration in relation to the child or young person, or
 - (c) a final care order has been made that removes the child or young person from his or her parents and the contact dispute has been the subject of alternative dispute resolution under section 86A which has not resulted in any agreement between the parties to the dispute.

No. 5 Page 13, schedule 1.2. Insert after line 18:

[24] Section 86A

Insert after section 86:

86A Requirement for ADR before certain final orders for contact

- (1) The Children's Court must not hear an application for a final contact order under section 86 (1A) (c) unless the applicant files with the Court a certificate given to the applicant by an alternative dispute resolution service provider. The certificate must be filed with the application for a final contact order under section 86 (1A) (c).
- (2) An alternative dispute resolution service provider may give one of the following kinds of certificates to a person for the purposes of subsection (1):
 - (a) a certificate to the effect that the person did not attend alternative dispute resolution with the provider but the person's failure to do so was due to the refusal, or failure, of the other party or parties to attend,

- (b) a certificate to the effect that the person did not attend alternative dispute resolution with the provider because the provider considers, having regard to the matters prescribed by the regulations for the purposes of this section, that it would not be appropriate to conduct the proposed alternative dispute resolution,
 - (c) a certificate to the effect that the person attended alternative dispute resolution with the provider and that all attendees made a genuine effort to resolve the issue or issues but were unable to reach an agreement in relation to the contact dispute,
 - (d) a certificate to the effect that the person attended alternative dispute resolution with the provider but that the other party or another of the parties did not make a genuine effort to resolve the contact dispute,
 - (e) a certificate to the effect that the person attended alternative dispute resolution with the provider but that the provider considers, having regard to the matters prescribed by the regulations for the purposes of this paragraph, that it would not be appropriate to continue the proposed alternative dispute resolution.
- (3) Subsection (1) does not apply to an application for a final contact order under section 86 (1A) (c) if:
- (a) the applicant is applying for the order to be made with the consent of all the parties to the proceedings, or
 - (b) the application is made in circumstances of urgency, or
 - (c) one or more of the parties to the proceedings is unable to participate effectively in alternative dispute resolution (whether because of an incapacity of some kind, physical remoteness from dispute resolution services or for some other reason), or
 - (d) other circumstances specified in the regulations are satisfied.
- (4) The Children's Court may make an order that the parties to the proceedings attend an alternative dispute resolution service in relation to a dispute about contact between a child or young person and his or her parents or other family members.
- (5) The Children's Court may make an order under this section:
- (a) on its own initiative, or
 - (b) on the application of a party to the proceedings.

Greens amendments Nos 4 and 5, read together, would allow the court to make an order for contact in the event that alternative dispute resolution proceedings do not result in agreement between the parties to a dispute. Under the bill proposed amendments to section 86 of the Children and Young Persons (Care and Protection) Act will mean that the Children's Court will no longer have the ability to make a final contact order. It will be restricted to making contact orders only in the instance of a permanency plan involving restoration or where an interim order is at issue.

Concerns have been expressed about removing the court's ability to make contact orders where a final care order has removed a child from his or her parents. This change, as recommended by Justice Wood in recommendation 11.1 (10), ignites the debate about whether the bureaucracy or the judiciary is more suited to develop contact orders or agreements in situations where a child is not going to be restored to his or her parent or parents. A big concern is that if contact orders are decided administratively, there will be a strong tendency for a one-size-fits-all approach—two to six visits a year. Concern has been expressed about how to provide a check and balance on what some would describe as problematic contact regimes and decisions by a very small minority of Department of Community Services workers, as highlighted in *Re Georgia and Luke (No. 2)* whereby Justice Palmer cited significant abuses of power. On the other hand, I agree with the maxim that we should not always legislate for the worst-case scenario or the lowest common denominator.

There are a multitude of issues to consider in relation to contact. The case of *Re Helen* really plays out some of the competing challenges that need to be addressed in contact orders. For example, a liberal contact order regime may be beneficial and in the best interests of the child, but there is a chance that a liberal contact order may prejudice the ability to find a permanent place of that child. Taking another approach to the best interests of the child may say that a liberal contact arrangement could mean that the child's stays without a permanent placement, which is also detrimental to the child.

These considerations also need to be balanced with the sometimes immeasurable benefits of contact between a parent and child. In the case of *Re Helen*, one can get a sense from just reading the case that

maintaining the parental-child bond is an important and significant component of progressing the child's interests. In that case it was found that the contact level proposed by the director general was insufficient to meet the needs of the child.

Having listened to both representatives of the Law Society of New South Wales and the New South Wales Bar Association explain the implications of section 86 of the bill and the department's legal service representatives, it is evident that both sides have valid and reasonable arguments. A decision to favour one view over another often comes down to either a deep-seated predilection to value judicial power or to value administrative power. Justice Wood, in the context of hearing all submissions, was significantly clear that he believed that the Children's Court should not be an oversight body and that the Children's Guardian and Ombudsman fulfil this role. Justice Wood further stated:

The inquiry is not of the view that it is in the best interests of children for the Children Court to have the power to intervene in the discretionary exercise of parental responsibility by the Minister or her delegates.

With all due respect to Justice Wood, I am not sure that I agree with that statement. I find it somewhat difficult to resolve the importance and significance attached to the statutory power of the Department of Community Services, as discussed in relation to the lifting of the threshold, and the argument that this significant power should not be constrained by the judiciary. Beyond this argument is the idea that there needs to be an adequate incentive for all parties to an alternative dispute resolution to resolve the matter.

Looking at a range of State-based tribunals and specialist courts in New South Wales, including the family law system, there is a clear precedent for judicial review or judicial appeal if the alternative dispute resolution [ADR] process does not deliver an outcome. If the alternative dispute resolution process becomes the final arbiter of contact, it is unlikely there will be any incentive for the department to negotiate flexibly. I ask members to think about their personal experience with alternative dispute resolutions. I do not have experience in this area but I have had a particular experience with alternative dispute resolutions, the details of which I shall not go into.

The Hon. Robyn Parker: Was it expensive?

Mr IAN COHEN: It was a bit actually, yes. I was quite surprised by the situation. If I had known the lie of the land, I would have taken the somewhat meagre offer made by the opposition party at the time. I found that the person in charge of the dispute resolution was far less skilled and perhaps more ready to make a value judgement and shut down the negotiation than someone who had legal training, who would deal with the situation with a little more depth and clarity. I ask that members keep that in mind because when we are dealing with young people and children, we must move from the comparatively more amateur assessments to more professional assessments. To me that is an important issue. Where the State is deciding a child's life and contact with parents at the end of proceedings, after the alternative dispute resolution—and I think this would be a conservative position—it would be fairer for the matter to go before a Children's Magistrate. That is my position on Greens amendments Nos 4 and 5, which I commend to the Committee.

The Hon. ROBYN PARKER [12.07 a.m.]: The Liberal-National parties support Greens amendments Nos 4 and 5.

The Hon. PENNY SHARPE (Parliamentary Secretary) [12.08 a.m.]: The Government opposes these amendments because under the amendments the Wood commission's recommendation 11.1 (10) would not be implemented. The Wood commission recommended the removal of the power of the Children's Court to make contact orders where the court has accepted the assessment of the Director General of the Department of Community Services that there is a realistic possibility of restoration of the child to his or her parents. These amendments would restore the Children's Court power to make contact orders in all cases, subject only to the condition that disputes involving parental contact must first have been the subject of an alternative dispute resolution process in accordance with proposed section 86A, which is set out in Greens amendment No. 5.

The amendments preserve the power of the Children's Court to make long-term contract orders but render that power conditional upon the parties first proceeding to alternative dispute resolution. The Government opposes the amendments because during alternative dispute resolution there is no incentive to reach a resolution as the parties will primarily receive legal aid and will know that when dispute resolution fails, there will be a new hearing before the Children's Court going over the same grounds.

This is likely to delay the resolution of care proceedings and considerably increase the cost of those proceedings. We are not convinced that there is any compensatory gain for the child as a result of this extended

process. The view of the special commission and the Government is that the nature of court proceedings is such that they cannot take account of changing circumstances as the child or young person grows older. It is more appropriate and flexible for contact disputes to be resolved through alternative dispute resolution, and this is what the bill proposes to do.

I add a personal comment. I have some familiarity with children in out-of-home care who have had contact with their parents over time. I firmly believe that the Government has made the right choice in balancing the different and competing priorities. Alternative dispute resolution concerning children and young people as they grow requires a flexible and thoughtful approach. Alternative dispute resolution provides a better opportunity than a more formal judicial process for allowing children to be heard during proceedings. Having said that, I accept that we will agree to disagree on that matter.

It is also important to note that the Attorney General will be setting up an expert advisory group to advise on the most appropriate alternative dispute resolution mechanisms to use in relation to care matters, including contact disputes. This part of the legislation that relates to contact arrangements will not commence operation until a satisfactory system has been developed. That will include an appropriate review mechanism when alternative dispute resolution is unable to resolve contact disputes, and of course leading organisations will be involved in that consultation. The Government opposes Greens amendments Nos 4 and 5.

Question—That Greens amendments Nos 4 and 5 be agreed to—put.

The Committee divided.

Ayes, 15

Mr Ajaka	Ms Hale	Ms Rhiannon
Mr Clarke	Dr Kaye	
Mr Cohen	Mr Khan	
Ms Cusack	Mr Lynn	<i>Tellers,</i>
Ms Ficarra	Ms Parker	Mr Colless
Mr Gallacher	Mr Pearce	Mr Harwin

Noes, 17

Mr Brown	Reverend Nile	Mr Tsang
Mr Catanzariti	Mr Primrose	Ms Voltz
Mr Della Bosca	Mr Robertson	Ms Westwood
Ms Griffin	Ms Robertson	<i>Tellers,</i>
Mr Kelly	Ms Sharpe	Mr Donnelly
Mr Macdonald	Mr Smith	Mr Veitch

Pairs

Miss Gardiner	Mr Hatzistergos
Mr Gay	Mr Obeid
Mr Mason-Cox	Mr Roozendaal
Ms Pavey	Mr West

Question resolved in the negative.

Greens amendments Nos 4 and 5 negatived.

