The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Industrial Relations, Vice President of the Executive Council) [5.10 p.m.]: 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 purpose of the Courts and Crimes Legislation Amendment Bill 2009 is to make miscellaneous amendments to courts and crimes related legislation. The bill is part of the Government's regular legislative review and monitoring program. The bill will amend a number of Acts to improve the efficiency and operation of courts and tribunals. The bill will also make minor amendments to a number of Acts relating to statutory bodies within the Attorney General's portfolio. I will now outline each of the amendments in turn. Schedule 1 contains amendments of Acts relating to eligible judges. Under a number of Acts, there are provisions to designate certain judges of the Supreme Court as eligible judges for the purposes of exercising a power as persona designata—that is, in their personal capacity rather than as a judge of the court.

The types of tasks judges undertake in this capacity include the issuing of certain warrants and the declaration of criminal organisations. The eligible judge provisions were originally introduced into the then Listening Devices Act in 1996 on the advice of the then Solicitor General. The amendments were considered appropriate in light of the High Court's decision in *Kable v Director of Public Prosecutions*, which cast doubt upon the ability of the New South Wales Parliament to confer certain functions on the Supreme Court. The existing provisions provide for the appointment of eligible judges in similar terms, with each Act requiring the consent of the relevant judge and a declaration by the Attorney General. The judge may revoke their consent and the Attorney may revoke any declaration.

From the introduction of the eligible judge provisions in the Listening Devices Act in 1996—now the Surveillance Devices Act 2007—through to the creation of similar provisions in the Law Enforcement and National Security (Assumed Identities) Act 1998, Law Enforcement (Powers and Responsibilities) Act 2002, and Terrorism (Police Powers) Act 2002, there were no objections to the role of the Attorney General in the appointment of judges to carry out these functions. Following the introduction of the provisions in the Crimes (Criminal Organisations Control) Act 2009, there has been some speculation that the existing provisions could give rise to at least the appearance of an infringement upon judicial independence due to the ability of the Attorney General to revoke declarations of his own accord. The Attorney General has never exercised his discretion either to reject a nomination or to independently revoke one, and it was never intended, and has never been used, to provide the Attorney General with such a deliberative role in determining which judges should exercise these functions.

As such, it is appropriate to amend the provisions in the various Acts to reflect the practice that the Attorney General has no role in vetting these appointments. The bill accordingly revokes the power of the Attorney General to revoke the declaration of an eligible judge and provides instead for the automatic revocation of the declaration if the Supreme Court judge revokes his or her consent, resigns or the Chief Justice of the Supreme Court advises the Attorney General that the declaration should not continue. The bill also puts beyond doubt that the selection of eligible judges to exercise any particular function under the Act is not one by the Attorney General or other Minister nor is the exercise of the functions of an eligible judge one subject to the control or direction of the Attorney General or relevant Minister. The references to eligible judge in the case of the Surveillance Devices Act extend to eligible magistrates. I now turn to the amendments contained in schedule 2 to the bill.

Schedule 2.1 contains amendments to section 22A of the Bail Act 1978, which sets out the test to be applied by a court in determining whether to refuse to hear a further application for bail by an accused person. In 2007, section 22A was amended to limit the circumstances in which a person could make multiple applications for bail. At the time of introducing the amendment, it was said:

The changes are necessary to guard against unnecessary, repeated bail applications that serve only to inflict further anguish upon victims.

It was further said:

The changes will also prevent what is known as 'magistrate shopping'—the process of going from magistrate to magistrate, or judge to judge, with hope of obtaining a different outcome.

These policy goals remain valid. However, it has become apparent that there has been significant misapplication of the section, which has coincided with an increase in the number of people being remanded in custody. The revised test contained in the Courts and Crimes Legislation Amendment Bill 2009 substantially replicates current section 22A, but with an important difference: any ambiguity that might have developed around the requirement that facts and circumstances be "new" in the current section 22A has been removed. Any relevant facts and circumstances that have previously not been brought to the attention of the court are grounds for a further application for bail. The court need not consider whether those facts or circumstances justify the grant of bail before deciding whether to hear the application for bail.

Some examples of relevant facts and circumstances that could justify a further bail application could include: the presentation of a report prepared by Juvenile Justice; the presentation of any report or document prepared by a

government or non-government agency or expert containing data relevant to the circumstances of the applicant or facts not previously brought to the attention of the court; the availability of persons to act as sureties or to supervise the applicant in some way; the availability of a place of residence; the availability of a rehabilitation centre or program; the availability of a sum of money, or an increased sum of money for surety purposes; a delay in the progress of the proceedings; a change in the health or mental state of the applicant; a change in circumstances of a dependant or family member of the applicant; the withdrawal of charges or the finalisation of other matters before the court; or a significant change in the strength or the nature of the case against the applicant.

