Legislative Council (2016-05-04)
Classification: Bills

CRIMES (SERIOUS CRIME PREVENTION ORDERS) BILL 2016
CRIMINAL LEGISLATION AMENDMENT (ORGANISED CRIME AND PUBLIC SAFETY) BILL 2016

Second Reading

The Hon. DAVID CLARKE (15:51): I move:

T hat these bills be now read a second time.

The Government is pleased to introduce the Crimes (Serious Crime Prevention Orders) Bill 2016 and the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016. The purpose of these bills is to deliver on the Government's election commitment to introduce tough new powers to give police the upper hand in the fight against serious crime. These powers include United Kingdom-style serious crime prevention orders to disrupt the activities of serious criminals. Public safety orders will also prevent people from going to certain places where they are likely to present a serious risk to public safety.

Serious and organised crime affects our community, economy and way of life. The effects of these crimes can be felt across the community, whether through investment scams, cyber attacks, clandestine drug laboratories in suburban areas or acts of violence between criminal groups on our streets. Serious and organised crime also has a broader impact on the Australian economy. The Australian Crime Commission [ACC] conservatively estimates that serious and organised crime costs Australia in excess of $15 billion every year. However, the actual figure is likely to be much higher. Operationally, the NSW Police Force is working effectively with Commonwealth bodies via the National Anti-Gang Taskforce and other joint operations.

Within New South Wales Strike Forces Talon and Raptor have been effective in curbing gun and organised crime, arresting more than 4,400 persons and seizing more than 1,000 firearms. This Government has already responded to the growing concern of organised crime by creating a modernised consorting offence that has been upheld by the High Court. It has created new offences that target the activities of criminal groups, including an offence of participating in the activities of a criminal group, punishable by five years imprisonment, and has introduced offences targeting those that direct the activities of criminal groups punishable by up to 15 years imprisonment.

The New South Wales Government has also created a new aggravated offence for shooting at a dwelling in the context of organised criminal activity, punishable by up to 16 years imprisonment. Other effective measures include amendments to enhance firearm prohibition orders as well as amendments to the Restricted Premises Act 1943 to increase police capacity to disrupt, prevent and detect organised crime through increased penalties and search and seizure provisions. The new powers in these bills build on these reforms to ensure that law enforcement agencies continue to respond quickly and forcefully to the organised crime threat.

Under this new package of reforms, the bills will introduce serious crime prevention orders to restrict the activities of persons or businesses that are involved in serious crime; allow senior police to issue temporary public safety orders to prevent people from attending places or events where they are expected to engage in violence or present a serious threat to public safety or security; improve our ability to confiscate the assets of serious criminals; and enhance money laundering offences of dealing with the proceeds of crime.

I now turn to the detail of the Crimes (Serious Crime Prevention Orders) Bill 2016. This bill allows the Supreme Court and District Court to make serious crime prevention orders against persons or corporations when sought by eligible applicants to prevent, restrict or disrupt involvement by certain persons in serious crime-related activities and terrorism offences. These reforms have adopted some aspects of the United Kingdom's serious crime prevention order provisions in the Serious Crime Act 2007, United Kingdom, and adapted them to suit the New South Wales legislative framework.

The reforms will allow the court to make an order against a person on the application of the Director of Public Prosecutions, the Crime Commission or the Commissioner of Police which may place certain requirements or restrictions on that person if there are reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting the person's involvement in serious crime. Clauses 3 and 4 of the bill define specific words and expressions that are used in the proposed Act. The bill defines an eligible applicant to clarify that only the New South Wales Crime Commission, the Director of Public

Prosecutions or the Commissioner of Police can apply to the appropriate court for a serious crime prevention order.

The definition of "appropriate court" clarifies that an order made post-conviction can only be made by the District Court or Supreme Court and an order made pre-conviction can only be made by the Supreme Court. The term "serious criminal offence" has the same meaning as in the Criminal Assets Recovery Act 1990, which includes offences such as prescribed drug trafficking offences under the Drug Misuse and Trafficking Act 1985 or an offence that is punishable by imprisonment for five years or more and involves theft, fraud, obtaining financial benefit from the crime of another, money laundering, extortion, violence, bribery, corruption, harbouring criminals, blackmail, or obtaining or offering a secret commission, as examples.

The term "serious crime related activity" is defined to mean anything done by a person that was at the time a serious criminal offence whether or not the person has been charged with the offence or, if charged, whether or not the person has been tried, acquitted or convicted. Clause 4 goes on to define when a person is "involved in serious crime related activity". This includes where the person has engaged in serious crime-related activity, or where the person has engaged in conduct that has facilitated or is likely to facilitate their own engagement in serious crime-related activity or that of another person.

Clause 5 enables the appropriate court, on the application of an eligible applicant, to make a serious crime prevention order against a person aged 18 years or older or against a corporation if the court is satisfied that either the person has been convicted of a serious criminal offence or the person has been involved in serious crime−related activity. The court, in making the order, must be satisfied that there are reasonable grounds to believe that the making of the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime-related activities. Safeguards and procedural fairness have been preserved in these provisions. The applicant must serve the order by means of personal service at least 14 days before the hearing date for the application.

The person against whom a serious crime prevention order is sought, and any other person whose interests may be affected by the making of the order, can appear at the hearing of the application and make submissions to the court in relation to that applicat ion. Importantly, clause 5 (5) provides that the court may admit and take into account hearsay evidence if the court is satisfied that the evidence is from a reliable source and is of probative value.

However, the evidence must be served on the person ag ainst whom the order is sought prior to its admission in the hearing. Clause 6 outlines the requirements of a serious crime prevention order. An order can contain such prohibitions, restrictions, requirements and other provisions as the court considers app ropriate for the purpose of protecting the public by preventing, restricting or disrupting the person's involvement in serious crime-related activities. This could include restrictions in relation to an individual's financial, property or business dealings or holdings, working arrangements, communication means, premises to which an individual has access, an individual's use of an item or an individual's travel.

The new Act provides for further safeguards for the person the subject of the order. Consistent with the United Kingdom scheme, clause 6 (2) specifies the kinds of provisions that a serious crime prevention order cannot contain, such as those requiring the person to answer questions or provide information orally or where the order requires the perso n to answer questions in writing or provide documents or other information that are subject to legal professional privilege. Clause 7 states that a serious crime prevention order commences when it is served on the person or on a later date specified in the order. For example, this allows an order to be served on a person when they are in custody but allows for greater flexibility in allowing the order to commence at a later date when a person is released. A serious crime prevention order cannot last for a p eriod of more than five years.

Clause 8 contains the offence provision. It is an offence to contravene the terms of the serious crime prevention order. The maximum penalty for the offence is 1,500 penalty units for a corporation, and 300 penalty units or five years imprisonment, or both, for a person. Clause 9 specifies that where a corporation is convicted of breaching an order, an application will be permitted to the Supreme Court to wind up the company. The Supreme Court may make an order to wind up a corporation where the court is satisfied that the corporation has been convicted of breaching the order, that there are no further avenues of appeal available to the corporation, and it is in the public interest and just and equitable for the corporation t o be wound up. As required under the Corporations Agreement 2002, the New South Wales Government has obtained the relevant approvals to introduce this provision to displace the relevant provisions of the Corporations Act 2001.

Similarly, clause 10 enables an eligible applicant to apply to the Supreme Court for a compulsory dissolution order requiring the dissolution of a partnership where that partnership has been convicted of

breaching a serious crime prevention order and it is in the public interest and just and equitable for the partnership to be dissolved. Clause 11 provides for a right of appeal against a decision of the relevant court in the making of a serious crime prevention order. Appeals can be made by the person the subject of the order and the applicant. The Act clarifies that an appeal lies as of right on a question of law and with leave on a question of fact.

Clause 12 enables the court that made a serious crime prevention order to vary or revoke the order at any time, either on the applicati on of the applicant or the person the subject of the order. Part 3, clause 13 clarifies that proceedings for serious crime prevention orders are civil, meaning that the court must be satisfied on the balance of probabilities in determining whether to make an order. Finally, the New South Wales Government wants to ensure that these reforms operate effectively and for their intended purpose. Accordingly, the Act requires the Minister to review the Act after three years of its operation to determine whether th e policy objectives of the Act remain valid. The findings will be tabled in Parliament.

I now turn to the detail of the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016 . Schedule 1 makes amendments to the Confiscation of Procee ds of Crime Act 1989 to enable the Supreme Court to make a forfeiture order in respect of property of a person convicted of a serious criminal offence in substitution for other property that the person used in or in connection with the offence if that prop erty is not available for forfeiture. For example, this could occur where the convicted person used a car to commit an offence, however the car was owned by an innocent third party.

Schedule 2 amends the Crimes Act 1900 to recast the offence of dealing wi th property suspected of being proceeds of crime so as to adopt certain provisions of the corresponding offence in the Commonwealth Criminal Code Act 1995. The amendments create two levels of the offence of dealing with property suspected of being the proc eeds of crime, with a maximum penalty of three years imprisonment if the property is valued under $100,000 and five years imprisonment if valued at $100,000 or more. The increased penalties will provide a strong deterrent to moving criminal proceeds, which is a significant enabler of organised crime.

Drawing on the provisions in the Commonwealth Criminal Code Act 1995, the amendments also provide for a non-exhaustive list of conduct and circumstances that can constitute reasonable grounds to suspect that p roperty is the proceeds of crime. For example, this could include dealings that are structures to avoid certain reporting requirements, or dealings that involve using one or more accounts held in false names. Clause 2 of schedule 2 allows the section 193C offence to be the subject of an alternative verdict in the trial for an offence of money laundering in section 193B of the Crimes Act 1900. Schedule 2, clause 3 allows several contraventions of money laundering offences under Part 4AC of the Crimes Act 190 0 to be combined in a single charge.

Schedule 3 amends the Criminal Assets Recovery Act 1990 to enhance the Crime Commission's assets confiscation powers and provide a stronger deterrent to committing serious crime. Organised criminals who use intermediaries to distance themselves from their crimes would be key targets of this legislation. Items [1] to [3] of schedule 3 insert new definitions into the Criminal Assets Recovery Act that are consequential to the amendments. For example, "serious crime use property" is taken to mean property that was used in or in connection with a serious crime-related activity. Schedule 3 , item [8] enables the Supreme Court to make a substituted serious crime use property declaration in respect of property of a person who engaged in serious crime-related activity if the property is unavailable for forfeiture. This means that where a criminal uses property owned by another person in the commission of a serious offence the bill will allow the court to make a "substitution order".

A substitution declaration can be m ade over property that is worth the same or less than the property used to commit the crime and, if practicable, property of the same kind as the property used to commit the crime. The bill clarifies that half of the value of goods confiscated from crimina ls as crime-used property under the Criminal Assets Recovery Act will be paid into the Victims Support Fund. Schedule 4 makes consequential amendments to the Criminal Procedure Act 1986 to enable the new section 193C (1) and (2) offences of dealing with pr operty suspected of being proceeds of crime in the Crimes Act 1900 to be dealt with summarily in certain cases.

Schedule 5 amends the Law Enforcement (Powers and Responsibilities) Act 2002 to enable a senior police officer to make a public safety order to prohibit a person from being present at a public event or at premises or another area if the person's presence poses a serious risk to public safety or security. These provisions have been largely modelled on similar provisions in place in South Australia . The new section 87R enables a senior police officer to issue a public safety order on a person or class of persons if they are satisfied that their presence at a public event or premises or other area poses a serious risk to public safety or security and the order is reasonably necessary in the circumstances to mitigate this risk.

In determining whether making a public safety order is reasonably necessary, the senior police officer may take into account certain matters, such as whether the place, which i s the subject of the order, is a place of work at which the person is regularly employed, an education institution at which the person is enrolled, or a place of worship that the person regularly attends. To limit the application of the powers, the police officer will also be required to take into account the nature of the person or group and any history of behaviour that previously gave rise to a serious risk to public safety.