Mr IAN COHEN [12.18 a.m.], by leave: I move Greens amendments Nos 6 and 7 in globo:

No. 6 Page 13, schedule 1.2. Insert after line 21:

[25] **Section 90 (2A) (f):**

Insert at the end of section 90 (2A) (e):

, and

- (f) matters concerning the care and protection of the child or young person that are identified in:
 - (i) a report under section 82, or
 - (ii) a report that has been prepared in relation to a review directed by the Children's Guardian under section 85A or in accordance with section 150.

No. 7 Page 19, schedule 1.3 [8], lines 18–22. Omit all words on those lines. Insert instead:

- (4) A temporary care arrangement cannot be:
 - (a) made or renewed in respect of a child or young person if the child or young person has, during the previous 12 months, been the subject of a temporary care arrangement for a period, or for periods in the aggregate, exceeding 6 months, or
 - (b) renewed in respect of a child or young person if the temporary care arrangement was made in the circumstances described in section 151 (3) (b).

Greens amendment No. 6 is intended to redress concerns about potential problems for reviewing issues stemming from section 82 reports or any other agency report. Commissioner Wood recommended that orders arising out of section 82 reports should be brought before the court under a section 90 application. Within section 90 matters, when there is a significant change in any relevant circumstances, leave to vary an order can be given. However, there is concern that issues arising from a section 82 report may not get over the threshold requirement. The purpose of the Greens amendment is to ensure that the section 90 threshold does not become an obstacle for rehearing matters derived from an issue raised in a section 82 report or a report completed by a care agency. The amendment achieves this by requiring the matters raised in a section 82 report or agency reports to be taken into account before granting leave to vary or rescind the care order.

With regard to Greens amendment No. 7, the Greens are greatly concerned about the bill's amendments to temporary care arrangements. The powers given to the director general in new section 151 (3) (b) are expansive, even if they are to be subject to departmental guidelines. It is accepted that new section 152 (6) allows the court to review a temporary care arrangement, but the onus is certainly on the parent to take the matter to court to challenge the director general's assessment of non-capacity and placement of the child in a temporary care arrangement. The purpose of Greens amendment No. 7 is to reduce the maximum length of a temporary care arrangement to three months where the child is placed in care after a determination that the parents do not have the capacity to consent. While the amendment does not deliver us an ideal situation in new section 151, with continued monitoring by members of this House and members of the legal fraternity any abuse will hopefully come to the attention of the public and this House. I will certainly monitor the use of this power through the House. I commend Greens amendments Nos 6 and 7 to the Committee.

The Hon. ROBYN PARKER [12.21 a.m.]: The Liberal Party and The Nationals support Greens amendments Nos 6 and 7.

The Hon. PENNY SHARPE (Parliamentary Secretary) [12.21 a.m.]: The Government does not oppose Greens amendments Nos 6 and 7.

Question—That Greens amendments Nos 6 and 7 be agreed to—put and resolved in the affirmative.

Greens amendments Nos 6 and 7 agreed to.

Schedule 1 as amended agreed to.

Schedule 2 agreed to.

The Hon. ROBYN PARKER [12.23 a.m.], by leave: I move Liberal Party amendments Nos 6 and 7 in globo:

No. 6 Page 39, schedule 3.1. Insert after line 7:

[2] **Section 11 (k)**

Omit the paragraph.

[3] **Sections 15 (1) and 5A (1)**

Omit "(other than its functions under section 11 (k))" wherever occurring.

No. 7 Page 42, schedule 3.1. Insert after line 40:

[8] **Section 45B**

Omit the section. Insert instead:

45B Establishment of the Team

The Child Death Review Team is established by this Act.

[9] **Section 45C Composition of the Team**

Omit section 45C (1). Insert instead:

(1) The Team is to consist of the following members:

- (a) the Ombudsman, who is to be the Convenor of the Team,
- (b) the Commissioner,
- (c) such other persons as may be appointed by the Minister.

(1A) The Team is to be supported and assisted in the exercise of its functions by members of staff of the Ombudsman's Office.

[10] **Sections 45C (6)**

Insert "and the Commissioner" after "the Convenor" wherever occurring.

[11] **Sections 45E, 45G and 45H**

Insert "or the Commissioner" after "the Convenor" wherever occurring.

[12] **Section 45F Remuneration**

Insert ", the Commissioner" after "the Convenor".

[13] **Section 45N Functions of the Team**

Omit section 45N (3).

[14] **Section 45S Preparation and presentation of reports**

Omit "or as part of a report of the Commission under Part 5" from section 45S (3).

[15] **Section 45U Confidentiality of information**

Omit section 45U (1) (c) (iv).

Liberal Party amendments Nos 6 and 7 in essence relate to the Ombudsman's role with regard to reviewable deaths and the Child Death Review Team. I am aware of the lateness of the hour but it is necessary for me to explain why these amendments are so important. We are trying to reflect in this legislation the recommendations of Justice Wood. Justice Wood's recommendations with regard to child death review envisaged a package of legislation providing for no duplication, to ensure that the child death reviews were not split between the office of the Ombudsman and the Child Death Review Team.

Unfortunately the Government, by way of this legislation, has adopted some of Justice Wood's recommendations but not all of them. In his report Justice Wood recommended restricting the Ombudsman's jurisdiction to reviewing the deaths of any child from abuse, neglect or suspicious circumstances. Justice Wood also proposed that the Ombudsman take charge of the Child Death Review Team, which is responsible for looking into all child deaths and is currently oversights by the Commission for Children and Young People. As I said, Justice Wood's recommendations have not been adopted in this legislation in their entirety. The Government has endorsed the first recommendation but has rejected the second. The Association of Children's Welfare Agencies issued a media release on this issue, and it reads in part:

The Government runs the risk of creating a hybrid mechanism that defies Justice Wood's intent in relation to this critical aspect of child protection.

It has been said that this issue is contentious and that it has been politicised. It has not been the intention to politicise the issue so much as to attempt to draw attention to these issues so that the Ombudsman has the

capacity to have his views heard. Proposals were made to do that by way of a one-day inquiry so we could get public information from the Ombudsman. We have moved on since then. However, I wish to quote from a letter the Ombudsman has written to the shadow Minister for Community Services, Ms Pru Goward, in relation to this matter. The Ombudsman wrote:

In 2002 the NSW Parliament conferred responsibility to me for reviewing the deaths of certain children, including children and siblings of children who had been the subject of a report to DoCS within the three years prior to their death. Prior to this time, these deaths fell within the ambit of the NSW Child Death Review Team. The transfer of the role to my office was part of a reform program to rationalise complex oversight arrangements in community services. While the Child Death Review Team retained a broader research role ...

The Ombudsman notes that Justice Wood found duplication of effort between the Child Death Review Team and the Ombudsman's office. Justice Wood made a number of recommendations about child death reviews in 23.1, 23.2 and 23.3. First, he said that the Ombudsman should become the convenor of the Child Death Review Team, and that the research and secretariat functions of the team should be under the Ombudsman's office. Second, Justice Wood said that the Department of Community Services should take responsibility for reviewing the deaths of children and siblings of children who were the subject of a risk of harm report to the department in the three years prior to their death. Justice Wood's third recommendation was that the Ombudsman's power to review the deaths of children and siblings known to the Department of Community Services should be repealed.

This is about making sure that there is the capacity to have systemic review. A number of members have spoken about the need to ensure that children do not fall through the cracks. This is vital. In my view it is the most important provision in the legislation that we need to fix. It is important that we understand the context in which reviewable deaths occur. By doing so, we empower ourselves to find out what has gone on and what the antecedents are. Ultimately this will make the system more efficient and more effective. It gives us the opportunity to observe how agencies have acted, how they should act in the future, and ultimately to ensure that children's safety is enhanced.

It is vital that the Ombudsman have this role. The amendments ensure that we restore the capacity of the Ombudsman as initially intended. The research role of the Child Death Review Team would be enhanced by the involvement of the Ombudsman's office. The Ombudsman's office has the capacity to carry out research and undertake child death inquiries. It is essential that we address this issue as a whole package. In his letter to the shadow Minister for Community Services, the Ombudsman also wrote:

It has been my consistent view that Mr Wood's recommendations should be considered as a reform package to be implemented in conjunction with one another. The important links between the three proposals provide for balanced improvement to oversight of child protection services through the avenue of reviewing child deaths. The result of not implementing the proposals as a package will, in my view, result in oversight that is less efficient and less effective.

If we are to make a genuine and determined attempt to fix some of the failures in the system, we need to adopt all of Wood's recommendations. We are not, as the Hon. Penny Sharpe said, trying to have it both ways. Indeed, we are trying to ensure that Wood's recommendations on this most important aspect are reflected in the legislation. It is about systemic review, systemic improvement and ensuring that we all understand what is going wrong, what is going well and how we can ensure that we do this well in the future. I urge honourable members to support these amendments and carefully consider their intent.

The Hon. ROBERT BROWN [12.30 a.m.]: As I foreshadowed in my contribution to the second reading debate, the Shooters Party supports Wood's recommendations as encompassed in Opposition amendments Nos 6 and 7. We support the amendments.

Mr IAN COHEN [12.31 a.m.]: Before I speak to the amendments I indicate that I do not believe the Ombudsman has been inconsistent on this issue. What I sought to do in my contribution to the second reading debate was to highlight the connection between removing the known-to-Department of Community Services category as linked with Wood's recommendation for transferral of the Child Death Review Team. My staff and I have spent many hours in my office agonising over this issue, and there may have been too much focus on this part of the reform package. I make it crystal clear that my agreement to these amendments is certainly not evidence that the Government has intentionally not followed Wood's recommendation on the Child Death Review Team, and I reject any suggestion that the Government, by not following Wood, is in any way covering up. I do not think that is the case at all.

Clearly, it is a difficult decision, perhaps epitomised by the discussions I have had with the Shooters Party. In many cases throughout this process we have amicably agreed to differ, and in this case we agree to

agree. It has been an interesting and difficult discussion, but all the crossbench members have approached it with the utmost sensitivity. We have evaluated the facts dispassionately and with an objective mind. We have listened to the facts, lobbied with great concentration and sought to rummage through the hysteria that has arisen at times to find a single nugget of truth that would indicate how one would vote on this issue. I am not convinced that we have it 100 per cent; but all we can do is work with what we are presented with. The Government's policy reason for keeping the Commission for Children and Young People as convenor of the Child Death Review Team is that the research functions and style of research of the Child Death Review Team is more suited to the Commission for Children and Young People.