What an accused cannot do is re-apply for bail simply because he or she happens to be in court that day, or because a "sympathetic" judge is sitting, or, in the most despicable of circumstance, because he or she wants to harass the victim. The Law Society of New South Wales has indicated its support for this amendment, describing it as "a step in the right direction". However, the society has suggested that more needs to be done; specifically that young people charged with criminal offences should be exempt from the requirements of section 22A.

This approach was considered by the Government in detail and ultimately rejected for a number of reasons, including the following. First, excluding young people undermines the policy of protecting victims from the stresses of repeat, unnecessary bail applications. Nobody would suggest that a young person should, merely because of his or her age, be allowed to make applications that are a waste of time and place stress on victims. Second, excluding young people undermines the policy of preventing judge "shopping". Again, an alleged criminal's age does not justify him or her manipulating the administration of justice. Third, the usual reason advanced for the need to exclude young people from section 22A is that children, by virtue of the limitations of their age and circumstances, are unable to put adequate instructions to their lawyers on the first occasion they appear, resulting in bail applications that fail because of a lack of information being provided, which in turn prevents second applications from being made.

These amendments make abundantly clear that in this situation a second application can be made when the young person is able to provide more complete instructions, and so this reason for excluding young persons falls away. The revised section therefore preserves the important policy goals of protecting victims and stopping judge "shopping", while ensuring that those who should be granted bail are not denied bail because of procedural hurdles.

Schedule 2.5 to the bill amends the Children's Court Act 1987 to enable a Local Court magistrate to exercise the jurisdiction of the Children's Court without being appointed as a children' magistrate. A local court magistrate will be able to exercise the jurisdiction of the Children's Court when authorised to do so by the President of the Children's Court and the Chief Magistrate. The amendment is necessary because an old 1992 proclamation dealing with Local Court magistrates exercising Children's Court jurisdiction is now out of date. The amendment to the Children's Court Act is strongly supported by both the President of the Children's Court and the Chief Magistrate. As a result of the amendments to the Children's Court Act, the bill also makes consequential amendments to the Children and Young Persons (Care and Protection) Act 1998, the Children (Detention Centres) Act 1987, and the Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009.

Schedules 2.6 and 2.11 to the bill amend the Civil Procedure Act 2005 and the Industrial Relations Act 1996 respectively, to enable the Civil Procedure Act and Uniform Civil Procedure Rules to be applied in civil proceedings in the Industrial Relations Commission. The application of the Civil Procedure Act and Uniform Civil Procedure Rules is consistent with Government efforts to increase the efficiency of the court system and to promote consistency in procedures across jurisdictions where appropriate. The amendments have the strong support of the President of the Industrial Relations Commission. The President will be a member of the Uniform Rules Committee, or he may nominate a judicial member of the commission to represent him on the committee.

Schedule 2.7 to the bill amends the Confiscation of Proceeds of Crime Act 1989 to make it clear that the power to issue search warrants under division 1 of part 3 of the Act, which relates to search powers, is exercisable by an authorised officer within the meaning of the Law Enforcement (Powers and Responsibilities) Act 2002.

Schedule 2.8 amends the Crimes (Criminal Organisations Control) Act 2009. Earlier this year, the Government passed the Crimes (Criminal Organisations Control) Act in order to disrupt and dismantle criminal gangs that actively threaten public order in this State. Since the commencement of the Act, New South Wales police have been working tirelessly through initiatives such as Operation Raptor to investigate and prosecute those involved in organised criminal groups engaged in illegal activity. In doing so, and in reviewing their powers under the Act, a number of issues have arisen regarding provisions of the Act that could be tightened in order to assist police law enforcement activity in this area.

The bill therefore contains some minor amendments that will assist police in the enforcement of these laws. The bill clarifies that control orders can be issued against persons who, although they may say they are no longer members, continue to be involved with these criminal groups. One purpose of the Act was to break up these gangs and disrupt their ability to conduct organised crime. From this perspective, genuine resignations from such gangs is a desired outcome of the legislation, and this amendment does not seek to jeopardise that outcome.