Further safeguards have been incorporated into the bill to clarify that a public safety order must not be issued to prevent non-violent advocacy, protest or dissent, or industrial action. A public safety order also cannot be issued to prevent a person from entering their principal place of residence. New section 87R (5) defines "serious risk to public safety or security" to mean that there is a serious risk that the presence of the person or persons might result in the death of or serious physical harm to a person or serious damage to property. This is a high threshold test to ensure that the use of public safety orders will be appropriate in the circumstances.

New section 87R (6) defines "damage" as it relates to property to include destruction of property, alteration of property that depreciates its value, and rendering the property useless or inoperative; and, in relation to an animal, injuring, wounding or killing the animal. New section 87S prescribes the requirements for the content and duration of a public safety order. The order must specify the public event or premises or other area to which it applies, and the person or class of persons to which it applies. A public safety order can last for no longer than 72 hours; however, where the order relates to an event that occurs over a period longer than 72 hours, the order would last for the duration of an event.

Safeguards have been included in new section 87R (4) to ensure that successive orders cannot be issued to circumvent the 72-hour limit; however, a public safety order may be issued for consecutive evenings, such as multiple Friday nights covering the same event. New section 87T prescribes the service and notification requirements for making or varying a public safety order. A senior police officer must personally serve a copy of the order made or varied on each person named in the order. The public safety order must be in writing and must also contain the reasons for making or varying the public safety order. However, this does not require the senior police officer to disclose any information that is considered to be criminal intelligence or other criminal information. If the person the subject of a public safety order is a child under the age of 18 years or has impaired intellectual functioning, new section 87T (2) requires the senior police officer to also serve a copy of the order on the person's parent or guardian, if it is reasonably practicable to do so. However, a failure to do so does not invalidate the order.

The bill also provides for a regulation-making power to provide for further safeguards for vulnerable persons who may be subject to a public safety order. The bill adopts the same definition of "vulnerable person" as the existing definition in the Law Enforcement (Powers and Responsibilities) Act 2002. However, new section 87T (6) also provides a mechanism for urgent public safety orders to be made. The provisions allow a senior police officer to make or vary a public safety order if satisfied that the order should become binding on the person as a matter of urgency. In this case, the senior police officer may verbally communicate the contents of the order to the person; however, a copy of the order and the required notification must be made available for collection by the person within 12 hours at a police station reasonably accessible by the person.

New section 87U provides for the variation and revocation of a public safety order. Provision is made for any senior police officer to vary or revoke a public safety order. However, an order that is originally made or varied by the Commissioner of Police can only be varied or revoked by the commissioner. New section 87U also requires the Commissioner of Police to revoke a public safety order if the commissioner becomes aware that the order was made in error or if the grounds for making the order no longer exist. The relevant safeguards are still retained, whereby any variations to the order must be personally served.

New division 3 outlines the appeals process for public safety orders. An appeal may only be made if the public safety order lasts for longer than 72 hours. New section 87W clarifies that a person can appeal the making of or a variation of an order that lasts for more than 72 hours; however, the appeal must be made before the order ceases to be in force. The provisions also clarify that the appeal does not affect the operation of the order. New section 87X provides for a mechanism for the Commissioner of Police to make an application to the Supreme Court to protect the disclosure of information that is considered to be criminal intelligence or other criminal information that has been used in connection with making or varying the public safety order. The Supreme Court may protect the disclosure of criminal intelligence information from the public and the person the subject of the order if the court considers that it is in the interests of justice to do so.

In making this decision the court may take into account certain factors regarding the effect of the disclosure of such information, including whether it would have a prejudicial effect on the prevention, investigation or prosecution of an offence, whether it may reveal the existence or identity of a confidential source of information for law enforcement purposes, or whether the disclosure might endanger a person's life

or safety. New section 87Y clarifies that an appeal to the Supreme Court will consist of merits review, which means that the court may take into account all relevant factual material and any applicable legislation or common law. New section 87ZA prescribes the offence of contravening a public safety order, which carries a maximum penalty of five years. However, this offence may also be dealt with summarily in certain cases.

New section 87ZB enables police officers to search premises or vehicle without a warrant if they have reasonable grounds to suspect that the person to whom the public safety order applies is within those premises or vehicle. The police officer may detain a vehicle for as long as is reasonably necessary to conduct a search under this section. These reforms will commence on proclamation. Time for implementation of these changes is needed to ensure that all required systems are updated and relevant training and resources are in place for the police, judiciary and legal profession. These reforms are a priority and the Government will ensure that they commence as soon as possible. The reforms contained in these bills build on the New South Wales Government's existing reforms to target serious and organised crime such as reforms to the consorting offence and firearms reforms, which have proved successful and are having a significant effect on numerous criminal groups.

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

Leave gra nted.

The measures contained in these bills provide law enforcement agencies with a more effective means of reducing serious and organised crime by targeting their business dealings and restricting their behaviour. The bills deliver on the New South Wales Government's election commitment to introduce tough new powers to give police the upper hand in the fight against organised crime. I commend the bills to the House.

The Hon. ADAM SEARLE (16:16): I lead for the Opposition in debate on the Crimes (Serious Crime Prevention Orders) Bill 2016 and the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016, which are being debated as cognate bills. The NSW Labor Opposition does not support these bills in their current form. We have serious concerns about the need for them, about the bona fides of the Government in how it has embarked on this exercise, about the far-reaching nature of the provisions, and about the lack of safeguards to protect the public and to ensure the integrity and rigour of decisions that will be made under these enactments. The Government made no effort to secure the support of the Opposition before proceeding to introduce this legislation. It is now clear beyond argument, given the controversy canvassed in the debate in the other place, that in developing the bills the ministry took no steps to consult with any of the expert bodies with knowledge and insight into this area of law and policy outside government.

However, as befits a responsible Opposition, a responsible alternative government of this State, we will engage with the serious public policy matters dealt with in the legislation and put forward sensible, carefully considered amendments that meet those concerns. The question is whether this Government has the maturity and good sense to take a bipartisan approach to the very serious issue of combating organised crime. Incredibly, this legislation proposes not one but two new systems of orders—serious crime prevention orders, and public safety orders to be issued by police. This will be in addition to orders already able to be made under other New South Wales and Commonwealth criminal laws, as well as the anti-consorting laws put in place by the O'Farrell Government.

New South Wales Labor is resolutely in support of laws to combat serious and organised crime. We have no difficulty with giving law enforcement agencies, the police and the NSW Crime Commission, the resources and the laws they need to protect the community from the scourge of criminal activity. After all, it was a Labor Government that created the NSW Crime Commission. Since the 1980s New South Wales has had two criminal asset confiscation laws—one civil based, now the Criminal Assets Recovery Act 1990, and the other conviction based, the Confiscation of Proceeds Act 1989. The process of constructing laws of this nature was commenced by a Labor Government with the Crimes Confiscation of Profits Act 1985.

In 2006, section 93T was put into the Crimes Act by a Labor Government, making it an offence for a person to participate in a criminal group. These provisions were overhauled in 2012, introducing new offences which Labor did not oppose. In 2009 the New South Wales Labor Government introduced the Crimes (Criminal Organisations Control) Act 2009 to meet the challenge posed for law enforcement bodies by bodies such as outlaw motorcycle gangs. After the High Court invalidated that legislation in Wainohu v New South Wales, Labor did not obstruct the efforts of the O'Farrell Government to enact the Crimes (Criminal Organisations Control) Act and the further amendments made in 2013. We understand, however, that that legislation has not been used by the present Government despite the hoopla and urgency that surrounded the overhaul of the legislation.

There was no consultation with legal or professional bodies, community groups or law reform agencies prior to the Government embarking on these bills. I note that the Law Society of NSW and the NSW Bar Association offer the observation that the legislation may well infringe the rule laid down by the High Court in

Kable v DPP in that it represents a contradiction to the fundamental aspects of judicial power and that judicial process has to be beyond the party of the Parliament to enact. The fact is that no evidence or case of any substance has been presented by the Government as to the inadequacy of existing laws and the criminal justice system in dealing with the issues to which the legislation is aimed. There are lots of assertions, and no doubt this legislation would be very useful for law enforcement agencies, but whether it is necessary is a different matter.

The NSW Bar Association, the Law Society of NSW, the New South Wales chapter of the International Commission of Jurists and many other relevant organisations were not consulted by the Government and are strongly opposed to the bills. One member of this Chamber said they have received a communication from the Police Association about the bills. I do not believe the New South Wales Opposition has received any communication from the Police Association, and in my brief conversation with the association it said it had not been consulted about the legislation and did not seem particularly fussed one way or another whether the legislation was enacted. I do not seek to verbal the association but usually when that body wants something it is not backwards in coming forward to either side of politics.

This legislation comes soon after this Government's anti-protest laws, which, in comparison, now seem very minor. A trend exists in this Government towards disproportionate and extraordinary laws that seriously erode the rule of law and the fundamentals of our system of legal rights and processes. For example, the ability of public safety orders to be used to crack down on all forms of protest, non-violent advocacy and even industrial disputes is a real and present danger, notwithstanding the window dressing in the second bill that is said to avert that problem. It is no wonder the Government has not yet brought into force and effected its anti-protest laws; something much more pervasive, something much more sinister, is coming down the pipeline. If the Government is serious about not wishing to impede non-violent protest, advocacy and industrial disputes it should accept our amendments to put that beyond any doubt. Where Parliament determines that authorities need unusual powers to deal with serious and pervasive issues such as organised crime or terrorism, they must be subject to judicial oversight and other checks and balances to protect against error and excesses in order to protect the community, and that is what our amendments seek to do.

I turn now to the details of the two bills. The Crimes (Serious Crime Prevention Orders) Bill provides for the making of serious crime prevention orders but goes well beyond the comparable legislation in Great Britain and Scotland. There are also fewer safeguards in the New South Wales bill than exist in the United Kingdom legislation. In New South Wales the power to seek such orders will be conferred on the Commissioner of Police and the Crime Commissioner as well as the Director of Public Prosecutions. Persons who are engaged in the front line of law enforcement, not the independent prosecutor but the policeman, will also be given the ability to make those applications. That does not happen in the United Kingdom. Under the United Kingdom model only the independent Director of Public Prosecutions of England and Wales and of Northern Ireland and the office holders of like positions, such as the Director of Serious Fraud and the Director of Revenue and Customs, may bring such an application, which is a very important distinction.

The United Kingdom model also occurs in the context of very strong domestic human rights legislation, the Human Rights Act 1998 and the European human rights framework, which comprises the Convention for the Protection of Human Rights and Fundamental Freedoms and, of course, the European Court of Human Rights, both of which provide protection for ordinary citizens. There are no comparable protections in New South Wales or Australian law. An SCPO will be able to be issued by the Supreme Court or the District Court following a conviction on the application of the Crime Commissioner, the Office of the Director of Public Prosecutions or the Commissioner of Police. The court will be able to issue the order where satisfied on the balance of probabilities that a person or business is involved in serious crime-related activity or, as I indicated, by the District or Supreme courts following a conviction for a serious offence. However, an SCPO will be able to be issued if a person is not charged with any criminal offence and even if they have been acquitted of a criminal offence, even if the fact situation supporting the SCPO is substantially the same as the criminal charge.

In the United Kingdom the guidelines for the Crown Prosecution Service make it clear that if there is evidence to support a criminal prosecution, that should be pursued. An SCPO should be pursued only where there is no real prospect of a criminal conviction. The proposed New South Wales model has no such protection, giving rise to a real risk that over time law enforcement will use the much easier civil process of an SCPO to pursue often difficult criminal trials with the need to prove matters beyond reasonable doubt. This would potentially endanger public safety and would be contrary to the public interest. Dangerously, the New South Wales bill also commits the authorities to pursue an SCPO even where a person has been acquitted of criminal charges and, as I indicated earlier, because of the prosecution guidelines this cannot occur in the United Kingdom as a matter of administrative practice; it is not in the Serious Crimes Bill 2007 but it is in the practice of the prosecution service. That safeguard does not exist in this State and that is why this legislation in its current form is so dangerous.

An SCPO would include prohibitions and requirements that a court considers appropriate to prevent, restrict or disrupt involvement by the person in a serious crime. Clause 6 provides some protections by listing things that cannot be included in an SCPO, including protection for legal professional privilege, confidential information and special protections for banking businesses, which, of course, is similar to the United Kingdom model. Importantly, there is no clear protection against self-incrimination.