Specifically, the Government argued that currently the Child Death Review Team, in reviewing all child deaths in New South Wales, takes a broader picture of statistical trends in child deaths. Deaths arising from such issues as sudden infant death syndrome, fatal driveway accidents and swimming pool accidents, to name a few, have been reviewed by the Child Death Review Team and a number of recommendations made. There are arguments that the research style and focus of the Child Death Review Team should not be integrated with child deaths where there is Department of Community Services or departmental intervention. Further, the argument for maintaining the Child Death Review Team under the Commission for Children and Young People is that there is more scope for non-government organisation engagement and better integration of recommendations via the Commission for Children and Young People.

On the other side of the ledger, the Ombudsman and Wood would be concerned that the deaths of children with a child protection history are undertaken by two separate agencies, both with the capacity to comment and make recommendations. This concern is derived from the fact that if the known-to-Department of Community Services categories are removed from reviewable deaths under section 35 of the relevant Act, technically there would be nothing stopping the Child Death Review Team from researching and investigating those deaths, hence the duplication. The question of whether we would see any real duplication if the Child Death Review Team is retained under the Commission for Children and Young People is not clear. The point is that we should rule out the possibility of any such duplication of efforts in relation to system overview of child deaths. The Greens support these two Opposition amendments.

Reverend the Hon. FRED NILE [12.34 a.m.]: As I said during my contribution to the second reading debate, I support the position of the Child Death Review Team. Importantly, the view of the Child Death Review Team and the Commission for Children and Young People is that the system should remain as it is. Prior to 2002 the Child Death Review Team reviewed all deaths, including deaths from child abuse and neglect. The Child Death Review Team supported transferring the reviewable death function to the Ombudsman as it fitted with his mandate of overseeing government systems. This arrangement has worked well for more than five years. Both Acts of Parliament have been independently reviewed in the past five years, and neither review recommended that the Child Death Review Team move to the Ombudsman's agency. It seems that making this change, although Wood recommended it, is going against the view of those involved in the role, except for the Ombudsman himself. That seems to place a big question mark over these amendments, and I cannot support them.

The Hon. CATHERINE CUSACK [12.36 a.m.]: I thank honourable members for their informed contributions to this debate. I am a member of the Committee on Children and Young People. Reverend the Hon. Fred Nile correctly said that the children's commissioner is of a different view to that of the Opposition on this matter. However, when referring to the children's commission, I do not think that is a separate entity; it is the children's commissioner, who is one person.

The Hon. Penny Sharpe: No, it's not.

The Hon. CATHERINE CUSACK: I am sorry, the Hon. Penny Sharpe indicates that there is a different children's commission.

The Hon. Penny Sharpe: The commissioner is the CEO of the children's commission. More than one person works with the children's commission.

The Hon. CATHERINE CUSACK: Does the Hon. Penny Sharpe agree that there is only one commissioner?

The CHAIR (The Hon. Amanda Fazio): Order! It is not appropriate for members to engage in discussions across the table. The Hon. Catherine Cusack should speak to the amendments before the Committee.

The Hon. CATHERINE CUSACK: They were being referred to as separate entities. It is in fact the children's commissioner. We are particularly interested in the views of the members of the Child Death Review Team because they are independent and have expertise. I have made inquiries of members of the independent team—I assure honourable members that the team has the highest regard for the Ombudsman—and they indicated that they did not disagree with Wood's recommendation. That is not to say that they wanted to become embroiled in this debate—I want to make that clear.

Reverend the Hon. Fred Nile: They don't wish to go to the Ombudsman, though.

The Hon. CATHERINE CUSACK: It is incorrect to say that members of the Child Death Review Team are opposed to being transferred to the Ombudsman's Office. I have made my independent inquiries directly to members of the team and that is not the case.

Reverend the Hon. Fred Nile: To the whole committee?

The Hon. CATHERINE CUSACK: No, not to the whole committee but to the deputy chair of the committee. There are two different committees, and the Ombudsman has his own committee. I have not consulted them, but I doubt that they would share those concerns. I simply place on record that it is not correct to say that all the key people are opposed to the functions of the Child Death Review Team being transferred to the Ombudsman's Office.

The Hon. PENNY SHARPE (Parliamentary Secretary) [12.38 a.m.]: This matter has been the subject of considerable debate over the course of the day. Of the entire package that will be passed tonight, and passed with a degree of bipartisanship, this is the pointy end of the debate. The Government opposes these amendments, which seek to transfer the Child Death Review Team from the commission to the Ombudsman's Office. The Government carefully reviewed this recommendation and concluded that the broad research functions of the Child Death Review Team should remain with the Commission for Children and Young People, rather than be transferred to the Ombudsman.

The purpose of the Child Death Review Team is to provide information about child deaths and to prevent or reduce the number of child deaths in New South Wales. Its research functions include maintaining a register of child deaths and classifying deaths according to cause, demographic criteria and other relevant factors. The Child Death Review Team has a broad role, which is not focused specifically on abuse or neglect or the performance of public sector agencies. The Government values the Ombudsman's research and recommendations on the child protection system and the work his office does to identify matters that, if addressed, may prevent future child deaths. The Government carefully reviewed Justice Wood's recommendation and concluded that the broad research functions of the Child Death Review Team should remain with the Commission for Children and Young People, rather than being transferred to the Ombudsman.

The report of the special commission quotes Professor Dorothy Scott, who notes that child death reviews are too heavily focused on the last link in the chain of events, rather than the role of the child protection system as a whole and how all agencies involved with the child and the broader community might have better responded to the child protection concerns. The Government's view is that the Ombudsman's role should continue to focus on the oversight of the child protection system and reviewable deaths, including the review of deaths of children that are or may be caused by abuse and neglect or in suspicious circumstances, rather than taking on the broader research functions of the Child Death Review Team.

In relation to Opposition amendment No. 6, the proposed amendment would be consequential on the transfer of the support and secretariat functions relating to the Child Death Review Team from the Commission for children and Young People to the Ombudsman's office. The Government does not support that transfer. The Government thus opposes Oppositions amendment Nos 6 and 7.

Question—That Opposition amendments Nos 6 and 7 be agreed to—put and resolved in the affirmative.

Opposition amendments Nos 6 and 7 agreed to.

The Hon. ROBYN PARKER [12.41 a.m.]: I advise the Committee that I will not move Opposition amendment No. 8 circulated on sheet C2009-007D.

Schedule 3 as amended agreed to.

Title agreed to.

Bill reported from Committee with amendments.

Adoption of Report

Motion by the Hon. Penny Sharpe agreed to:

That the report be adopted.

Report adopted.

Third Reading

Motion by the Hon. Penny Sharpe agreed to:

That this bill be now read a third time.

Bill read a third time and returned to the Legislative Assembly with a message requesting its concurrence in amendments.

HAWKESBURY-NEPEAN RIVER BILL 2009

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [12.43 a.m.], on behalf of the Hon. Eric Roozendaal: 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 Hawkesbury-Nepean River is an iconic waterway and an important ecological and community asset.

Sydney is very fortunate to have such an asset in its backyard. A river that can supply most of our drinking water needs, irrigate a productive food bowl, estimated to be worth in the order of \$259 million per year, and provide recreation for many residents.

However, this also means the operation and management of the Hawkesbury-Nepean River System is complex, because there are so many competing demands.

Providing a water supply for Australia's largest city, irrigation, recreation and a home for the plants and animals that depend on the River is a major challenge.

The New South Wales Government is determined to address this challenge.

It is for that reason that I bring the bill before you today, into the House. This bill establishes a new Office of the Hawkesbury-Nepean, and gives it the power to coordinate the whole-of-Government action needed to manage this critical and iconic waterway.

The bill has four objectives and it gives the Office of the Hawkesbury-Nepean the clearly defined functions it will need to achieve each of those objectives.

Firstly, the Office will improve coordination and implementation of management strategies relating to the health of Hawkesbury-Nepean River System. To achieve this, the Office will:

Co-ordinate the management of aquatic weeds; and

Manage the implementation of any agreed arrangements between New South Wales and the Commonwealth, or local Government, to improve the health of the Hawkesbury-Nepean River System.

Secondly, the Office will improve public access to information and advice about management strategies concerning the health of the Hawkesbury-Nepean River System. To achieve this, the Office will:

Act as a single point of information and advice about management strategies;

Respond to inquiries for advice and provide advice about management strategies; and

Compile information on management strategies, and provide that information to the public.

Thirdly, the Office will provide increased opportunities for the public to be involved in the development of management strategies to improve the Page 2 of 9 health of the Hawkesbury-Nepean River System. To achieve this, the Office will:

Carry out public consultation to determine the views of the public or stakeholders; and

report to me, as the relevant Minister, and relevant public authorities, on the results of any public consultation.

Lastly, the bill provides for the Office to improve the management of instream development in the Hawkesbury-Nepean waters. The bill provides for the Office to do this by:

liaising with planning authorities to ensure they fulfil their responsibilities in an integrated and efficient manner;

providing information and assistance on development to members of the public who propose to carry out in-stream development; and

accepting development applications for developments in the Hawkesbury-Nepean waters, and forwarding them to the relevant consent authority, along with associated documents and fees.

Before elaborating on these functions, I will briefly outline the administrative arrangements established by the bill. The bill establishes the Office of the Hawkesbury-Nepean as a Corporation, under my direction with an Advisory Board and a Director.

The Advisory Board will include representatives of the Department of Water and Energy, as chair of this board, the Department of Environment and Climate Change, the Department of Primary Industries, the Department of Premier and Cabinet, the Department of Planning, the Hawkesbury-Nepean Catchment Management Authority, the Sydney Catchment Authority and the Sydney Water Corporation.

The bill defines the area to which the functions of the new Office of the Hawkesbury-Nepean will apply.

The first three core functions, that is, coordination, provision of information, and public consultation, will be applied to the entire Hawkesbury-Nepean River System.

The last of the Office's functions, that is, the promotion of effective management of in-stream development, will apply to the waters of the River, and its tributaries.

These waters are defined in the bill.