Police were concerned, however, to ensure that criminals who "pretend" to resign from a gang, and thus try to avoid coming within the scope of the Act, but nevertheless continue to associate with the gang and engage in organised criminal activity, will still be caught by the laws. Police expressed concern that where a person who is a member of a declared organisation asserts that they are no longer a member, it may not be possible to seek a control order against the person under section 19 of the Act. The current definition of "member" under the Act includes "a person who is treated by the organisation or persons who belong to the organisation, in some way, as if he or she belonged to the organisation". This definition is likely to cover people who falsely assert that they are no longer members of an organisation, although it necessitates proving that they are still treated as a member of the organisation by other members of the group even though they have officially resigned. The amendment will mean that involvement with group members by a former member will be enough, and ensures that just "handing in your colours" will not prevent police enforcing the Act.

New South Wales police have also raised concerns that persons targeted under the Act are likely to be uncooperative, or actively avoid being served with notices under the Act to avoid being caught by its provisions. As a result, the bill contains new powers for police to request identification particulars from a person who needs to be served with an interim control order and furthermore to detain such a person for a reasonable period, and no longer than two hours, in order to effect service where that person refuses to remain in one place long enough for service to be effected. There will be an offence of refusing to provide identification or providing a false identification in such circumstances. The bill also contains a similar power allowing police to request identification particulars from anyone suspected of committing an association offence under the Act.

The bill clarifies the ability of police to apply for alternative methods of service of an interim control order, provided all reasonable steps have been taken to personally serve the order. Interim control orders do not take effect until they have been served upon the controlled member, and must be served within 28 days. This amendment will clarify that police need not wait until the end of the 28 days before applying for substituted service. Finally, the bill creates an additional offence applicable to persons who are the subject of a control order of associating on three or more occasions within a three-month period with other controlled members, carrying a maximum penalty of three years imprisonment.

The Crimes (Criminal Organisations Control) Act already contains an offence of association applicable to controlled members, which carries a penalty of up to two years imprisonment for a first offence, and an offence for subsequent associations carrying a maximum penalty of five years imprisonment. However, the latter is applicable only where the person already has a conviction for the first-time association offence. This amendment will better equip police to bring charges against individuals who do not have a prior conviction for an association offence but flout the laws by continuing their association with other controlled members. These amendments will ensure that police have the powers they need to dismantle criminal gangs in New South Wales.

Schedule 2.9 to the bill amends the Criminal Procedure Act 1986 to enable the Industrial Registrar to make orders commencing summary proceedings with respect to offences that may be dealt with by the President or a judicial member of the Industrial Relations Commission. The Industrial Relations Commission will take over the criminal jurisdiction of the Industrial Magistrates Court upon the commencement of the Industrial Relations Amendment (Jurisdiction of the Industrial Relations Commission) Act 2009. The amendment contained in the present bill will ensure that when the Industrial Relations Commission assumes responsibility for this additional jurisdiction, the criminal proceedings before the commission will be as simple and efficient as possible.

Schedule 2.10 to the bill amends the Evidence (Audio and Audio Visual Links) Act 1998 to enable all employees of the New South Wales Police Force, not just sworn officers, to give corroborative evidence by audio and audiovisual link. The amendment is consistent with Government efforts to increase the efficiency of the criminal justice system through the use of technology where appropriate.

Schedule 2.12 to the bill amends the Law Enforcement (Powers and Responsibilities) Act 2002 to: firstly, remove a superfluous definition of authorised officer in section 46(1) of the Act; and, secondly, to make it clear that the eligible applicant for a covert search warrant need not intend to personally execute the warrant.

Schedule 2.13 to the bill amends the Legal Profession Act 2004 to put beyond doubt the power of the District Court to hear appeals against decisions of cost assessors arising under the Legal Profession Act 1987. The District Court has already been given jurisdiction to hear appeals against decisions of cost assessors arising under the Legal Profession Act 2004. The amendment will ensure that all such appeals are heard by the same court.

Schedule 2.14 to the bill makes two amendments to section 25 of the Local Court Act 2007, which sets out the composition of the Local Court Rules Committee. First, section 25 will be amended to enable the Chief Magistrate to appoint any officer of the Local Court to the Local Court Rule Committee. Currently, the Chief Magistrate may appoint only a Local Court Registrar to the rule committee. There may be other officers of the Local Court who could bring relevant experience and expertise to the Committee. Second, section 25 will be amended to provide that the Minister need appoint a person as a member to the Local Court Rule Committee only if the Minister thinks it appropriate to do so. This will align the position of the Local Court Rule Committee with that of the District Court Rule Committee.