There is the ability to demand things from people in writing under this legislation. For example, in both the legislation for the Independent Commission Against Corruption and the Crime Commission in cases where the issue of self-incrimination arises, a person may object to answering questions; they still have to answer but their answers then cannot be used in any criminal trial against them. It can only be used for the purposes for which the information is sought. Given that these are not criminal trial processes that we are dealing with in this legislation, there should be at least equivalent protection against the risk of self-incrimination. That is absent from the Government's package.

Mr David Shoebridge: You're such a bleeding heart, Adam.

The Hon. ADAM SEARLE: I acknowledge that interjection, but it is not true. An SCPO would last for a maximum of five years and a breach would be punishable for up to five years imprisonment and/or a fine of 300 penalty units, which is $33,000 for an individual, and 1,500 penalty points or $165,000 for a corporation. Importantly, the legislation, as it stands, contains no defence to these charges. There is no defence under either of these bills. "Serious offence" and "serious crime-related activity" are defined as they are in the Criminal Assets Recovery Act. However, this legislation goes further with an additional definition of "involved in serious crime−related activity", which captures not only the engaging in serious crime-related activity but also conduct that facilitated another person engaging in such activity and conduct that is likely to facilitate another person engaging in serious crime-related activity.

In considering an application for an SCPO a court may rely upon hearsay evidence. However, the respondent will be put on notice and served with the material. The provision that deals with hearsay evidence in this legislation clearly abrogates the existing protections against the admission of hearsay evidence. Hearsay evidence can be admitted in other trials in accordance with the terms of the Evidence Act but this abrogates those protections. It is quite clear that the intention is to remove the hearsay rule; there is no doubt about that.

I note the contribution of Mr Henskens, SC, in the other place regarding hearsay evidence. As I indicated, there were a number of exceptions to the prohibition of hearsay evidence, as he points out, but they are in the Evidence Act and they replicate the tests that evolved in the common law, with some refinements and additions. This bill abrogates the rule against hearsay evidence in a most serious way without justification. I also note the contribution of that honourable member on the subject of the nature of the orders themselves. The member for Ku-ring-gai makes his observations in the context of the most extraordinary attack on the NSW Bar Association of which both he and I are members and on his current president, Noel Hutley, SC. Such an attack is not only unwarranted but unworthy of a member of this Parliament.

I note also that the honourable member in the other place made a reference to the judgement of the English Court of Appeal Criminal Division in *R v Hancox and Another* as authority for the proposition that such orders are "not an addition or alternative form of sentence. It is not designed to punish". Perhaps he forgot the reason the court reached this view. It was not due to the terms of the legislation but the fact it is subject to the European Convention on Human Rights. Paragraph [10] of page 540 of that judgement states:

> "The necessity for orders to be proportionate also follows from the fact that they will almost inevitably engage article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 ... [The legislation not only requires the orders be made according to law but] it requires that they be proportionate: see authoritative expression in EB (Kosovo) v Secretary of State for the Home D ept [2008] 4 All ER 28 at [7]"

The legislation—the Serious Crime Act 2007 (UK)—only requires that any order be "appropriate" and be made according to law. It is the Europe-wide human rights framework that constrains the operation of that legislation to ensure—as the court put it at page 541, paragraph [10]—that "the provisions of the order must be commensurate with the risk". There is no such requirement in this legislation. As I mentioned at the outset, there is no human rights or other legal safeguard that will provide the same rigour and proportionality in any orders that are sought if the legislation is made in its current form. Intriguingly, there is no counterpart in the SCPO regime proposed to clause 87R (2) (e), (f) and (g) which will apply to the public safety order regime. It is there for the public safety order regime as an important safeguard but it is not present in the SCPOs. I am looking forward to the Government's answer on that.

Clause 11 provides for a right of appeal to the Court of Appeal on a point of law but a restricted appeal on fact. As it would be an appeal from a discretionary decision the scope of such appeal rights are of course very narrow. An applicant has to establish that the judge made an error in the exercise of his or her discretion in accordance with the rules laid down in *House v The King*, which is a very narrow and difficult appeal right. Where a company is convicted of breaching an order, an application may be made to the Supreme Court to wind up the company if the applicant considers that it is in the public interest to do so. The Supreme Court may make an order to wind up a company where the company has been convicted and it is just and equitable to do so. We have no objections to that.

The Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016 is a more serious and sinister piece of work. It amends a number of other Acts. The Opposition is concerned only with schedule 5, which makes amendments to the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW). The amendments to the Law Enforcement (Powers and Responsibilities) Act will permit a senior police officer, defined as the rank of inspector or above—and I note that an inspector, I think, is the lowest rank of commissioned police officer in New South Wales—to issue a public safety order preventing a person from attending a place or event for a limited period if the officer is satisfied they would pose a serious risk to public safety or security. They are lifted from the equivalent South Australian laws, the Serious and Organised Crime Control Act 2008, part 5 of section 23, but without the safeguards found in that legislation.

However, while a SCPO requires someone to have engaged in serious criminal activity, there is a very low threshold for a person to be made subject to a PSO; only the satisfaction of the relevant police officer that a person's presence at a particular location and time would pose a serious risk to public safe and or security—but this is widely defined to cover anything from property damage to the serious injury or death of a person. It has a very wide scope but a very low threshold. When dealing with what it takes to satisfy an officer, one could look at the High Court decision in *George v Rockett* in 1990. It is quite clear that "the assent of belief is given on more slender evidence than proof". It is a very low threshold both as to the level of satisfaction needed for a police officer and the danger that will trigger the ability to order a PSO.

A PSO can last for up to 72 hours but where the order relates to an event that occurs over a period longer than 72 hours, the order will last for the duration of the event. If an order lasts for more than 72 hours, a person subject to it can appeal the decision to a single judge of the Supreme Court: If the order is for less than 72 hours, there is no capacity for any review or challenge to the order. There is no right to be heard before any order is made. Not only is there no capacity to approach the court, on the face of the legislation there is not even the capacity for a more senior officer to review the appropriateness of the order.

However, there is provision to issue multiple orders for a series of events, such as consecutive Saturday nights, which appears to provide a way to bypass the time restriction without engaging the appeal rights. In fact, there is nothing to prevent consecutive 72 hours public safety orders being placed on a person, one after the other, week in, week out, indefinitely, as long as there are separate and distinct orders, and no capacity for this to be reviewed by a court or any other body.

While a proposed SCPO can apply only to persons aged 18 or over, a PSO can apply to persons aged under 18 years and to persons with impaired intellectual functioning. I refer of course to clause 87T (2). This is pretty low even by the standards of the Coalition parties. In his second reading speech the police Minister claimed it as a protection for non-violent advocacy protest assent or industrial action in the legislation found in clause 87R (3) and other places. However, the drafting makes it clear that such a protection rests on a police officer's belief that these are likely to be the primary purpose of a person's presence at a particular location. If the officer believes that the primary purpose is for a different purpose, an order may still be made in accordance with clause 87R, endangering the capability of other law-abiding citizens to conduct a non-violent protest advocacy or indeed industrial disputes.

I note the excellent and high-quality submissions made by the NSW Law Society, the Society of Labor Lawyers, the Council for Civil Liberties and of course that radical, left-wing outfit—and I use the term sarcastically—the NSW Bar Association. I urge all honourable members to read and reflect on the contents of those submissions, which I will not read because I note honourable members in debate in the other place did so at great length. There is insufficient time here to do justice to their arguments and the material they provide. It should give this House pause for thought. Yes, let us give the Crime Commission and the police the tools to combat serious and organised crime, but let us do so with proper safeguards.

I serve on the parliamentary oversight committee for the NSW Crime Commission, among other bodies, and I note that it is quite clear that what we see here in the legislation is not what was originally conceived for public safety orders. The safeguards contained in the overseas counterpart are absent here so something clearly has been lost in the translation in terms of the serious crime prevention orders.

In particular, the New South Wales Bar Association is of the view that the bill confers very broad and far-reaching powers on the police and creates a real danger of arbitrary and excessive interference with the liberty and freedoms of persons in this State for a number of reasons, some of which I have outlined. I will touch on some that I have not yet outlined. Because there is no applicant for a public safety order, there is no testing of or contradiction of the material relied upon by the senior police officer in making a PSO and there is no opportunity for the person to be heard. A PSO may be made in relation to children and people with impaired intellectual functioning. The bill is silent as to what might constitute a class of persons for the purpose of the power to make a PSO. The concept of an area to which a PSO can apply is also not defined and is unconfined. There is no upper limit on the duration of a public safety order. In many cases the person the subject of an order will have no means of knowing the basis upon which the senior police officer has reached the satisfaction required by 87R.

While there is a right of appeal to the Supreme Court in relation to a PSO, as I indicated, that is a fairly illusory right because almost no PSOs longer than 72 hours will be made. The Bar Association submission contains a range of other observations, as does the Law Society submission, and members should familiarise themselves with those observations. One point is common to views of the legal expert bodies and that is that the constitutional validity of aspects of the bills must be regarded as doubtful. This is because, in the case of a PSO, the Supreme Court is required to stand in the shoes of the original decision-maker, a senior police officer, and make what the court considers to be the correct and preferable decision. That is a non-judicial function that is substantially incompatible with the functions of the Supreme Court of a State. This brings to mind not only the reasoning of the High Court in Kable but also in the judgement striking down the original New South Wales anti-bikie legislation in Wainohu. In this bill the Supreme Court is enlisted in implementing the decisions of the executive in proceedings in which there is an inherent lack of fairness between the parties and in which the commissioner retains a level of control.

I note that while the Minister for Justice and Police seeks to assure the Parliament that there are no problems with the constitutional validity of the proposals he does not set out any basis upon which we might derive that comfort. Given the very cogent reasoning provided by the New South Wales Bar Association, there must be real doubt about the validity of the proposed power to make public safety orders in its applications to individuals or groups that are exercising their implied constitutional freedom of communication about government and political matters, notwithstanding the content and operation of the proposed section 87R (3) (a). These observations are also made by the Bar Association and other bodies in relation to the proposed serious crime prevention order regime. I will not touch on the aspects of the legislation with which the Opposition has no difficulties.

I will now address the speech in reply given in the other place by the parliamentary author of the bills, the Deputy Premier and Minister for Justice and Police, Mr Troy Grant, MP. While acknowledging the concerns that have been raised about whether there are sufficient safeguards in the bills, he said:

> The Attorney General's contribution should go a significant way to … allaying concerns …

Sadly, having read the Attorney General's contribution, I must say that the reverse is the case. This is a very sad Attorney General. It gives me no pleasure to say it, but she does not have the confidence of either the legal profession or the judiciary. The contribution she made to the debate in the other place may disclose why this is so. Her contribution signally failed to address the serious shortcomings in the legislation outlined by the expert legal bodies or in the debate in the other place. Furthermore, the office has been fundamentally compromised by being subsumed into the Department of Justice. In all previous governments, new law enforcement measures would be subject to the scrutiny of an alternative expert agency. The creative tension at the very heart of all previous Government policy on law and justice, whether we are discussing police measures being critiqued by the former Attorney General's Department or new law reform measures being challenged by the NSW Police Force and the police ministry, has now gone. The Attorney General is the junior Minister in the agency, which may explain a lot about the content of the bills and the lack of safeguards.

I return to the speech in reply by the Deputy Premier. He was critical of my colleague in the other place the member for Charlestown for her contribution and her request for examples of where the orders proposed in the bills are necessary. He indicated that his office had supplied me and my colleague Mr Guy Zangari, MP, shadow Minister for Justice and Police, with those details when he briefed us. I had thought, perhaps foolishly, that the information supplied in the context of that briefing was confidential. We respected that confidence. But apparently, according to the Deputy Premier, there was no confidentiality. In that case, I am happy to inform this House that the examples given in connection with the public safety orders were entirely hypothetical. We had asked for some real-life examples, even if anonymous, of where the authorities believed that PSOs were necessary. We were provided with only hypothetical examples of where they may be able to be used. No information was supplied to us as to why, in those hypothetical examples, existing legal mechanisms available to the police or to the Crime Commission were not able to address the situation.