They include the waters downstream of the Upper Nepean Dams (Cataract, Cordeaux, Avon, Nepean) and Warragamba Dam, but upstream of Brooklyn.

Under the bill, these waters also include land that is permanently or intermittently submerged by those waters within a distance of 40m inland from the top of the bank in non-tidal areas, and the 40m from the high water mark in tidal areas.

Under the bill, the Office of the Hawkesbury-Nepean is subject to the control and direction of my portfolio.

Very importantly, the bill requires agencies to cooperate with the Office. This agency cooperation is critical, and the inclusion of this power in the bill will allow the Office to succeed in its coordination role.

In addition, the Premier and I will be closely monitoring the progress of the Office to ensure better outcomes are delivered for Western Sydney.

By establishing an Office with these functions and these administrative arrangements the Government is today taking a big step forward in managing the Hawkesbury-Nepean.

The four key reasons why the Office is a great thing for people in my part of Sydney:

the Office will deliver improved coordination across Government;

it will provide a single point of contact;

it will provide opportunities for the public to be involved; and

it will facilitate consideration of in-stream developments.

Coordination of Hawkesbury-Nepean Activities

Firstly, in relation to coordination of the management of the Hawkesbury-Nepean, the bill provides for the new Office of the Hawkesbury-Nepean to coordinate the range of Government programs already in place to improve river health, such as:

the Hawkesbury-Nepean Nutrient Management Strategy;

the Diffuse Source Water Pollution Strategy;

the Development of an environmental flows regime;

the Water Sharing Plan for the Hawkesbury-Nepean;
the Sydney Metropolitan Water Plan; and
the Weirs Modification Program.

The bill also provides that the Office will have the power to require cooperation from other agencies. This means the Office will be able to coordinate appropriate Government activities in relation to works on river banks. Agencies, including the Department of Planning and the Department of Lands, will be brought together to ensure effective working relations on issues associated with river health.

It also means the Office will be able to coordinate agency effort to support the delivery of the Hawkesbury-Nepean Catchment Action Plan. In doing this, the Office will work closely with the Hawkesbury-Nepean Catchment Management Authority to ensure consistency of effort and reduce duplication.

Importantly, the bill gives the Office of the Hawkesbury-Nepean the ability to administer funding programs and on-ground works, which may contribute to significant water quality benefits.

(One-stop Shop)

My colleagues the Member for Penrith, Member for Londonderry and Member for Riverstone have been long term advocates for a single point of call for the river. I am pleased to say that this is exactly what the Office will be.

By establishing the Office of the Hawkesbury-Nepean, this bill will create a 'one-stop-shop' for members of the community, bringing the programs and expertise of the New South Wales Government together under the one roof.

The Office will act as a single point of access to Government services, including those relating to water quality and quantity management and river use issues.

This will provide the residents of the area with an access point for services and inquiries related to the River. Being located in the community it will be aware of the issues facing river communities and be able to bring these issues to the Government.

(Public Involvement)

The bill also provides for improved community input to the management of the River. The people of the Hawkesbury-Nepean are passionate about their river and the bill recognises this by establishing a stakeholder committee to advise the Government on the best way to manage the health of Hawkesbury-Nepean River.

One of the specific functions of the Office will be to engage with the local community through effective communication and education campaigns. This will create a two way dialogue, in which the community gains a greater understanding of the current Government strategies and actions on the river, and the Government learns about community concerns.

(In-stream Development)

In response to the community, this bill provides for the new Office to simplify the application process for people undertaking in-stream developments.

Under the current planning system, an individual with a development application for in-stream developments, such as building a jetty on a river, must first apply for land owner's consent from the Department of Lands, who manage the river bed, as it is Crown Land.

Once land owner's consent has been granted, the applicant must lodge their development application with the local council, who act as consent authority.

The new Office of the Hawkesbury-Nepean will provide assistance to individuals seeking land owner's consent, including the ability to arrange one-on-one consultation with officers from the Department of Lands.

The Office will also work with officers from the Department of Lands to ensure the processes for granting land owner's consent are clear, and streamlined.

The bill will not override existing statutory powers, such as Councils' development consent role, under the Environmental Planning and Assessment Act.

The integrated development framework has been refined in the 12 years since its commencement, and the Government is not going to create another level of bureaucracy. Rather, the primary role of the Office is to make this legislation work more smoothly.

For example, the Office may accept development applications for developments in the Hawkesbury-Nepean waters, and forward them to the relevant consent authority, along with associated documents and fees.

However, if the Office advises the Government that existing planning, pollution, fisheries or water management legislation is part of the problem, we will act to address the issues.

Further, the Office of the Hawkesbury-Nepean may work with councils, relevant agencies and the community to identify ongoing concerns with the approvals process for in-stream developments. Such work may feed back into broader whole-of-Government work on strategic issues within planning, land-use and natural resource management.

In summary this new Office is a great thing for people from my part of Sydney. It gives them real access to the decision makers and it gives all the authorities involved in managing the River a chance to coordinate their activities.

By improving information flows and coordination, and by providing onground restoration services such as weed management the Office will deliver the people of western Sydney a better river.

I commend the bill to the House.

The Hon. RICK COLLESS [12.44 a.m.]: The Opposition supports the Hawkesbury-Nepean River Bill 2009. This legislation establishes the Office of the Hawkesbury-Nepean as a statutory corporation and confers functions and powers on the office. The legislation also establishes an advisory board made up of representatives the from Department of Environment and Climate Change, the Department of Primary Industries, the Department of Premier and Cabinet, the Department of Planning, the Hawkesbury-Nepean Catchment Management Authority, the Sydney Catchment Authority and the Sydney Water Corporation.

On 13 August 2008 a River Summit was held to establish the problems facing the river and recommend a solution. The member for Hawkesbury made a private member's statement in the other place on 30 October 2008, highlighting the problems of erosion control, aquatic weed infestation and shallow depths caused by siltation and called for a single authority to be established. The State Government's intention to establish an Office of the Hawkesbury-Nepean was announced by Premier Rees on 7 October 2008. It is proposed the office will be staffed by 11 personnel, two of whom will be part-time, drawn from the Department of Primary Industries, the Department of Environment and Climate Change, the Catchment Management Authority and the Department of Water and Energy.

The member for Hawkesbury supported the broad thrust of this legislation. I have been unable to find any negative criticism regarding the establishment of this office, other than what I will expand upon a little later in my contribution to the second reading debate. All arguments against this legislation so far centre on the lack of detail in the bill, the lack of public representation on the advisory board, the definitions of some terms, such as "in stream development", and the possibility of cost shifting by the State Labor Government on to councils. There appears to be no consideration of environmental flows or the impact of stormwater and minimal consideration of outflows from sewerage treatment works, and the impact on existing riparian rights has not really been addressed.

The Hawkesbury-Nepean catchment is a waterway of national significance, covering some 21,400 square kilometres, with a catchment length of 470 kilometres, making it the longest coastal catchment in New South Wales. More than one million people live in the catchment, with land use ranging from traditional sheep, cattle and cropping in the upper reaches, through to dairying, market gardening and horticulture in the mid reaches, to fishing, prawning, recreation, oyster farming and residential in the lower reaches. There can be no doubt this iconic river is under stress. Many people are saying that the prolonged dry period has contributed to this situation.

It is a fact there has not been a flood in excess of 9.15 metres, or 30 feet on the imperial scale, since 1992—a period of 17 years. It should also be pointed out that since 1799 there have 65 floods in excess of 30 feet: 65 floods in 210 years is a flood frequency of one every 3.2 years. If we look more carefully at these flood frequency figures we see that the current non-flood period of 17 years is the second-longest period without a flood since 1799. There was a big flood in June 1819, and the river did not exceed 30 feet again until July 1857—a period of 38 years. The river will need not to flood again until 2030 to break that 150-year-old record. This current dry spell is the eighth time since 1799 that the river has gone more than five years without a flood—a frequency of 26 years—so it is not uncommon for dry periods of low river levels to impact on the Hawkesbury River. There have also been many periods of regular flooding in the river, with more than three floods in any 12-month period being recorded on seven occasions—a similar frequency to the extended dry period frequency.

Between May 1955 and June 1956 five floods over 30 feet were recorded, so repeated floods in a short space of time are not uncommon. On several occasions there were two floods within a month—we have seen the same situation in Coffs Harbour in the last month. The fact that these events are sometimes 30 or 40 years apart means that people's memories of these big events fade with time, and there is a whole new generation of people who have never experienced it at all. This is certainly the case in the Hawkesbury valley now. There has not been a flood over 30 feet since 1992, and in the past 17 years a whole new generation has grown up that has never seen a flood, and many under 25 years of age probably have only vague memories of it from their childhood.

In addition to the new generation, whole communities of new residents have moved into places such as Windsor, Richmond, Scheyville, Pittown, Penrith and all the other suburbs within that new residential area of north-western Sydney and they have never seen the Hawkesbury River in flood. It is these people that are in for a shock when the next big flood comes, and it is coming. The biggest flood in the Hawkesbury is reported to have been in 1867, and while there remains some debate about the level that flood reached, it was almost certainly around the 50-foot mark.

It is especially important to look at these long-term trends when making management decisions about this river, and any river system for that matter, rather than to look for short-term causes, such as blaming anthropogenic global warming, for the problems and then to look for short-term quick fixes in order to overcome the inherent management deficiencies. There has long been a call for a single river management authority in the Hawkesbury-Nepean catchment, and this bill creating the Office of the Hawkesbury-Nepean was crystallised from a summit held last year, at which the then Minister for Water, now Premier, made a promise to establish such an authority. The establishment of the office was called for because of a substantial failing of this Government to achieve any level of coordination and integration between government departments, with development applications taking up to two years to gain approval.

This time lag was not caused by delays in local government ranks, as member opposite would undoubtedly try to convince us. It was caused by the varying agencies required to grant approval to the development application process, in particular the Department of Water and Energy, the Department of Environment and Climate Change, the Department of Primary Industries, the Department of Planning, the Sydney Catchment Management Authority and the Sydney Water Corporation. Those agencies were not pulling their respective weight in relation to the Hawkesbury issues they were confronted with—they simply could not get their act together on a collective basis to provide a coordinated and integrated result for the people of the Hawkesbury. It is of great concern that this office has many functions that are duplicated by the Hawkesbury-Nepean Catchment Management Authority. The Hawkesbury-Nepean Catchment Management Authority's website states:

The Hawkesbury-Nepean Catchment Management Authority was formed to help protect the natural values of the Hawkesbury-Nepean and ensure it continues to be a healthy and productive catchment.