In connection with the serious crime prevention order regime three examples were provided, apparently from real life, and for that reason I will not outline the situations. Again, there was no information supplied as to why the existing law could not deal with those situations. I accept that these bills would make the task of the police and the Crime Commission a lot easier. But, as I indicated earlier, that is very different from saying that they are actually necessary. The Government has not discharged its burden of showing to the Parliament why this legislation is necessary. The Government has not provided any substantial basis for the measures contained in these bills other than that they would increase the powers available to the authorities.

In a democratic society that should not be a sufficient basis for sweeping new law enforcement powers, particularly those with grossly inadequate safeguards and, in our view, no real supervision by the independent courts of our State. I know that SCPOs will be made by the courts, but the basis upon which courts may do so is not sufficiently protective of the rights of individual citizens. This was strongly reinforced by the briefing we received from officials in the Department of Justice. Despite our requests, they—the subject matter experts employed in the key government department responsible—could not offer us any practical or policy rationale for the measures in the bills. The only reason being advanced by the Government, not by the public servants, is that this was a commitment made by the Government at the 2015 election.

I note that in his extraordinary attack on the New South Wales Bar Association the Deputy Premier stated that the bar had taken no interest in the policy since it was announced in March 2015. That announcement, a press release on 3 March, outlines the policy aspects now contained in the bills but fails to provide key details. No definition was provided of what would constitute a serious crime related activity, who a senior police officer would be or on what basis a PSO would be able to be issued. Nor was the fact that there would be, at least in the case of a PSO, no scrutiny provided by an independent prosecutor of the courts or that in relation to an SCPO the legal safeguards present in the United Kingdom and Scottish versions would be absent.

Let us be clear: The announcement of a policy direction in a press release is one thing, but the details of legislation are quite another. It is not unreasonable that the expert legal bodies, the Bar Association and the Law Society, would wish to be consulted on the details of such changes to the law. I note the attack on the bar by Mr Henskens, SC, for not consulting with the Government on the matter. As the President of the Bar Association, Mr Hutley, SC, noted, the association wrote to the Government on 13 April and received no response. In the letter from the bar to the Government on 2 May, attaching its submission on the public safety orders regime, that organisation again outlined its willingness to sit down and discuss with the Government its views and the reasons for them. I ask the Parliamentary Secretary: Has his Government formally responded to either communication from the Bar Association or any other organisation that has made submissions on these bills and has it met with them?

The Deputy Premier says we should take comfort from the fact that, although not in the legislation and not legally binding in the State of New South Wales, the counterpart legislation has been interpreted by the United Kingdom courts such that:

> … a serious crime prevention order must address a real risk of future offending behaviour. It must be proportionate and commensurate with that risk.

The Deputy Premier completely fails to mention, and perhaps he fails to understand, that this is not because of the terms of the law in the United Kingdom but because of the presence of both domestic and European human rights laws. The absence in this State of any such human rights framework means that a similar approach to interpreting the laws before this House would most likely not be open to the courts here. I wonder whether members opposite and the responsible Minister have a real appreciation of what they are asking Parliament to enact.

Mr David Shoebridge: What did the European Convention on Human Rights ever give the United Kingdom?

The Hon. ADAM SEARLE: I acknowledge the interjection. The Minister states that we should "be satisfied that this legislation will not be abused" but gives no basis on which we should reach this state of satisfaction. Earlier in my contribution I outlined many powers the authorities have been granted by this Parliament but which appear not to have been used. I referred also to the new consorting laws in the section 93X provisions that the Government has introduced. They have been used. The first person charged was a young man with an intellectual disability. The Ombudsman has since revealed numerous instances where the powers were used specifically in a way that the Government promised they would not be. This gives no confidence that these laws, if passed, will operate fairly, properly or as intended.

The Minister states, "The NSW Government is also confident that the legislation will withstand any constitutional challenge." Beyond this bare assertion, he provides no basis upon which this Parliament can be confident that the real constitutional concerns, raised by the bar among others, are addressed in the legislation. As I indicated earlier in my contribution, the Labor Opposition will put forward sensible, carefully considered and responsible amendments that meet each of the criticisms I have outlined of the package of bills before the House. Labor's amendments will ensure that only the Director of Public Prosecutions can apply for a serious crime prevention order. The amendments will narrow the basis upon which an SCPO can be sought and ensure that there is a common approach taken to public safety orders.

We think it ridiculous that the Government is asking the Parliament to enact two regimes of orders. There should be one regime of orders, if any. If we are going to have two regimes then they should be synchronised by requiring a similar trigger. They should have the same risk trigger not two wildly divergent risk triggers. A cynical person would draw the conclusion that the Government is presenting these two bills together—one has the veneer of court approval and due process, the SCPO legislation; and the other is a more sinister and more pervasive one, the public safety orders regime—as it hopes no-one will notice these changes. It is not actually upfront or centre; it is the last schedule in the second bill which deals substantially with an overhaul of the criminal assets confiscation regime.

Mr David Shoebridge: They are sneaking in some new police powers.

The Hon. ADAM S EARLE: They are sneaking some new police powers in. They just did not want to have a frank public debate about the merits of the matter. So we think there should be a common risk trigger for both regimes. Our amendments will also seek to remove the capacity to seek an SCPO if a person has been acquitted of a serious criminal charge if the subject matter is substantially the same. We think that in the current form it smacks of having two bites of the cherry—if the authorities cannot achieve a criminal prosecution against someone then they will proceed against them in this second way.

Mr David Shoebridge: One is a bite; the other is a sledgehammer.

The Hon. ADAM SEARLE: I acknowledge that interjection. The authorities should make a choice as to whether they wish to take a preventative approach or, if they have the evidence, to seek a criminal prosecution. There is something I think sinister and untoward in having two bites of the cherry. Our amendments will also specify that only the Supreme Court may issue serious crime prevention orders, with of course rights of appeal. We will also seek to ensure the capacity of the Supreme Court to admit hearsay evidence is the same as in any other legal proceeding but not greater.

Our amendments will also seek to remove schedule 5 from the organised crime and public safety legislation, which would allow senior police officers to issue public safety orders. We also want to ensure the protection against self-incrimination is not infringed. If the removal of schedule 5 is not agreed to by this House then the Opposition will propose further amendment to ensure that only the police commissioner or a deputy or assistant police commissioner can make a public safety order. Although the term "senior police officer" is used in the regime we do not think the class of police officer specified is senior enough. I think the rank of inspector is the lowest rank of commissioned police officer. If such powerful orders are available to be made by a police officer without court approval and any court oversight and without the ability—

Mr David Shoebridge: Prohibiting court oversight—

The Hon. ADAM SEARLE: —to have an independent judicial officer scrutinise and evaluate whether that order is proper and appropriate, and whether it has even been lawfully made, we think the rank at which a police officer can make that order should be seriously elevated. We also propose amendments that will ensure that an order is able to be made only if there is a serious risk that a person or persons will engage in or cause serious crime related activity, as will be the case in the SCPO regime. At the moment that risk to public security covers everything from property damage, although at a serious level, through to serious injury or death. We think serious crime-related activity should be the common trigger.

We also think, however, that the current definition of "serious crime-related activity" in the SCPO bill is far too broad. It does not cover just people who have engaged in it or who are likely to engage in it; as I indicated earlier, it covers people who, whether knowingly or not—and I think that is a big problem—have facilitated or may facilitate someone else engaging in serious crime-related activity, or are likely to do so. The triggers are just too low and the connection between a person and the behaviour that can be caught by the

orders is just too tenuous. We think there should be an adequate right to be heard before any public safety order is made and we think there should be proper appeal rights against the making of any order. We also believe strongly that persons aged under 18 and other vulnerable persons, including the intellectually impaired, should not be subject to a PSO. So that will also be the subject of an amendment.

The amendments will also be directed at ensuring that both bills before the House are subject to the antidiscrimination legislation and that the legislation contains proper protections for nonviolent protest, advocacy and industrial action. On that last point, we note that the police Minister claims that the protections are in the bill. But if we look at proposed sections 87R (2) (c) and 87R (3) we see that it rests upon a police officer's belief that those things are the primary reason for a person being at a particular location.

Mr David Shoebridge: An unchallengeable opinion.

The Hon. ADAM SEARLE: It is an unchallengeable and untestable assumption by a police officer. We think there should be an objective standard of protection applied so that persons who are not engaged in criminal activities of any kind may still continue to engage in lawful activities of nonviolent advocacy, protest and industrial action pursuing their industrial rights. We think the risk to those persons and those activities posed by this legislation is far greater than the Government's recent anti-protest laws, and that may well be the reason why those laws have not yet been brought into force or effect—that is, because a much more effective tool is about to be conferred upon the police. We hope the House will join with us and amend the legislation. If we do not get sufficient amendments through then we will not be able to support the legislation in its third reading stage.

Mr DAVID SHOEBRIDGE (16:56): What happens when you have a liberal democracy but you do not have a bill of rights? What happens when you have a traditional liberal democracy but then you have a reactionary, right-wing government that decides to put the police Minister in charge of the justice ministry and makes the Attorney General play second fiddle to the police Minister by actually putting the police Minister in a position of ascendancy in the Cabinet? What happens in those circumstances? Well, we now know what happens in those circumstances: we find the New South Wales Parliament is right there. It is considering the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016 and the Crimes (Serious Crime Prevention Orders) Bill 2016.

On behalf of The Greens I stand in this place to oppose these bills. They are an affront to our democracy and an affront to our traditions as a liberal democracy. This place has traditionally respected the freedoms that will be trashed by these bills. I will start by discussing some of the critiques that have been made of these bills by organisations and institutions that, at least until the last four or five years, were always shown respect in debates in the New South Wales Parliament. I am not talking about fringe organisations that can be easily dismissed; I am talking about representations from some pretty core organisations in our society that are deeply concerned about the rule of law and that have traditionally been essential to upholding the law. This is what they have to say about these bills. The Law Society of New South Wales, in its representation on 29 April 2016, said this about these two bills:

> The proposals under the Bills appear to be an attempt to circumvent the usual protections of criminal justice procedures. In addition to our concerns that individuals who could not be said to be serious criminals could be subject to these orders (with significant criminal consequences if they are breached), the Law Society is seriously concerned that the alternate processes proposed by the Bills would see:
>
> An effect upon the balance between executive and judicial powers;
>
> The longstanding rules in relation to hearsay evidence removed;
>
> Arbitrary outcomes in respect of the confiscation of proceeds of crime;
>
> The court's discretion fettered in relation to making certain declarations about asset forfeiture;
>
> - An extraordinary expansion of police powers, where individual police officers are granted the discretion to issue "public safety orders" that restrict individual movement and carry a five year prison term for breach, without (in some circumstances) any avenue for appeal and;
> - A further expansion of police powers to search and detain without warrant.
>
> The Law Socie ty considers that the extension of executive powers proposed by the Bills w ould erode longstanding rights including the presumption of innocence, the right to a fair trial, the right to property , and the right to be protected against double punishment.

The International Commission of Jurists Australia is an organisation that brings together some of the most eminent jurors, including a former Liberal Party Attorney General.

Mr Adam Searle: Liberals for lawyers.

Mr DAVID SHOEBRIDGE: Yes, Liberals for lawyers. Amongst other criticisms, it says this about the Crimes (Serious Crime Prevention Orders) Bill 2016:

> The Government should withdraw the proposed legislation enabling Serious Crime Prevention Orders to be made against individuals and corporations , as being an excessive power in the hands of police. No case has been m ade out t o extend such wide ranging restrictions on individuals and corporations.
>
> This bill, al though expressed to be preventative, wi ll in fact be punitive in function. There has been no prior discussion with legal organisations or civil community groups before setting up a regime that may be used as an alternative to the criminal justice system with its traditional safeguards but may be used in addition to, or subsequent to convi ction or acquittal or the service of an offender's term in prison.

It continues:

> There should be an inquiry through the NSW Law Reform Commission as to the necessity of such legislation and to consider what safeguards may be imposed to protect persons, cor porations or unincorporated associations who may be affected by the proposed legislation.

The New South Wales Bar Association has come out publicly and critiqued these laws. This may surprise members of this Chamber but the Bar Association is populated by and large by fairly conservative individuals whose politics, as a general rule, would be closer to that of the Government. In relation to the Crimes (Serious Crime Prevention Orders) Bill 2016 the Bar Association states:

> The bill provides an open- ended sc heme for the making of serious crime prevention orders which potentially endangers the liberties of tens of thousands of NSW citizens. The potential for unwarranted interference in individuals' liberties and their day to day lives is extreme.
>
> The Bill crea tes broad new powers which can be used to interfere in the liberty and privacy of persons, and to restrict their freedom of movement, expression, communication, and assembly. The powers are not subject to necessary legal constraints or appropriate and adeq uate judicial oversight, and in many cases basic rules of evidence are circumvented.

The Bar Association then enumerates many issues that it has with the bills. I have received representations from many different sources but one that struck me was from the Hunter Street Chambers—a group of barristers in Newcastle; I will not name them all. On reading the bills they were moved to make separate representation in the name of their chambers asking for sanity to prevail in the New South Wales Parliament. They are people who are used to interpreting the law and consider that the basic principles of criminal justice will be respected by the Parliament but they were bemused with the prospect that the Parliament might be ramming this legislation through without seriously considering the consequences. In relation to the Crimes (Serious Crime Prevention Orders) Bill 2016 they say it delivers a lower standard of justice. Amongst other criticisms they state:

> Firstly, and most importantly, the Bill creates a de facto means of criminalising behaviour and punishing individuals that undercuts and devalues the fundamental principles of our existing criminal justice system. It does this simply by lowering the bar for police and prosecuting agencies.

Together these bills create a personalised, subjective and separate set of criminal laws for people who are targeted by the police. The police can target somebody and then craft a whole set of criminal laws specifically at that person whether or not he or she has engaged in criminal activity. Those who breach the individually crafted prohibitions that have been made by the police, and potentially rubber stamped by the court, can go to jail for up to five years. Because of the very serious concerns that have been raised from across a broad group of key stakeholders, the Parliament should at least pause and think: Do we really want to go down this path and water down such fundamental presumptions and liberties? Therefore, I move an amendment to the motion as follows:

> That the question be amended by omitting "be now read a second time" and inserting instead "be referred to the Standing Committee on Law Justice for inquiry and report by Friday 12 August 2016 " .

The Hon. Duncan Gay: Haven't you got anything else?

Mr DAVID SHOEBRIDGE: I note the interjection from the Hon. Duncan Gay.

The Hon. Duncan Gay: You do it every time, the standard end-of-the-world comment: "We need to refer it to a committee".

Mr DAVID SHOEBRIDGE: Haven't you got something else? If the Minister had had the courage to make a presentation on behalf of his party about why these appalling laws do not have any place on the statute books of New South Wales I might give his interjection more credit. But he has not and no doubt he will not come forward and defend these laws, as he should as a Minister. If he thinks they are good laws he should tell us why. Has he read the bills? Does he know what they do? How on earth did these bills get through the combined party room? What is going wrong in the checks and balances in the Coalition party room that has enabled these bills to be put before the Parliament in the first place? Something is rotten in this Parliament's checks and balances for human rights.

It is absolutely rotten because time after time we see these types of laws, consorting laws, the watering down of bail laws or criminalising association being rushed through the Parliament regardless of centuries of jurisprudence that would suggest these extraordinary expansions of police powers have no place in our society or our traditions. Members of the Government call themselves conservatives. These are not laws from a conservative framework. They are laws from a deeply reactionary right-wing framework that wants to give the Executive and the police more powers. They do not even care about the traditional freedom being removed by the nonsense that the Liberal Party, or the illiberal party, is now adopting.

What do these laws do? The serious crime prevention orders allow the Supreme Court pre- or post‑conviction or the District Court post-conviction to place restrictions on people or businesses that are involved in serious crime or terrorism offences. No mens rea is needed; no intention to actually engage in serious crime is required. One does not have to be committing a serious crime and can be entirely innocent to be the subject of one of these orders if the police make out a case that a person has been "involved in". A person who has rented a car or lent money to somebody unwittingly can suddenly be dragged before the courts and face five years in jail if they do not comply with the orders.

An application can be brought by the Director of Public Prosecutions, the Crime Commission or the Commissioner of Police. The Commissioner of Police can apply to the District Court and seek to impose requirements or restrictions on a person if there are reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting the person's involvement in serious crime. If that is not enough, the court can admit and take into account hearsay evidence if it believes it is reliable and relevant and the person, the subject of the order, is notified. The Leader of the Government says I have got too much time. Why are we wasting the Parliament's time with this kind of namby-pamby civil liberties stuff?

Mr Adam Searle: You mean debating laws properly?

Mr DAVID SHOEBRIDGE: That would be the other view. Passing a law that sees somebody who had no intention to be involved in criminal activity and their activity was not criminal in any way subject to a serious crime prevention order that is made against them in the Supreme Court on hearsay evidence—"He said, she said. This is what Bill said to me"—

The Hon. Duncan Gay: Point of order: I am impressed with the hearsay evidence of the member. He just made some statements about me on hearsay evidence that had no validity whatsoever.

I made some criticism earlier that he did not have anything else to put before the House except moving amendments and proposing committees. The rest of the material that he credited to my name is totally wrong.

The Hon. Shaoquett Moselmane: Is this a speech?

The Hon. Duncan Gay: It is a speech because I request if the member has any decency or legitimacy that he stops sledging me and misleading the House.

Mr DAVID SHOEBRIDGE: First, the Leader of the Government clearly does not understand hearsay evidence, which is unfortunate because allowing hearsay evidence is a key part of the bill. I suggest a lesson on the subject. Secondly, he made no reference to any standing order. I wish to simply get on with my contribution to the second reading debate.

The DEPUTY PRESIDENT (The Hon. Shayne Mallard): I ask the member to take into account the Leader of the Government's concerns. There is no point of order.

Mr DAVID SHOEBRIDGE: Serious crime-related activity, which is one of the key triggers in this bill, is defined as anything done that is a serious criminal offence even if a person is not charged, or tried and acquitted. Involvement in any such activity includes conduct that facilitates or is likely to facilitate another person engaging in serious crime. It is not about the individual's criminality; it could be about something entirely unrelated to them. As I said, they might lend or hire out a car or let a property to someone and be roped into these arrangements. Orders can be made for up to five years. Breaching them will carry a maximum penalty of 1,500 penalty units for a corporation and 300 penalty units and five years jail time for an individual.

Serious crime prevention orders can include prohibitions, restrictions, requirements and other provisions as the court considers appropriate for the purpose of protecting the public by preventing, restricting or disrupting involvement by the person in serious crime-related activities. Remember we are talking about hearsay evidence, not reliable evidence. For centuries the criminal justice system has rejected hearsay evidence as not being reliable. I suppose that is why the Government is seeking to include the balance of probabilities in the test. Apparently, orders cannot require a person to answer questions, provide information orally or breach legal professional privilege or other protected confidences. Any compelled evidence apart from those things is not admissible as evidence against that person except for the offence of contravening a serious crime prevention order. That, of course, is the entire purpose of the legislation.

Turning to public safety orders, the bill creates a new power under the Law Enforcement (Powers and Responsibilities) Act 2002 to allow a senior police officer to ban people from places or events where they are expected to present a serious threat to public safety or security. Last time Parliament met we passed deeply offensive laws that The Greens opposed which allowed the police to break up a protest. We have now come to the point where the Government does not want the protest to happen in the first place. It wants to be able to issue public safety orders to prevent people from even going to the protest.

In urgent circumstances the Government wants to allow a police inspector to simply yell across the street to somebody, "Don't go down there. I am making one of those new public safety orders." An inspector will be able to communicate orally with a person across the street to say, "I'm warning you not to go down there." If the person does not listen to the inspector and does go down there—although there is no suggestion they have ever engaged in criminal activity; they are just disobeying the officer—the Government wants to be able to put them in jail for five years. There is not so much as a pretence at court oversight of the order issued by the inspector. In fact, the court will be prohibited from reviewing such orders.

A public safety order can prohibit a person from attending a specified public event including entering or being within specified area or premises, and the order can be made if the officer is satisfied of certain things—if they get the kind of gut feeling that police officers get. If a gut feeling satisfies a police officer that a person poses a serious risk to public safety or security and they think the order is reasonable, off they will go. What is the police inspector meant to be considering when they are yelling at the person across the street or putting the order in writing? They are to consider any history of the person engaging in serious crime-related activity and if the person is a member of a declared organisation or subject to a control order. They are apparently also meant to consider the public interest in maintaining freedom to protest or engage in industrial action. No doubt they will have little regard to that, but no-one is going to test the opinion of an inspector because the merits of an order are not allowed to be tested in court.

The police officer is supposed to consider if an order would stop a person from being able to work, study or receive health care. That is not a disqualifying ground; they just have to take it into account. They are to consider if the content of the order is proportionate to the degree of risk posed and the extent to which the order will mitigate risk to public safety or security when compared with other measures they might reasonably find available. All of those things merely have to be considered to the satisfaction of a police officer and then they can make the order. There need be no suggestion of criminal activity. If someone breaches an order issued orally or in writing by a police inspector they can go to jail for up to five years.

Together these laws create some sort of de facto criminal law but not to the criminal standard, not beyond reasonable doubt. They allow people to be prosecuted on the balance of probabilities. One commentator has said that the serious crime prevention bill appears to enable a kind of Clayton's conviction—a conviction when police are not in a position to actually secure a conviction. The commentator said that by sidestepping the criminal standard of proof and rules of evidence this legislation would enable police to secure significant court sanctions even in cases where they have nothing to rely upon but hearsay evidence. If the police lose a prosecution and do not like the criminal standard they can have another go.

Under the civil standard they can include all of the hearsay evidence and get their serious crime prevention order.

About public safety orders, we note that the Bar Association has said that no case has been made as to why the powers to make public safety orders should be conferred on the police at all, let alone in circumstances where it is recognised that the rates of crime in New South Wales are declining. There are a legion of concerns about public safety orders that empower police to order people not to go places and that prohibit court oversight. It is incomprehensible how we have got to this place so quickly. I come back to where I started my contribution: this is what happens when a right-wing government puts the police Minister in charge of the justice ministry.

Under this Government the police Minister is in a senior position to the Attorney General. The Attorney General has become the police Minister's poodle and has been effectively silenced in the debate. The Attorney General is the junior Minister and what the police Minister demands the police Minister gets. The Government has got it all wrong. The first law officer in this State should be the Attorney General, who should check to see if our essential liberties are being infringed, but the Attorney General has been effectively nullified. The police have asked, the police have got. Citizens beware: this is the State of New South Wales under the Baird Government.

Reverend the Hon. FRED NILE (17:16): On behalf of the Christian Democratic Party I support the Crimes (Serious Crime Prevention Orders) Bill 2016 and the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016. The bills will restrict the activities of persons or businesses that are involved in serious crime. Earlier a comment was made about the Police Association. An email I have received from the Police Association of NSW regarding these bills reads:

> Dear Reverend Nile,
>
> As discussed this morning the Police Association of New South Wales has been briefed regarding the above bills. We support the initiatives as they will provide police with another tool to deal with serious crimes and, more importantly, enable our members to take preventative actions that will stop crime before it happens. We believe these bills make the community safer and there are ample safeguards. We seek your support for the bills and ask they be passed as soon as possible without amendment. Thanking you in anticipation,
>
> Kind regards,
>
> Peter Remfrey
>
> Secretary
>
> Police Association of New South Wales.

I always seek the advice of the Police Association on matters that affect police officers in this State. In this case I have received confirmation of their support for these bills, which I have just read. These are preventative bills. Members know what happened to a senior employee of the NSW Police Force at Parramatta. He was not a sworn officer but had served loyally in the administration for many years. When going home from the police headquarters at Parramatta he was shot viciously by a teenage Muslim boy.