The Hawkesbury-Nepean Catchment Management Authority's vision states:

A healthy and productive catchment valued now and into the future.

It goes on to explain that the Hawkesbury-Nepean authority has six broad functions:

1. Planning and Investment ...
2. Native Vegetation ...
3. Water ...
4. On ground works ...
5. Community engagement ...
6. Provide advice to Governments

The long title of the Hawkesbury-Nepean River bill 2009 reads:

An Act to establish an Office of the Hawkesbury-Nepean, to provide for its functions and to make other provision for the purposes of improving or maintaining the health of the Hawkesbury-Nepean river system.

The two organisations have the same objectives. It is also appropriate at this stage to restate the objectives of the bill before the House, and the level of duplication is self-evident. The objects of this Act are as follows: to improve the coordination and implementation of management strategies in relation to the health of the Hawkesbury-Nepean river system; to improve public access to information about management strategies in relation to the health of the Hawkesbury-Nepean river system; to provide increased opportunities for public involvement in the development of management strategies in relation to the health of the Hawkesbury-Nepean river system; and to improve the management of development in the Hawkesbury-Nepean waters.

This is going to be further complicated by those two organisations being responsible to two different Ministers—the authority is responsible to the Minister for the Environment and Climate Change, and the Office of the Hawkesbury-Nepean will be responsible to the Minister for Water. Which agency will be the lead agency? Keep in mind that the authority supposedly is a community focused and run organisation, although the department still plays an active role by providing much of the administrative functions such as payroll, et cetera.

Which Minister will have the final say in the case of a dispute? There is a history of overlapping roles by various agencies with respect to natural resource management and it has long been difficult to bring all the relevant players to the table together and to get them to reach a consensus.

I fail to see how adding yet another layer of bureaucracy is going to help that problem; in fact, it may well exacerbate the problem. If those issues are to be resolved, the most important ingredient is a will amongst the players and the bureaucrats to resolve the issues. In situations that are difficult to resolve they need to have a philosophy of finding a way to say yes rather than throwing up dozens of bureaucratic reasons to say no. Unfortunately, the latter seems to be the way most bureaucrats think. It matters little as to how the bureaucracy is structured, it matters little as to how many government agencies there are and it matters little how many instruments of legislation there are: if the will is not there, it will not happen.

Part 3 of the bill relates to the functions of the office, and the duplication with the authority is clear. Most of those functions are also functions that I am sure the authority would see as its role, such as assisting with the implementation of management strategies, liaising with public authorities, acting as a single point of contact and compiling information about the health of the river. The only obvious extra function is that the office may—I repeat “may”—accept a development application, and charge a fee, from any person relating to a development in Hawkesbury-Nepean waters. Again, that is an extra level of bureaucracy. If there is a real issue surrounding the lack of integration and coordination by various government agencies then it is also obvious that the problem arises because the relevant government agencies do not have a seat at the board level of the authority since the introduction of the Catchment Management Authorities Act 2003, which removed senior departmental personnel from the boards of the new authorities.

This was indeed a mistake. As a board member under the original Catchment Management Act 1989 I know that it was the presences at the table of senior departmental people that facilitated prompt decision making and resultant action, as demanded by the board—and the bureaucrats were forced to act promptly. That does not happen under the Catchment Management Authorities Act 2003, as the senior bureaucrats are no longer present at that table. Rather than introducing a whole new piece of legislation with a staff of 11, it would seem to be a far preferable solution to introduce an amended Hawkesbury-Nepean Catchment Management Act, which should have basically allowed for the inclusion of those senior bureaucrats as described in part 2, clause 10 (3) of the bill and by broadening the powers of the authority to include the assistance with the in-stream development as allowed for under clause 15.

This would have led to immense savings in office accommodation and staff resources that I would have thought the Premier should have been aware of given the global financial crisis that we hear so much about. Eleven staff at a conservative cost of \$100,000 each, including on-costs and so on, is a cost of \$1.1 million per year, and while the amended authority alternative may have resulted in an extra one or two staff being employed by the authority, there would have been a huge saving when compared to the cost of establishing and operating a whole new government agency.

In conclusion, the Hawkesbury River is personally an important part of Australia, as the Colless family started in Australia with a grant of land at Castlereagh, adjacent to the Castlereagh Uniting Church, on the banks of the Nepean River. That land is now largely the site of the Olympic rowing facility. During the early 1970s I lived, studied, worked and played in the Richmond-Windsor area while a student at Hawkesbury Agricultural College. From picking fruit at Bilpin, cutting turf on the river flats at Richmond, working in a dairy, carting hay from North Richmond to Kurrajong and shovelling mushroom compost somewhere where I can no longer recall, as well as an occasional burst of study, I knew that the influence of the river was involved in everything we did in those days and it remains an icon in my mind. The river is also important to many other millions of Australian workers and families. It is a river that must be preserved and looked after. I commend the bill to the House.

Mr IAN COHEN [12.57 a.m.]: The Greens support the Hawkesbury-Nepean River Bill 2009. In 2001 I opposed the then Minister Richard Amery's dissolution of the Hawkesbury-Nepean Catchment Management Trust, which was a blatant cost-cutting exercise. Hence, I am wary of the Government creating new entities when there are existing ones. Shuffling bureaucracies usually slows or stops action from being taken. The Hawkesbury-Nepean Catchment Management Trust, established in 1993 by the Hon. Kevin Rozzoli, was an effective group with representatives from the community, councils and government departments. I objected when the trust was dissolved in 2001 by this Government and its funding moved to the Department of Water and Energy. The proper care and management of the river system has suffered since then. The role of this new Office for the Hawkesbury-Nepean seems to largely replicate the functions of the old trust.

I am hopeful that the new office will do as good a job as I believe the trust was doing when it was summarily axed. The Hawkesbury-Nepean is a significant waterway in New South Wales. Its length is 470 kilometres. It supplies drinking water for the Sydney area, irrigates farmland, supports industries such as prawn farming and tourism, and is the site of leisure activities such as swimming, boating, fishing and waterskiing. The importance of this waterway and its careful management cannot be understated and so I look to this bill with some hope for a future for this magnificent river system. There can be no doubt that the Hawkesbury-Nepean and its dependent ecosystems and their components are under stress. This river system has suffered pollutants, effluent, algal blooms and invasions of exotic weeds. Added to these are the stresses placed on the river by diminished water volume—a result of the presence of dams and weirs, and the direct extraction of water for irrigation.

Recently the river volume has diminished further because of low rainfall. Since the axing of the trust the management of the river has clearly been lacking in coordination or it has become so bureaucratic in a cross-departmental jumble that little can be done in a timely manner. Balancing interests and working with communities dependent upon the river can pose a challenging task, even when all parties have the good health of the river as a common goal. Associated with the river are 23 local councils, two catchment management authorities and a host of government departments. Regulation of the river relies on layer upon layer of legislation and departmental responsibility. I appreciate that the coordination of tasks can be difficult.

The Office of the Hawkesbury-Nepean River, as constituted by the bill, is meant to have a coordinating role in enabling the river to be better managed. Whilst I have no doubt that this is a desirable outcome, as the river has suffered from ad hoc or unauthorised activities I am slightly concerned about the functions and powers of the Office of the Hawkesbury-Nepean River. One objective of the office is to "co-ordinate and assist with the implementation of management strategies in relation to the health of the Hawkesbury Nepean river system". The bill says:

The Office may liaise with public authorities, and establish arrangements or procedures, for the purposes of:

- (a) co-ordinating works and other activities to manage aquatic weeds in the Hawkesbury-Nepean river system, and
- (b) managing the implementation of any agreed arrangements between the State and the Commonwealth or local councils for the recovery of the Hawkesbury-Nepean river system.

On examination of this bill I do not know how the Office of the Hawkesbury Nepean River will ensure that councils and agencies will cooperate with the office. What muscles will the office flex, or will it rely less on coercion and more on engagement? I note that the bill does not give the office any consent authority in relation to developments along the river, nor does it give the office powers to compel the associated agencies to cooperate. The bill merely says that public authorities are "required to co-operate with the Office". If the river has suffered from bureaucratic mismanagement in the past, what is there to stop this office from being just another Byzantine government agency tied up in red tape and at the mercy of rival agencies with differing agendas? If there are complaints or dissent about the activities of the office, to whom can a person or organisation appeal? Another issue that caught my attention is the office's objective of "provision of information to the public about management strategies". This is a good idea and concept, which the Greens support. The Government must consider how to facilitate strong mechanisms to educate stakeholders and draw together multiple consultation forums, which historically have been run independently by different departments.

The bill states that a function of the Office of the Hawkesbury Nepean River is "to provide opportunities to the public to be involved in the development of management strategies in relation to the health of the Hawkesbury-Nepean river system". I have been present at many "community consultations" that pay lip service to the community and then ignore their wishes completely. The tick-a-box consultation culture has become pervasive in our planning systems. Whilst I do not suggest this will be the case, I am concerned that the bill is not clear on how public consultation will be taken into consideration in the decision-making of the office. I welcome the Minister's effort to improve the management of the Hawkesbury-Nepean, which is a significant waterway of great importance and an area that needs our urgent attention. However, I want to be assured that this new office is constituted to attain the best possible outcomes for the Hawkesbury-Nepean River.

On reading the bill I was reminded of the Riverstone West Development Plan, covering an area through which the Eastern Creek tributary runs. Coordination of government departments to ensure that the health of the river is maintained will be particularly critical if this development proceeds. I have concerns about the impacts of 17 metres of proposed fill on a flood plain that is a primary catchment of the Hawkesbury River and home to three creeks—Bells, Eastern and South creeks. This flood plain was completely inundated in the flood of 1992. I understand that commercial structures and houses will be built on top of the fill. Silting of the river by some of

the fill will inevitably occur downstream of these creeks and the health of the main river will be affected. I sincerely hope that the new office will liaise very closely with planning authorities on this proposed development and ensure that the health of the river and its flood plain is protected.