Curtis Cheng may have been alive today if this legislation had been in place. Mr David Shoebridge has attacked the provisions in the bill which are designed to prevent that type of offence, namely, discussion between one or more teenagers with key people involved in the Islamic State of Iraq and al-Sham [ISIS] terrorist organisation in the Middle East about proposed crimes to be carried out in Sydney. For example, members will remember that ISIS was encouraging young Muslim men in Sydney to do something spectacular and, in fact, carefully outlined the procedure.

It was proposed that these teenage Muslim men were to kidnap someone in Martin Place—down the road from New South Wales Parliament House—and behead them. They were then supposed to wrap the body in an ISIS flag and send a video of it around the world. This was to be done as a sign that that they could perform such a serious crime and that it could successfully reach into the corners of every nation in the world. These bills refer to "serious crime", not minor events such as shoplifting or motor vehicle theft. The Christian Democratic Party is supporting this legislation in the hope that serious crimes such as that which occurred to Curtis Cheng will be prevented.

It could happen to any member of this Parliament. The Parliament of Canada was attacked and I still believe—but I have no evidence—that Man Haron Monis, who was shot for a terrorist act in the Lindt Café, got the idea of a spectacular attack on the New South Wales Parliament House from the Canadian attack. Monis was walking up Martin Place with a sawn-off gun in his bag and a police officer patrolling Martin Place observed him to be acting suspiciously; police are trained to make such observations. When Monis noticed that he had been spotted by the police officer he ducked into the Lindt Café.

I do not believe that Monis planned to take people hostage in a coffee shop; I suspect those events unfolded accidently. He may have been going to the Channel 7 studios, which are located opposite the Lindt Café. Channel 7 had previously interviewed him. Perhaps he thought he could force them to televise his message around the world, but I think the more likely objective was Parliament House. These bills should be passed today. If the abuses referred to by the Hon. Adam Searle occur we will know about them and it will be within the power of the Parliament to review and amend the legislation. The police should be given the weapons they need to protect our society. I emphasise the use of the term "serious crime" throughout these bills.

It may be Government policy not to talk about Islamic terrorism because I cannot find a reference to it in these bills. Indeed, I am referring to it because I believe it is the hidden item behind this legislation. Perhaps the Government does not wish to dramatise it and is therefore not highlighting it, but the Christian Democratic Party is supporting the bills because of the threat of Islamic terrorism in Sydney, as occurred in Martin Place last year. The Crimes (Serious Crime Prevention Orders) Bill 2016 will create a stand-alone Act to provide for the making of serious crime prevention orders, which can be issued by the District Court or Supreme Court on the application of the NSW Crime Commission, the Office of the Director of Public Prosecutions or the Commissioner of Police. No-one would question their integrity.

A serious crime prevention order could be issued by the Supreme Court where it is satisfied on the balance of probabilities that a person or business is involved in serious crime-related activity, or by the District or Supreme courts following a conviction for a serious offence. Serious offence and serious crime-related activity would be defined in the Criminal Assets Recovery Act. A serious crime prevention order would include such prohibitions or requirements that a court considers appropriate to prevent or disrupt involvement in serious crime. That is the key to this legislation—for example, two teenage boys in Auburn who were connected via the internet with people involved with ISIS in the Middle East and information was then provided to the police. This legislation is designed to prevent or disrupt involvement in a serious crime.

Under the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016—I again emphasise the term "public safety"—the amendments to the legislation will permit a senior police officer to issue a public safety order to prevent a person from attending a place or event for a limited period if they would pose a serious risk to public safety or security. For example, fears were held that this year's Anzac Day commemorations, with the huge numbers of people who were in the city to march or to watch the parade, would be the ideal place at which to produce a bomb or a sawn-off shotgun and kill as many people as possible. Those perpetrators would then become heroes in the eyes of ISIS. This legislation is designed to prevent that from occurring. It is no good saying later that our great Police Force caught the person who let off a bomb and murdered everyone.

Earlier this week we had a bomb scare at Parliament House and we were evacuated. It turned out to be a hoax. One of the many homeless individuals who sleep around the precincts of this building was asked to move on. That person was carrying a bag. I am told, and this is hearsay, that he threw the bag into the garden and said, "There is a bomb in it." The police, under instruction from the security officers at Parliament House, had to act on that threat and evacuate Parliament House. Whilst that disrupted the activities of this Parliament, it has to be the procedure in order to prevent terrorist attacks. The bag may well have contained a bomb.

That is why we have this legislation before the House. Mr David Shoebridge was very dramatic in saying, "We never had this legislation years ago." That is because we never had this type of situation years ago. We had criminal activity but it was an orderly society. We did not have bomb threats or people shooting hostages in a coffee shop in Martin Place. Our society has changed and as a parliament we are forced to adopt legislation to deal with a real situation that now occurs in our society. It is a new situation and we have to face it. This Government to the best of its ability—and no government is perfect—has sought to design legislation that it believes will assist in preventing these types of events from occurring in the future.

The legislation talks about the confiscation of property and so on, which may be related to serious crime activity, but I see that as a secondary issue. I know that some groups are concerned about the legislation, particularly the Christian bikie group the God Squad. In Queensland the so-called bikie legislation seems to have had some extreme aspects to it and the Labor Government there is talking about repealing it. These groups have a fear that this legislation, as innocent as it sounds, may be abused by certain police against a group such as a Christian bikie group, who are only seeking to help young people. To remove their fear, I ask the Parliamentary Secretary in his reply to indicate that there is no intention in this legislation for it to be used against groups such as a Christian bike club—for example, the God Squad, who are helping young people. I do not believe their fear is justified but in my negotiations with them it would help to put their minds at rest.

We urge the House to pass the legislation and we can all observe its implementation in this State under the Minister for Justice and Police—who I believe is a very efficient Minister—and the current

Commissioner of Police, Andrew Scipione, who I am sure will ensure that there is no abuse of this legislation in any way at all. We support the two bills before the House.

The Hon. Dr PETER PHELPS (16:31): I speak in debate on the Crimes (Serious Crime Prevention Orders) Bill 2016 and the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016. I will be voting for the bills but I wish to express a number of reservations I have with the legislation. Before I get to that, it would be remiss of me not to make mention of the two previous contributions in this debate. First, Mr Shoebridge did a very good impression of Mr Shoebridge talking about any bill in this place. His outrage might seem a little more sincere if we were to put aside the fact that tomorrow he is planning to pursue a bill which would effectively remove the double jeopardy provisions of the common law. So when he talks about the grand traditions of the common law and the grand thread of common law rights within the New South Wales legal system let us not forget that this is the same person who is planning to abolish one of these core threads, the double jeopardy provisions.

Secondly, Reverend the Hon. Fred Nile suggested that the objects of this legislation may have something to do with terrorism. That is a very new suggestion, as far as I am concerned, and I think as far as anyone on the Government side is concerned. I am not sure that this has any direct relevance to terrorism or potential terrorism, but I am sure if it does the Minister will make that clear because in all the mentions we have had so far this legislation has been peculiarly related to organised crime—bikies, drugs and the like. But if it is about terrorism, then this is quite a new and interesting development which has not previously arisen. Assuming for one moment that the legislation does not have anything to do with terrorism, let us remember what it is. This is simply the latest in a whole series of amendments to the criminal law to deal with "the problem with bikies".

Let us go through what we have done in the mere five years that I have been in this place. First, we had legislation that banned gang colours, and that was going to stop the bikie menace. Then we removed the spousal immunity, which would affect the bikie menace. Then we changed the ammunition laws so bikies could not get hold of ammunition. We reintroduced the consorting laws—which I personally am strongly in favour of; I think consorting laws are very good and I differ with Mr Shoebridge in that respect quite markedly—to stop the bikies. We had the licensing of tattoo parlours to stop the bikies and to prevent them being owned by bikies. We had tighter regulation of the security industry to stop the bikies being involved in it. We had early disclosure of any defence alibis—again, a breach of the common law traditions within the law—to stop the bikies. We had the adverse inference of the right to silence change to stop the bikies—again, another undercutting of the common law tradition in this State. We re-enacted, as the Leader of the Opposition noted, the Criminal Organisations Control Act after the High Court struck down the original Act, to stop the bikies; we decided to stop the bikies by reintroducing a new Criminal Organisations Control Act.

We were going to stop the bikies with prescribed organisations legislation. We were going to stop the bikies with drug dog detection powers in Kings Cross. We were going to stop the bikies with interstate recognition of criminal organisations and now, today, we are going to stop the bikies with serious crime prevention orders. I will not go into what the NSW Bar Association had to say but its three-page briefing on the legislation makes very interesting reading and I recommend that people who are interested in this read it because the distinctions that are made between this proposed law and the United Kingdom Act are quite marked and those distinctions have not, as yet, been adequately explained.

We are told that these bills when enacted are going to be administered by executive officials in a reasonable way, and I certainly hope that that is true. Indeed, my concerns about these bills would be substantially ameliorated if I felt absolutely sure that their application as Acts would be done in a way which has been explained by the Government. However, similar assurances were given in relation to the reintroduction of the consorting laws. As I said, I supported the reintroduction of the consorting laws and I still support them because I believe they are an appropriate prophylactic against young people being brought into the world of criminality, but we were told that the consorting laws would only be applied to serious crime, to bikies and the like. But the NSW Ombudsman reported to Parliament in mid 2014 on the first 12 months of operation of the State's laws and stated that despite having been designed to combat organised crime, general duties police were the majority users of the consorting provisions at 85 per cent of the time, not detectives from specialist squads at only 11 per cent of the time.

The NSW Ombudsman reviewed 1,247 persons targeted by police for consorting.—about 7 per cent of those were children and young people aged between 13 and 17—and 40 per cent of all people subject to the consorting provisions in their first year of use were Aboriginal. I am not sure there is a great deal of Aboriginal influence within bikie gangs in New South Wales. The review also highlighted the fallacy of the law being targeted at organised crime. An analysis of the criminal histories of a select group of 604 people targeted by the laws revealed that 28 people, or 24 per cent of those who were the subject of official warnings issued by the specialist squads, had a conviction for a serious criminal offence; and 43 people, or 15 per cent

of those who were the subject of official warnings issued by the local area commands, had a conviction for a serious criminal offence. These figures highlight the lack of serious criminal activity of those being targeted by the laws.

The review raised the crucial question of what gaps, if any, the consorting provisions filled that current laws and powers did not already cover. There were already existing laws available to achieve what the consorting laws supposedly did, but senior New South Wales police still claim the laws are necessary. Those figures are quite a dramatic example of what happens when we create laws. We create laws with the best of intentions, with the hope that they will be applied perfectly by reasonable men and women in situations of obvious necessity, but that is not what happens. Every law that is created has unintended consequences.