The bill represents a growing realisation that our environment management systems have become considerably fractured and disjointed, not through any fault or wrongdoing of any particular agency or department but through the lack of integration in the architecture of natural resource management and land use planning. I would expect that the Legislative Assembly Standing Committee on Natural Resource Management in current and previous inquiries has wrangled about integrating the natural resource management activities undertaken by catchment management authorities with the land use planning decisions of local councils. Professor David Farrier from the Institute for Conservation Biology and Law, University of Wollongong, has discussed in a number of publications the practical and legal barriers to harmonising the way in which local councils approve certain land uses and natural resource management programs initiated by catchment management authorities under catchment action plans.

I raise this issue because I believe the bill is, in some ways, an implicit acknowledgement of this problem. More importantly, this bill may offer a potential way forward in redressing the disjuncture between authority natural resource management activities and local council or State Government land use planning mechanisms. While we may not need to create an overarching office for all significant river systems in New South Wales, this new office may demonstrate the possibilities of expanding catchment management authority roles into land use planning processes. As the Catchment Management Authority Act is due for its five-year legislative review, it would be beneficial to monitor the effectiveness of the office and whether the catchment management authorities could adopt some of the roles that have been given to this new office. I ask the Minister for Primary Industries and the Minister for Water to consider this proposal. I commend the bill to the House.

The Hon. HENRY TSANG (Parliamentary Secretary) [1.05 a.m.], in reply: I thank honourable members for their contribution to the debate on this bill. The Hawkesbury-Nepean River is an important ecological and community asset. It is the lifeblood of greater Sydney. The river deserves renewed focus. The Government intends to provide it through the efforts of the new Office of the Hawkesbury-Nepean. The bill, by establishing the Office of the Hawkesbury-Nepean, will empower the Government and the community to manage this critical and iconic waterway. In summary, the bill has four objectives for the Office of the Hawkesbury-Nepean. Firstly, the office will improve the coordination and implementation of management strategies relating to the health of the Hawkesbury-Nepean river system. Secondly, the office will improve public access to information and advice about management strategies relating to the health of the Hawkesbury-Nepean river system. Thirdly, the office will provide increased opportunities for the public to be involved in the development of management strategies to improve the health of the Hawkesbury-Nepean river system. Lastly, the bill will provide for the office to improve the management of in-stream development in the Hawkesbury-Nepean waters.

The bill is necessary to ensure the office has a clearly defined set of objectives and functions. This means it is a discrete organisation with a core purpose. It also demonstrates to the community that the Government recognises the concerns of the community and the value the community places on the river. The bill also gives the office a clear statutory mandate to improve the health of the Hawkesbury-Nepean river system. This clear focus and the power to require cooperation from other public authorities will allow the office to cut through the complexity and deliver real river health improvements. The bill delivers on clearly identified community needs. For example, at the River Summit, held in August 2008, members of local councils called upon the Government to establish a single body to coordinate overall river management. Accordingly, the bill establishes the office as a one-stop shop to meet the needs of local councils and other stakeholders. Local members of Parliament have been long-term advocates for a single point of call for the river. In response, the bill provides for the office to work with councils to ensure improved coordination of government programs and activities.

The office has established an interim advisory group, with representation from Wollondilly, Penrith and Hawkesbury city councils and the Western Sydney Regional Organisation of Councils to assist with planning a two-day workshop. A key objective of the workshop will be to identify how the office can be effective and ensure the office delivers useful outcomes for councils and their communities in the longer term. Twenty-three councils in the Hawkesbury-Nepean catchment will be invited to the two-day workshop to contribute to the longer term functioning of the office. I seek leave to have the remainder of my speech incorporated in *Hansard*.

Leave granted.

The bill gives the office a number of important mechanisms to resolve complex issues.

Firstly, the office will have access to CEOs of all the key agencies because the bill establishes an advisory board. This board will provide a forum in which to raise and get resolutions to any ongoing problems of coordination between levels of Government or between agencies.

In addition, the bill confers functions on the office in connection with maintaining or improving the health of the Hawkesbury-Nepean river system and the management of in-stream development. It gives the office the power to require the cooperation of agencies in relation to the exercise of its functions.

Further, the Office of the Hawkesbury-Nepean may work with councils to identify ongoing concerns and feed those concerns back into broader whole-of-government work on strategic issues within planning, land use and natural resource management.

Finally, there are a number of other mechanisms within government that can be used to resolve disputes. These include direct discussions between CEOs and ministerial level negotiation.

It is important to note that the office's approach will be one of collaboration and cooperation. In the event of a dispute, then discussions will be entered into with appropriate levels of the executive and Government to seek a successful outcome.

Consultation will be an integral function of the office. There are numerous upcoming river projects and management actions which will require ongoing engagement with stakeholders.

Engagement will be varied ranging from workshops and seminars to education programs associated with specific functions and responsibilities of the office. For example, one of the first tasks of the office is a two-day workshop with stakeholders.

The office will operate as a knowledge broker providing information on Hawkesbury-Nepean river health and management strategies.

The office will also provide technical and management information to inform both the broader community and key stakeholders.

The office will also be developing a website to provide advice to the public on the activities and programs of the office.

The focus of the office will be on in-stream and riverbank works, such as jetties.

However, the office is not taking over or duplicating the existing consent authority functions of local councils or other agencies.

Its purpose is to provide a source of advice or assistance for members of the community seeking assistance. This means it is not adding another layer; rather it is helping people use the existing system.

The office will have customer service expertise and some expertise specifically in relation to in-stream developments such as jetties.

There are a small number of such developments proposed each year. There are a much larger number of other developments, such as houses, proposed each year. These will continue to be assessed by the existing consent authorities such as the Department of Planning or councils.

The office is not a consent authority but seeks to facilitate the timely processing of DAs where requested by proponents. As there is no change to the consent process there is no change to the timelines.

In summary, this new office is a great thing for the people of Greater Sydney.

It gives them the opportunity to discuss issues of concern about the river face-to-face with the decision makers.

By improved coordination and increased flow of information, the New South Wales Government, directly through the efforts of the Office of the Hawkesbury-Nepean, will give the river the fighting chance it deserves.

I commend the bill to the House.

Question—That this bill be now read a second time—put and resolved in the affirmative.

Motion agreed to.

Bill read a second time.

Leave granted to proceed to the third reading of the bill forthwith.

Third Reading

Motion by the Hon. Henry Tsang agreed to:

That this bill be now read a third time.

Bill read a third time and returned to the Legislative Assembly without amendment.

ADJOURNMENT

The Hon. TONY KELLY (Minister for Police, Minister for Lands, and Minister for Rural Affairs) [1.09 a.m.]: I move:

That this House do now adjourn.

AUTISM SERVICES FUNDING

Mr IAN COHEN [1.09 a.m.]: Late last year this House debated a motion of the Hon. Amanda Fazio on early intervention services for a child with autism. I want to pick up on some of the issues that were raised during that debate. Autism spectrum disorder [ASD] is a global epidemic. In Australia more than 1 in 100 children are affected and, if figures from the United Kingdom are an indicator, it can affect as many as 1 in 57 children. According to New South Wales figures, of which the validity is still not demonstrated, about 300 children under six are diagnosed with autism every year. Article 24 of the Convention on the Rights of Persons with Disabilities acknowledges the right of persons with disabilities to education.

Nation States who have adopted the convention, including Australia, have committed to ensuring that persons with disabilities are not excluded from the general education system on the basis of disability. They also committed to ensuring that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability. They also committed to ensuring that persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live.

A March 2009 report by the Public Schools Principals Forum on the full implementation of Australian disability standards for education in New South Wales schools highlights that a number of obstacles exist in fulfilment of disability education rights. The report found that there was no or inadequate funding for mainstream enrolees. Specifically, the report revealed that more than 2,500 disabled or special needs students in New South Wales government schools receive nil or seriously inadequate levels of funding to address their learning needs and allow them to participate effectively alongside their more able peers. One principal in the Liverpool area stated:

We have 20 students in mainstream for whom no funding is provided including one with Downs Syndrome, one with autism and one with a mild intellectual disability.

Instead of tailored education solutions and initiatives to encourage the advancement of children with autism spectrum disorder and children with other disabilities, these children are being suspended from school for displaying behaviours that are manifestations of their autism; being told they can attend school for only one or two hours per day; being placed in inappropriate environments and settings that play havoc with their sensory processing; and having to travel unacceptable distances, 1½ hours each way, just to get to school. As disappointing as the significant funding and institutional deficiencies are, I want to highlight how community-based support organisations unfairly have to fill the gap that the New South Wales Government has left.

One parent-driven service based in Fairfield, the Autism Advisory and Support Service, has confirmed the reality of what New South Wales principals found in their review of disability education needs, specifically in relation to children with autism spectrum disorder. The Autism Advisory and Support Service is a self-help service created and run by parents of children with autism spectrum disorder, together with the support of professionals and specialists within the field, and provides an outreach service to families. The Autism Advisory and Support Service provides families, carers and service providers with unbiased and up-to-date information, professional advice and referral, as well as practical help and support. Although initially set up to assist families within the Fairfield, Liverpool and Bankstown local government areas, the Autism Advisory and Support Service now supports families from all over Sydney, including families of culturally and linguistically diverse backgrounds.

One of the great initiatives of the Autism Advisory and Support Service is the establishment of a community house for families and children with autism. For families of children with autism, who are often left isolated by the lack of governmental support services, to have access to a collective space with a library, therapy room, barbecue area and sensory garden is great testament to the strength and commitment of the parents. The Autism Advisory and Support Service also runs a playgroup in partnership with university students from the University of Western Sydney Campbelltown School of Medicine, the Medicine in Context Program and local TAFEs to give real work experience with children with autism and their families.

While community groups such as the Autism Advisory and Support Service are doing such amazing work, the New South Wales Government is simply not pulling its weight. Teachers and aides need more training to assist them in providing educational outcomes for students with autism spectrum disorder and other disabilities. We need specialised units in schools to assist autism spectrum disorder and disabled students regardless of their location. I want to finish with a thought from Autism Advisory and Support Service President Grace Fava:

Most children with Autism can learn the skills to fulfil their potentials and integrate into society, gain meaningful employment, pay taxes and start families of their own. They will be the leaders, carers and policy makers of the future when those of today need help.