In the case in point before us today I am concerned that comparable, unintended consequences may well happen. In this regard—I will not name the person—I refer to a senior Liberal who is also a barrister who felt the need to write to me in relation to these matters. He said:

> I am moved to write to you after being informed of a bill that has been proposed through the bar association email newsletter and then after c arrying out my own research into the proposed *Crimes (Serious Crime Prevention Orders) Bill 2016*. I have written to other liberal MPs in similar terms.
>
> I am frankly shocked and appalled that a government supposedly founded on liberal principles and a commi tment to the rule of law would entertain let alone propose such legislation.
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> That any government would propose legis l ation that enables the state (either through the police, the DPP or arguably worse the secretive and unreformed crime commission) to have o rders made that can restrict a person's liberty and curtail their basic freedoms when they have been acquitted of crimes or never even charged with a criminal offence defies credulity.
>
> It is sufficiently repugnant as a matter of principle that the bill wou ld restrict the lives of people acquitted of crimes or never even charged with a crime to be able to live as they wish in a free society, but it is made much worse by the fact that such draconian measures can be imposed based on hearsay evidence eliminatin g any protections usually extended in criminal proceedings by the rules of evidence. Moreover the fact that the standard of proof for the making of a restrictive order is the mere satisfaction of the court is further evidence of a deeply troubling bill.
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> Th e legislation undermines the entire basis and need to have a criminal justice system to determine matters on the admissible evidence proved beyond reasonable doubt as an acquittal can now result in punishment notwithstanding the notional freedom from punis hment the acquittal should have provided or that living free of a criminal charge should ordinarily provide. Furthermore the legislation will do nothing to enhance policing and investigative techniques in the state as police will have less incentive to do the job properly for a criminal trial as they will be able to bring applications to restrict a person's liberty regardless of the evidence produced against them in court.
>
> The rationale for this legis l ation (whatever it is) can only be described as dubious and unsubstantiated given we live in a state where crime statistics have consistently showed that rates of serious crime have been falling or stable across most recorded categories for nearly 10 years. The suggestion that the application of the legislation is targeted or limited in its scope only to organised and gang related crime is without foundation [as I mentioned previously] as no such limitation appears in the bill, these orders can be made against any citizen even if they have never been charged wit h a crime.
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> On occasions concerns of this kind raised by lawyers have often been dismissed as being unrepresentative of community attitudes to crime prevention or are typically pro-defence, any suggestion of that kind is without merit given the broad scope of the legislation permits the restriction of a person's daily life regardless of whether there is evidence sufficient to actually charge them with an offence. In addition I make my contribution as someone that has prosecuted, defended and worked in crimin al law policy over the past 8 years.
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> As a member of the liberal party for 15 years I have been prepared to accept legislation that cuts against ones beliefs from time to time, I can say truly for the first time that I am seriously considering leaving this party to which I have been a proud an d active member because of this disgraceful legislation.

This person, who is a senior member of the Liberal Party, might be considered to be from the progressive wing of the party. However, people within my own side of the party—senior barristers—have also expressed comparable concerns about this legislation. It does not appear to be a conservative versus libertarian viewpoint or left versus right or progressive versus conservative; it is a matter of serious concern among practitioners within the legal profession. One may well say, applying the Mandy Rice-Davies principles, "Well, you would expect them to say that, wouldn't you?" One would expect criminal defence lawyers to want a situation that is not so tough on their particular clients.

I turned then to the Legislation Review Committee's report into this bill. As members will know, the Legislation Review Committee is a joint committee with a Government majority. Its memberships is Mr Michael Johnsen, Chair, member for Upper Hunter; Mr Lee Evans, member for Heathcote; Ms Melanie

Gibbons, member for Holsworthy; Mr Alister Henskens, member for Ku-ring-gai; and the Hon. Greg Pearce, MLC. One would not say that the members of the Legislation Review Committee are necessarily weeping, bleeding heart civil libertarians willing to lie down in front of bulldozers. Generally they might be considered of a moderate, conservative bent.

Yet the Legislation Review Committee had substantial criticisms of these bills. This committee, with a Government majority, found that the Crimes (Serious Crime Prevention Orders) Bill may impact on various rights and liberties such as freedom of movement, property rights, privacy and the right to work. In relation to the Criminal Legislation Amendment (Organised Crime and Public Safety Bill) the committee found that public safety orders may impact on a person's freedom of movement and that the bill will allow a police officer to enter and search premises and vehicles without a warrant. It also found that requiring property or an interest in property to be forfeited to the State could impact on an offender's property rights and the rights of anyone with an interest in that property. This is particularly the case if the property in question was not used in connection with the relevant offence. The amended offence of dealing with property suspected of being the proceeds of crime will capture acts or omissions related to proceeds of crimes which arise from serious offences committed before these provisions commence.

I suggest a range of questions hang over these bills. I will vote for the bills, perhaps in a spirit of hope over experience that their implementation will be strictly in accordance what we have heard in the second reading speech. However, I wish to put on the record my concerns that this is something we will have to watch very closely. Moreover, I make a more general point: that is, that over a period of time we have had bill after bill after bill after bill that purports to strike at the heart of the bikie menace. My view—and it is the same view I have in relation to electoral legislation—is that patchwork quilt amendments are not effective legislation, especially when they have traduced traditional common law rights in relation to criminal matters.

For that reason I suggest that the Government take an entirely different approach where the bills that have now become Acts or amendments to existing Acts are replaced—are removed—and that the existing common law provisions effectively are reinstituted. That does not mean that I am soft on crime. I seriously urge the Deputy Premier and the Attorney General to consider a United States style Racketeer Influenced and Corrupt Organizations Act—a RICO Act. The RICO Act in New York City destroyed the top five mafia crime families. You cannot tell me that the top five mafia crime families in New York are in any way less powerful than a bunch of tattooed bearded bikies from Fairfield.

You cannot tell me that a RICO Act, properly applied in this State, could not do what all of these previous bills have sought to do. I will support these bills but I suggest that a generalised look at how we have approached this matter of organised crime should be undertaken and it certainly should be done with reference to what the 33 US states have adopted with the RICO Act, and particularly what the State of New York did when it decided to get tough on organised crime but at the same time ensured that the constitutionally enshrined rights of American citizens were not invalidated by that particular law.

The Hon. ERNEST WONG (17:49): I join my Labor colleagues in discussing this important legislation, the Crimes (Serious Crime Prevention Orders) Bill 2016 and the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016. The bills are important for many reasons. The Government's purported purpose for their introduction—that is, the prevention of serious and organised crime—is important. But it is also important to understand the potential risks to everyday Australians that could arise from the passage of these bills as they currently stand. Certainly, protecting New South Wales families and communities from serious and organised crime is a worthy intention. But if the mechanism to do so impinges dramatically on the same families and communities that one seeks to protect then that is an own goal.

Government members have speculated on whether Labor supports measures to deal with organised and serious crime. That is a question as ignorant as it is offensive. It was the Labor Party that, for 16 years, oversaw the building of the most professional, best funded, best equipped and most contemporary police force in the nation. When Labor left office, New South Wales communities were safer than they had ever been from all types of major crime. Labor understands that dealing with tough criminal challenges is difficult. There are no silver bullets or quick fixes. We must regard with great caution any attempt by the Government to get around the tough challenges by overriding longstanding community protections.

One of the potential risks with the bills as they stand is that the extraordinary new powers granted to police will become an alternative to obtaining real prosecutions, instead of assisting them. The risk, for example, with the proposed public safety order [PSO] arrangement is that, faced with the more arduous task of building the full case for arrest, charge and prosecution—which we understand is a tough slog—officers will be tempted to rely instead on the PSO system. As with many of the ideas of members opposite, it does not seem terrible at first glance but when one thinks about it for even a moment the idea looks anything but safe.

While the PSO regime might act as a bandaid in the short term, it does not remove potential offenders from our communities. It does not result in the rule of law being applied. It does not leave our communities safer. It is also a system open to abuse. It allows an infringement of freedom of movement and association that can be based solely on the opinion of one officer, with no right of appeal. With both the serious crime prevention order [SCPO] and public safety order regimes, the measures proposed in these bills extend well beyond the powers of jurisdictions that we like to compare ourselves with, such as our fellow States and the United Kingdom.

The United Kingdom model, for example, confines the SCPO power to the Director of Public Prosecutions and offers a range of judicial protections that are not mentioned in the legislation we are debating here. To those members opposite who say that this legislation is about getting serious about serious crime, I ask: Are they suggesting that the United Kingdom is not serious about it? Are they suggesting that the United Kingdom has not had good reason lately to examine its crime prevention laws? Of course it has. The Government of the United Kingdom and the Metropolitan Police understand that preventative orders like those introduced by this legislation must be balanced with the rights of individuals. Those rights are essential to promoting the community support that our police rely on to do their essential work.

As my colleagues, especially the Hon. Adam Searle, have already outlined in detail Labor's views on the bills, I will not dwell on the specifics. I support the amendments that Labor proposes to move. They will do the following: ensure that only the Director of Public Prosecutions can apply for a serious crime prevention order; narrow the basis on which an SCPO can be sought; remove the capacity to seek an SCPO if a person has been acquitted of a serious criminal charge, if the subject matter is substantially the same; ensure protection against self-incrimination; specify that only the Supreme Court may issue serious crime prevention orders, with full rights of appeal; ensure the capacity of the Supreme Court to admit hearsay evidence is the same as in any other legal proceeding, not greater; and remove schedule 5 from the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016, which allows senior police to issue public safety orders. These amendments would, if passed, mean that the legislation would do what the Government claims it does—that is, introduce new methods to improve community safety without removing community protections. I therefore commend the proposed amendments to the House.

The Hon. DANIEL MOOKHEY (17:54): Other members have detailed Labor's concerns about the sloppiest aspects of the Crimes (Serious Crime Prevention Orders) Bill 2016. I add my voice to that chorus. I will therefore address my remarks to the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016. There is a reason that, in the interest of public order, Parliament sets a high threshold for setting aside the presumption of innocence to create preventative instruments such as those proposed in this bill. The Parliament sets a high threshold to make that decision because the application of the State's coercive power prior to a point of criminal conviction is, firstly, a significant disturbance of a citizen's civil liberties. That is the simplest explanation for the Parliament's reluctance to breach that threshold.

The more complex reason is that the coercive powers of the State applied without the accountability mechanisms that are associated with the judicial branch of our Government ultimately undermine the social trust that exists between the State and its citizens and between institutions such as the police and the people that they have sworn to serve. Ultimately it results in our citizenry losing trust in institutions such as this Parliament and in our capacity to balance the competing concerns of public order and civil liberties. Far from being an abstract concern to be tossed over the bar table down the road, the loss of social trust results in the loss of public order. Parliaments that are reckless and callous and that cannot see that aspects of these bills could result in a loss of social trust commit the ultimate irony: they create the very phenomena that they then have to pass laws like this to resolve.

We ought to heed this as a warning, we ought to proceed with caution, but they are two character traits one would not associate with either the Baird Government or this legislation. The Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016 presents a policy designed to solve a problem which the Baird Government has not yet explained. It lacks the design quality that one would expect of legislation bestowing an extraordinary level of new powers on New South Wales police. It disconnects that power from all the review mechanisms that are designed to hold all forms of coercive and State power accountable. None of the features of law enforcement design that, collectively, result in discretion being exercised by multiple entities, not any one entity, are contained in the principal aspect of this bill.

To understand why the Parliament should not pass this bill in its current form, members should be aware of all the components of the argument, starting with the aspect of need. I have not noticed a mass outbreak of public disorder—the creeping rise of craziness that would require Parliament to pass a bill like this. I have not noticed a pandemic of lawlessness that is beyond the control of existing law enforcement agencies and their ability to manage it.

Of course the reason why New South Wales has enjoyed a decades-low and declining level of crime is the reforms undertaken by the last Labor Government. The fact is that the bequest of the last Labor Government to today's Baird Government was a corruption-free NSW Police Force trusted by its citizens. This Police Force had the right equipment and had had regular upgrades of its equipment. It had the right laws and it had the right leadership. All of this meant that the last Labor Government did indeed have a well- deserved reputation for being tough on crime.

Accompanying that suite of measures was an equally impactful set of approaches via things such as the Drug Court, early intervention policies and juvenile justice reform. All of this meant the last Labor Government was able to acquit itself well on the criteria of being tough on the causes of crime. That dualism has anchored the policies of this State since it was enacted by the last Labor Government. It is the reason why our State has enjoyed and indeed benefited from a strong bipartisan consensus around the core elements of this State's strategy to deal with crime.

The other reason why we have benefited from that approach is the maturity of political leadership that has been displayed. Certainly Labor governments built their policy approach on the basis of fact not hysteria. Indeed when Labor governments formed the judgement that additional laws and additional powers were necessary they presented the evidence basis and the factors that had led them to that conclusion. That approach contrasts with the way in which these pieces of legislation came about.

The fact is that the previous police Minister took what had been a hard-won bipartisan consensus on the elements of the law and order debate and traduced it out of some desire for momentary political advantage in the 2015 election. Since then, under a new police Minister, no evidence has been adduced as to exactly what are the mass levels of lawlessness that require powers like this. Instead we have had an approach where those opposite simply said, "Trust our bona fides. Trust our intent." This is a hard test to pass once we actually look at the design features of this law.