We must stop looking at the provision of disability services as a cost burden on community and look at it as a significant social investment in the future.

WOMEN IN LOCAL GOVERNMENT

The Hon. PENNY SHARPE (Parliamentary Secretary) [1.14 a.m.]: It is often said that local government is about roads, rates and rubbish, but over recent decades it has evolved to be so much more. Local councils are responsible for the look and feel of our communities through our neighbourhoods and our town centres. They are on the front line of maintaining and sustaining our built and natural environments. Information is power, and through our local libraries local government is sharing that power with anyone who walks in the door. Local councils are responsible for tourism promotion and regional promotion, and contribute greatly to the economic prosperity of local areas. Local councils support and celebrate the diversity of our local communities through the design and use of public spaces and through community events and cultural planning.

Local councils provide support for our communities from childhood to old age. They can be the difference between simply a place to live and a local community that feels connected and safe. Local councils are also the engine room of innovation in community consultation. A local council's greatest strength is in finding solutions to local problems, and the problems that confront our communities need every bit of help they can find. No stone should remain unturned. How can we draw on all the available talents that exist within our communities to provide local councils with the right mix of skills, talents and experiences to solve these problems? I do not pretend to have all the answers, but a good start would be to elect more women to local councils across the State.

Tonight I speak about the Ministers' Awards for Women in Local Government. The awards were established last year by the former Minister for Local Government and the Minister for Women. The awards acknowledge the contribution of women to local government in New South Wales. The awards celebrate not just the women who make a significant contribution to local Government in New South Wales as elected representatives but also the women who work in our local councils across the State as staff. Our local governments are integral to our local communities. These awards recognise the input of women into our communities in making them more responsive and more representative of our whole population. They highlight the important work of talented individuals at a local government level.

The awards also provide an opportunity to reflect more broadly on the work of all women who contribute to our local governments and communities on all levels. Just under two weeks ago Anna Bligh became the first woman elected Premier of an Australian State. It was only at the end of 2007 that Australia had its first female Acting Prime Minister. I mention these things not just to highlight the importance of Anna Bligh's victory but to highlight the under-representation of women in politics, including in local government. As members may be aware, I served as a councillor on Marrickville Council until last year. During my time at Marrickville Council we had a woman general manager. Having women in senior positions in local government is still, unfortunately, very rare. Despite the fact that women make up about half of our population, only 22 per cent of mayors and 27 per cent of local government councillors are women, and only 5 per cent of general managers and 24 per cent of senior staff in New South Wales councils are women. In 2009 these figures are unacceptable.

I recognise that there are structural barriers that prevent women from participating as elected representatives or at higher levels of management. But I also acknowledge that councils and government have come a long way in making local government environments more supportive towards women. It is essential for us all to keep the goal of increasing women's participation in local government as a key priority. That is why the Government's Joint Ministerial Advisory Council on Women in Local Government is so important. The

advisory council will be overseeing the implementation of two action plans: to increase women's representation among senior staff and as elected representatives. I congratulate the Minister for Local Government and Minister for Women for their dedication to this initiative.

It is fitting that the Ministers' Awards for Women in Local Government were presented by the Minister for Local Government and Minister for Women, two women who served as councillors before entering this Parliament. Their experience gives a unique perspective on the importance of women's participation in local Government and is why they bring a personal commitment to developing initiatives to increase women's participation in local government. I congratulate the 42 women who were nominated for this year's awards. The two elected representatives who won the awards were Councillor Tania Mihailuk, Mayor of Bankstown City Council, who received the award for metropolitan elected representative for her community leadership in multicultural relations, particularly the initiatives she developed following the Cronulla riots; and Councillor Sue Whelan of Queanbeyan City Council, who won the award for regional/rural elected representative for her consistent contribution to local government and her community over a number of years.

Ms Leanne Barnes, Group Manager, Customer Service and Community Development, at Bega Valley Shire Council, in my duty electorate of Bega, won the regional/rural staff member award for her sustained focus on reconciliation in her community. Ms Penny Holloway, General Manager, North Sydney Council, which serves another of my duty electorates in Willoughby, won the award for metropolitan staff member for her efforts in the areas of the environment and sustainability and for increasing the participation of women in local government. I pass on my congratulations to those four outstanding women and I also thank them. It is because of women like these, who dedicate themselves to serving their local communities, that other women are inspired to stand for election and strive for senior management roles. I know that without the inspiration of women who came before me in local government I would not have taken that first step to seek election to council. I hope that these women, recognised as winners of this year's Ministers' Awards for Women in Local Government, will inspire many more young girls and women to serve their communities. We will all be better for it.

PUBLIC HOUSING MAINTENANCE

The Hon. GREG PEARCE [1.19 a.m.]: Tonight I wish to draw the attention of the House to the lack of commitment by this Government to service delivery, particularly in relation to public housing and the Government's failure to provide adequate maintenance to deal with the backlog in public housing. Part of the reason I wanted to draw honourable members' attention to this matter tonight is a memo that has come to my attention from the acting general manager of the Greater Western Sydney Division of Housing New South Wales in relation to maintenance charges. This memo is dated 26 September 2008.

The memo begins by stating, "Currently the division's 2008-09 expenditure on repairs and maintenance is running well ahead of budget." It goes on to say, "If the trend continues we will be well over budget by the end of the financial year." Then the memo sets out some steps that the various staff, who are referred to as "colleagues", should take in relation to maintenance inquiries from public housing tenants. It states that all delegations to raise work orders were withdrawn and that there is an exception for urgent boarding up of vacant houses where essential to prevent vandalism.

The memo then goes on to outline the process that the officers of Housing New South Wales should undertake. It helpfully states that if a tenant happens to be in the office raising an issue about maintenance the staff should direct the tenant to a telephone in the office to ring Housing's maintenance people. It goes on to state that if there is no phone in the office but there is a standard phone booth nearby the staff should dial 13 15 71 for the tenant and allow the tenant to complete the call themselves. I would have thought that is as close to being fobbed off as one could imagine. The memo states further that any work that a team identifies to bring an occupied property to a clean, safe and habitable condition that cannot be deferred to future planned works programs is to be referred to the asset operations team via email. In other words, fob it off.

This is a very important issue because the Government has no real commitment to dealing with the maintenance backlog that has built up during its term of office, notwithstanding the fact that a very considerable amount of money is spent on maintenance of public housing. Last year it was some \$224 million. This year it has been reduced to about \$220 million. The backlog itself is the subject of considerable concern. Housing New South Wales' annual report for 2008 is open about the issue. On page 159 in small letters, under note 28 to the accounts, it discloses that as at 30 June 2008 the maintenance backlog was assessed at \$647.5 million. It helpfully goes on to state that that is a marginal—a very interesting word—increase over the 30 June 2007 maintenance backlog estimate of \$612 million.

Instead of the maintenance backlog being addressed it is actually getting worse, by 6 per cent in that financial year. This is not just a matter than I am concerned about; it was raised by the Auditor-General in his most recent report of 2008. He notes the same amount of money and states that in 2007-08 Housing completed maintenance works on 26,000 properties but that Housing forecasts removal of the substantive maintenance backlog will still take another seven or eight years. He notes that the removal of that maintenance backlog was originally forecast to be completed by 2011-12.

There is no commitment to deal with that. Yet Premier Rees claimed in December that he had ordered the Government to bring forward 10 years worth of upgrades. It is extraordinary to think he wants to bring forward 10 years worth of upgrades because he has allowed only \$220 million to do that. Given that the current budget is \$220 million a year, I fail to see how that amount is going to cover 10 years worth of work, although I am sure the Premier would be able to explain his maths if he had the opportunity. This is a very important matter. As the alternative Government the Coalition cares about the delivery of services to the people of New South Wales. The Government must do much better over the next two years. [*Time expired.*]

NRMA PURCHASE OF THRIFTY CAR RENTAL

CAMBERWELL COALMINING PROPOSAL

Ms LEE RHIANNON [1.24 a.m.]: The activities of John Walker should be noted by this House. The former managing director of Thrifty once ran a company for Mitsubishi Motors, which owned 80 per cent of Thrifty. Initially Walker tried a management buyout of Thrifty. When he could not get enough support for his proposal he bought 100 per cent of the company from Mitsubishi in a \$30-million deal, and then sold 75 per cent to the NRMA in 2006. In April 2006 a memo drafted for the NRMA's board stated, "Walker has negotiated an exclusive right to buy Thrifty from Mitsubishi on what are considered favourable terms." These included Mitsubishi writing off \$22 million in debt. It was agreed that the NRMA would acquire 75 per cent of Thrifty for \$9.8 million while Mr Walker would keep 25 per cent for \$200,000.

What was not made public at the time was that the NRMA had the right to buy out Walker's 25 per cent equity stake at any time one year after concluding the deal at an independently determined value with a floor price of \$2 million. Walker had a right to put his 25 per cent stake to the NRMA at any time after three years from completion on similar terms. Walker was the chief executive officer of Liverpool council during the saga of the disastrous Oasis project. I understand that the NRMA became aware that the Thrifty business was in financial trouble at least as early as the middle of 2008. It has been accused of failing to disclose this clearly to members at its annual general meeting in November 2008.

It seems the NRMA began an investigation into Thrifty's accounts mid 2008. It described this in a statement to the *Sydney Morning Herald* as a "team of investigative accountants" poring through Thrifty's books late last year. A reliable insider has said that up to 30 accountants were involved and took an interest in franchises acquired by Thrifty in the period after August 2006, when the NRMA became involved with Walker as a partner in the business. The NRMA has still not yet revealed the results of the accountants' investigation. This is worrying. The NRMA said in a statement:

In the final quarter of that financial year 07-08, the board of Thrifty became concerned about cash flows in the business and immediately took action to assess the full financial position of the company. Consequent upon the initial investigation, the NRMA-appointed directors on the board of Thrifty raised their concerns with the board of NRMA, following which it was jointly agreed that NRMA would install its own financial team into Thrifty.

Walker left as managing director soon after and resigned as a director of Thrifty in mid-December 2008. So far the board has refused to explain why Walker was bought out of the business by the NRMA for \$1—yes \$1—despite the fact that the NRMA had previously committed to buying him out for at least \$2 million.

Searching questions need to be asked and answered about the manner and timing of Walker's actions. Why did the former chief executive officer of Thrifty, John Walker, sell his share of the business for only \$1? If the NRMA had any concerns about any wrongdoing by Walker, have the Federal police or the Australian Securities and Investments Commission been informed? The NRMA board members each now receive a minimum of \$100,000 including superannuation. Is it true that the board has not met since December 2008? Is it true that no NRMA business has been reviewed by the board since November 2008? Is the NRMA board trying to cover up any wrongdoing by the former chief executive officer of Thrifty? Is there any truth to the rumour that Walker was buying up franchises in Victoria for inflated prices and getting secret commissions? Is there any truth to the rumour that Walker had been involved in a scheme whereby he was skimming a fee on vehicles in

the Thrifty fleet purchased and sold? If the former chief executive officer of Thrifty, Walker, was involved in any wrongdoing, were any other NRMA directors also involved in similar wrongdoing in their roles as Thrifty directors? NRMA members deserve an explanation and, indeed, the public deserve answers.

Ashton Coal is looking to complete its plans for two new open-cut areas opposite the tiny village of Camberwell, south of the New England Highway. The company has already bought about 35 of the 50 village residences on which it has made offers. Mrs Wendy Bowman, a 75-year-old resident, is the last substantial landowner in the area, which is being slowly swallowed by open-cut mining. Mrs Bowman does not want to sell her property until mining giants or the State Government pledge \$2 million for a study on the effects of coalmining on the Upper Hunter communities. She has said that she feared the new open-cut mines would force out the remaining residents.

Ashton Coal has argued the mine has no health effects on the community. The Department of Planning said in December 2008 that it would commission an independent study of the cumulative effects of mining on Camberwell. Mrs Bowman has welcomed the study. She has also called for an Upper Hunter-wide examination of the health effects of mining and for the Department of Environment and Climate Change to move two real-time quality monitors from the Lower Hunter to the Upper Hunter. Mrs Bowman's stand is commendable in light of the known facts about the impact of mining on health. Her request should be granted. Mrs Bowman stated that she did not want to be responsible for wrecking the whole village. She said she would ignore any offers until the effects of mining on the region are known. [*Time expired.*]

CANTERBURY MUNICIPALITY 130TH ANNIVERSARY

The Hon. KAYEE GRIFFIN [1.29 p.m.]: Tonight I acknowledge the 130th anniversary of the incorporation of Canterbury municipality in 1879. Over the past 130 years the local government area has seen many changes. Despite the boundaries remaining virtually intact from the original incorporation, today the landscape is different. The first land grant in this area was made in 1793 to Reverend Richard Johnson who named the land Canterbury Vale. In the years following, as transport links increased and employment opportunities arose, many people moved to the Canterbury area. Local residents petitioned the State Government and, despite opposition, the Municipality of Canterbury was proclaimed on 17 March 1879.

At the time of incorporation the municipality covered 2,896 hectares and had a population of around 800 residents. This was a very small base to levy rates in order to pay for services such as roads, bridges and waste collection. Roads were poor, not having been surveyed or aligned, and footpaths were non-existent. In the 1880s the Sydney metropolis experienced remarkable growth in urban development and the completion of the railway line in 1895 led to the area becoming heavily populated. Today Canterbury City Council remains one of the larger councils in the Sydney metropolitan area. At the 2001 census, 48 per cent of Canterbury's residents were born overseas. Known as the city of cultural diversity, the city of Canterbury is now a bustling multicultural hub, with residents representing over 130 nationalities. The council workforce and the elected members reflect the multicultural nature of Canterbury's population.

Over the years one of the most pleasing changes has been the expansion of outdoor recreational facilities. Despite being just 17 kilometres south-west of Sydney's central business district, the city of the Canterbury has a range of excellent outdoor recreational facilities. Historically, lands set aside for public recreation generally were maintained by the government of the day. However, when municipalities were incorporated they became recognised as the most appropriate authorities to maintain these areas under the Public Parks Act 1854. Since the council's inception the provision of open space for recreational use has been a priority. *Change and Challenge—a History of the Municipality of Canterbury NSW* written by F. A. Larcombe in 1979 refers to this issue:

From a cursory glance at a map showing the extent of Canterbury's 775 acres of open space one may conclude that the Municipality is well endowed but according to recognised town planning standards, it is actually deficient. The standard, seven acres for 1000 of population, requires Canterbury to have a minimum of 910 acres of open space. The council has been pursuing a consistent policy to make up the deficiency by purchasing properties for conversion into open space.

During the first century of its existence Canterbury City Council strove to acquire further lands for recreational purposes. In the past 30 years council has made it a priority to provide additional open space and recreational facilities for its population. I would like to make special mention of three of the parks and recreation areas in the Canterbury district and acknowledge the contribution of succeeding councils and staff in ensuring access to those excellent facilities. Wiley Park was created after local businessman John Valentine Wiley bequeathed 20 acres of land to Canterbury council for use as a public park or recreation ground following his death in 1895.

During the Great Depression unemployment schemes saw the construction of a new pavilion and cycling arena on this land, which for many years became the home of the Lakemba Cycling Club and the Bankstown Sports Club. In recent years ponds and gardens have been built and maintained as passive recreation. The Bicentennial Amphitheatre, opened in 1988, has the capacity to seat 2,500 people. This amphitheatre is a wonderful community asset and is home to many cultural and community events such as Carols in the Park. Wiley Park is a great facility for local residents and is well utilised by local families seven days a week.

Gough Whitlam Park in Undercliffe is another wonderful outdoor recreation area for Canterbury residents. Originally used for many years as storage place for the Department of Works, building was once prohibited on this land due to pollution. Despite its history, development of this property in recent years has resulted in high-quality sporting and recreational facilities. Gough Whitlam Park is situated on a sprawling area of land along Cooks River surrounded by landscaped gardens, cycle tracks and footpaths. Shade cloths, barbecue facilities, play equipment and sporting fields ensure that this park is an extremely well utilised local facility.

Salt Pan Creek Recreation Area, Salt Pan Creek Wetlands, is another area that has been developed in recent years. This site has seen a wonderful transformation over the past few decades and has come a long way from its origins as the former council tip. Unfit to be built on and plagued by pollution issues, this site has undergone dramatic regeneration and has been transformed into vibrant and interactive parklands. It has been the goal of both council and residents to redevelop this site. The planning process has involved broad consultation over the years and I think the results are a credit to the people of Riverwood and to Canterbury City Council. Once again I congratulate the council on celebrating its 130 years of incorporation. [*Time expired.*]

REMOTE WATER WATCHER

The Hon. RICK COLLESS [1.34 a.m.]: Tonight I advise the House about an extremely innovative young man by the name of Alex Newmarch. Alex addressed a meeting of the Inverell branch of The Nationals last week. He told the meeting he was there to talk to us about a dream he turned into reality for his year 12 Higher School Certificate design and technology major design project. Alex told us he had two goals for his Higher School Certificate final year. One was to captain the school rugby team and the other was to have his design and technology major project on display at the Powerhouse Museum in Sydney as one of the top 25 most outstanding major projects of the year 2008.

He and his group were given the opportunity to design and construct anything of their own choice while following a professional level industrial design process by proposing ideas, exploring the need, creating a criteria of success, budgeting and creating time and action plans. They also had to predict resources, research, construct, experiment, test and finally evaluate their project. Alex was living on the family farm, a 2,000-hectare property situated between Glen Innes and Inverell, running cattle and 10,000 merino sheep. One of Alex's daily tasks was to check the water troughs—a system of 15 troughs, five tanks and 30 kilometres of pipeline with water pumped from a bore. As any farmer would know, leaks, sticking or stock-abused float valves resulting in overflowing troughs or empty troughs and thirsty stock usually happen while the farmer is away from the farm. Water is gold to the rural industry and everybody is doing all they can to save water so Alex decided that if security of the rural water system is so important it needed a security system.

As with all the younger generation, Alex is technology literate and understands the use of mobile phones and electronics much better than those of us of more mature years. Alex thought along the general lines of a water security system based on sending, from a remote location, a text message to a mobile phone to let the farm manager know what the status of the water troughs was, removing the need to manually inspect the troughs each day. A survey was sent to over 20 different farmers living in different regions and climates around Australia to gauge interest in such a device. Many interviews with businesses and companies and extensive Internet research identified a strong demand for his idea as there was nothing like it on the market at the time.

This apparent demand was a huge motivational booster, which encouraged Alex to seek the components needed to make a prototype. Four months later Alex had the electronic components he needed to make the device, and after seeking some professional assistance to put the electronics together, he tested his invention on a water trough that was exposed to cattle and horses. When there was an overflow or when the trough was too low Alex was alerted on his personal mobile phone, and further testing for longer distances proved there were no problems. Alex was ecstatic with the functionality of the device.

Between Higher School Certificate trial exams Alex entered the Land Farm Invention of the Year Competition at Ag-Quip in Gunnedah. The device was now called the Remote Water Watcher and Alex

submitted a provisional patent to protect his invention. Alex was unable to attend Ag-Quip because of his trial exams, but his family attended and demonstrated the Remote Water Watcher on his behalf. The day after his maths exam his phone was ringing regularly with people at Ag-Quip wanting more information about where they could buy it. Alex won the competition at Ag-Quip and was entered in the final at the Orange Field Days, where he was awarded a podium finish against a strong national field of finalists.

His invention also won a place in the top 25 designs in the Higher School Certificate in a field of 3,700 and is now on display in the Powerhouse Museum, where it will remain until the end of April. Alex is continuing with his Remote Water Watcher, and has further plans to expand it to include monitoring capacity for tanks, dams, rivers, bores, and other electronic farm devices such as electric fences and pumps, and to control them via mobile phone SMS commands. It is very encouraging to know that Australia's future is in such good hands. I am sure all honourable members join with me in congratulating Alex Newmarch on the fantastic achievement of inventing a most practicable and useful device for on-farm use in New South Wales.

Question—That this House do now adjourn—put and resolved in the affirmative.

Motion agreed to.

The House adjourned at 1.39 a.m. until Tuesday 5 May 2009 at 2.30 p.m.