The reality is that, in addition to being a law for which no evidence has been adduced to show the problem that it is intending to solve, if we examine the substance of the bills we see that their design is poor. They are riddled with basic errors, which we would not expect to see from a first-year law student let alone from the Crown. It is important to understand the dimensions of the design flaws that this Parliament is being asked to endorse.

Let us start with the issue of the threshold. The threshold required in order to get a public safety order is exceedingly low compared to all other forms of preventative orders in New South Wales law, in the laws of other jurisdictions in the Australian Commonwealth and even in other like jurisdictions like the United Kingdom and the United States. The fact is that it would be possible to get one of these orders without having to demonstrate the same level of risk and the same level of likelihood and probability that is rooted as a protection in all other forms of like laws, upon which this is presumably modelled.

In addition, there is the issue of the scope of these public safety orders [PSO]. The fact is that these public safety orders can be made against children and against people with impaired intellectual functions. The idea that we would allow some of the most powerful and coercive aspects of this State's power to be used against some of our weakest citizens is just outrageous. On top of that, this legislation would allow such orders to be made on the basis of class—a form of collective punishment in the form of collective preventative orders. And that is of course without defining what it is that constitutes a class.

Let us not beat around the bush about how this will be used or the type of people who face this type of law being used by the police—they will be the people engaging in protests, for example, against coal seam gas. There is nothing to stop these orders being used against the knitting nanas who are currently holding a three-day vigil in front of the New South Wales Parliament. If we were to apply this type of power historically, we would find that it would have been able to be used against those who led the uprising in the Wave Hill industrial dispute 50 years ago as they clamoured for equal wages and Indigenous rights. This law is so poorly designed that it allows this concept of a class to be introduced into law without defining it. On top of that, it makes the same error in respect of geographic areas.

A level of precision is required in describing the geography of a site from which a person is prevented from entering. The legislation is so poor that it will have serious consequences if misapplied—for example, to a person's place of employment. If one of the knitting nanas happened to work around the corner from a building somewhere in the central business district then they would fall under a PSO. They would find themselves in breach and subject potentially to five years imprisonment.

A huge onus is placed on the police to exercise discretion absent the direction that would accompany the granting of such power by Parliament. This is not trivial. Not only are the police being asked to exercise tremendous discretion, there is absolutely no commitment from the Government to an accompanying level of

training for those police officers as to how they should go about issuing these types of orders and exactly what the factors are that would give rise to the circumstances in which a PSO is to be issued or granted. A government serious about the professionalism of its Police Force would not leave the police in such an ambiguous position.

The final category of design errors associated with these laws is the absence of any meaningful review mechanism at the point at which they are granted. There is no ability for a person who may find themselves subject to a PSO to test or otherwise contradict the material that a police officer relies upon in making his or her decision. There is no right of appeal for short-term PSOs. Should we find a cascading series of PSOs that lead to a long-term result there is no meaningful right to representation should one find themselves with the means and resources to go to the supreme court of New South Wales and ask for relief. Design flaws like these have real consequences, and these consequences linger long after the actual media headlines are ripped up and the papers used for wrapping fish and chips.

I have had the opportunity to visit many of the wonderful, hardworking police officers who work in this State. I recently had the opportunity to visit the Oxley Local Area Command. It is responsible for policing some of the most difficult areas in our State. I am looking forward to soon meeting with the Parramatta Local Area Command and the Newtown Local Area Command. In my previous line of work I had the opportunity to work very closely with inspectors in the roads division of the NSW Police Force. I came to admire their professionalism and to hold them in high regard for the work that they do. In addition to that, I had the opportunity to see the respect in which they are held by members of the community.

No-one should be mistakenly under the illusion that the respect in which the NSW Police Force is held is somehow accidental or a by-product of a quaint set of factors. The reality is that that trust has been hard won. It is incredibly valuable because it avoids so many other problems we see in like jurisdictions. It has become clear in other jurisdictions that a series of bad laws which have been badly designed, in breach of all the fundamental principles of law enforcement, can result in a police force losing the trust of the communities which it polices.

We should pay close attention to what has happened in the United States in the city of Chicago and we should be paying close attention to what is happening in New Orleans. These two police departments have now had to be brought under Federal jurisdiction and oversight because they have lost the social trust that makes community policing real. Those problems that the citizens of Chicago and the citizens of New Orleans are dealing with did not arise overnight. They were not the product of any one act or one omission; they were the result of a series of acts and omissions over a period of time which created the culture those cities now have to deal with. We as a Parliament ought to see this as a warning.

Because I am a friend of the NSW Police Force, I do not support this bill. Because I am a realist about crime, I do not support this bill. Because I believe the best path to high levels of public order is high levels of public trust, I do not support this bill. Labor will be moving a whole series of amendments that will replace the immature approach contained in this bill with a far more adult approach to an area that is fraught and difficult. It would be wise for all members of this House to support those amendments.

The Hon. MICK VEITCH (18:09): I speak to the Crimes (Serious Crime Prevention Orders) Bill 2016 and the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016. One simple fact tells us a lot about these bills—consultation has been limited, if not non-existent. The Government failed to consult the detail of these bills with the public, and it failed to consult with the well-regarded expert legal bodies of the State—the NSW Bar Association and the Law Society of NSW. We now know the bills are opposed by the Bar Association and the Law Society, as well as the International Commission of Jurists Australia.

It takes a seriously arrogant government to so blithely dismiss the need for consultation on legislation as significant as this, and a government severely lacking in courage that it would shirk the debate with stakeholders by completely ignoring them. As my colleague in the Legislative Assembly the shadow Attorney General put succinctly, "This is seriously flawed legislation." I think the Government knows it. Why else would it skip consultation with expert legal bodies, but to avoid the opposition it knew would follow? I have heard the Government's response that "This legislation represents an election commitment, so consultation is not required."

Mr Adam Searle: No correspondence entered into.

The Hon. MICK VEITCH: No correspondence entered into. Of course that argument might hold some water for an election commitment to upgrade a train station or fund the local sports centre, but for complex, controversial laws such as these, that is simply unacceptable. That the bills made it through Cabinet in this

form is another telling fact, and a sad one for the people of New South Wales—and that is that justice policy in this State is now being directed solely by the Minister for Police with only one perspective in mind. I am sure these endeavours are well meaning, but the unintended consequences of the sweeping expansion of government or police powers without adequate safeguards is of great concern to us all.

Unfortunately, the Attorney General, who should be representing the legal principles and safeguards on the other side of arguments concerning the restriction of citizens' liberty, plays second fiddle to the police Minister, which has led to a growing list of civil liberties being eroded without a peep. I have no doubt there are members opposite who carry concerns regarding this legislation. My advice to them is simple: Vote for Labor's amendments. As so much of the detail of the bill has been well examined by my colleagues in this Chamber and the Legislative Assembly, I will not go into great detail about each aspect of the bill.

I wish to reiterate the words of my colleague in the other place. The member for Blacktown said that no---one in this Chamber supports organised crime, and the pursuit of organised crime is of great importance. That is not up for debate. It would do the Deputy Premier some good to stop playing the tabloid headline game, where he states, "You're either with us or against us" in his efforts to simplify complex laws into a zero-sum-game, as if it is simply all-or-nothing. Labor proposes to make sensible amendments that rein in the overreach of the current legislation, not to stop authorities from pursuing organised crime.

My concerns are of a similar vein to the concerns expressed by Labor about the Government's recent anti-protest laws. Those laws sought to give increased power to police officers to control the activities of people on the basis of a reasonable suspicion alone. The bills before us today contain similar principles, such as empowering police officers to issue public safety orders which bar entry to public events or places on the suspicion of illegal activity and with no judicial oversight. Under these bills, a senior police officer will be empowered to issue an order disallowing a person from attending an event or place if the officer is satisfied that they pose a risk to public safety or security. Once again, there are no protections or safeguards for the immediate enforcement of that officer's decision—just that officer's opinion.

These bills set up a very concerning precedent: they allow an order to be made against a person who has not been convicted of an offence beyond reasonable doubt. In fact, it allows such an order to be placed on a person who has been tried and acquitted of an offence. And as long as a court believes on the far lower balance of probabilities threshold that someone has been involved in a serious criminal activity, they can be subject to one of these orders. This means that people can be effectively punished for something they are merely considered likely to have done, and hearsay evidence can be taken into account in deciding that likelihood. And the definition of "involved' is virtually limitless.

For example, the NSW Bar Association gives an example of a parent, who lends the family car to their son or daughter in good faith, could be subject to an order if their son or daughter uses the car to commit a serious offence. These are the unintended consequences of these bills, and no amount of the Deputy Premier standing up and saying, "Trust us", is going to make up for these principles being embedded in our laws. It is deeply disappointing that legal precedents in New South Wales are heading down the path of act now, ask questions later and never mind the consequences.

In addition, I was very concerned to hear that we are still waiting for the Government to provide a single real-world example of why these laws were required or where they would have made a difference to an organised crime investigation or prosecution. We should not base laws involving police powers on hypotheticals—the onus is on the Government to demonstrate a need, to provide the evidence. So far we have seen nothing on that score. That is simply incredible. In closing, I urge members to support Labor's practical amendments to bring these bills into line with sensible legal principles, and reject the overreach that these bills represent in their current form.

The Hon . SHAOQUETT MOSELMANE (18:14): I speak to the Crimes (Serious Crime Prevention Orders) Bill 2016. The supposed object of this bill is to enable the Supreme Court and the District Court to make serious crime prevention orders on the application of the Commissioner of Police, the Director of Public Prosecutions or the NSW Crime Commission so as to prevent, restrict or disrupt involvement by certain persons in serious crime-related activities. While on the surface this legislation looks and sounds like a tough approach to crime and illegal activities, certain aspects of the bill sets into motion a dangerous precedent for society as a whole.

The bill effectively puts in train two parallel laws—one for the courts, based on established principles of justice and an established legal system, and one for the police, based on mere suspicion. This bill if misapplied can effectively override certain aspects of the established legal system, a state of affairs this State should never allow. I will say a little more about this later in my contribution, but suffice it to say at this point that it is a real shame that the Liberals-Nationals who claim to represent the interest of freedom and protection

from abuse of the law are in fact using this bill for pure electoral purposes. Tough on crime wins them votes, so they think.

The reality is the mob, as one friend would say, will work them out and will see through their duplicitous opportunistic positions. How many more bills do we need to tackle bikie gangs, as the Hon. Dr Peter Phelps quite rightly said when he articulated a number of bills, yet the situation remains the same? This is yet more legislation to show that we are tough on crime. In reality, this is no more than wedge politics. If our proposed amendments fail we will vote against the bill.

The basic purpose of the serious crime prevention order is for police to take the necessary action to prevent criminal behaviour. We are all in favour of prevention of any illegal or criminal activities. But while this sounds well and good on the surface it can, if misused, allow for serious miscarriages of justice. The power to interfere in the liberty and privacy of an individual—based on mere suspicion of a potential danger the police can slap the order on an individual—as well as the ability to limit freedom of expression and assembly can lead to gross abuse of power.

No-one from the Government or the Opposition likes to criticise the police, who are doing their job as best they can. But the truth is in any organisation—the police or any department—there can be the few bad eggs who do the wrong thing. With tremendous discretion given to the police in this bill the likelihood of abuse can become very serious. In a profession such as policing—where police deal with all sorts of people on a daily basis—the potential to become confrontationist is real. It is dangerous to hand over semi-judicial powers from the judiciary to those who are tasked merely with the enforcement of the law. The NSW Bar Association in its submission regarding this bill stated:

> The NSW Bar Association opposes the Bill which effectively sets up a rival to the criminal trial system. The system proposed to be set up is contrary to the administration of criminal justice by a process of trial.

The New South Wales Bar Association is telling us that this is a rival system that is contrary to the proper criminal justice system that has been in existence for hundreds of years. The submission goes on to say:

> ... the SCPO provides a means to restrict a person's liberty where a prosecution fails, but the authorities continue to believe the acquitted (or not convicted) person poses some unidentified threat to public safety.

At this point a person may be acquitted of a crime in a court of law but may have some restrictions placed on them in the form of an order based on the suspicion of the police officer. The police are being given semi-judicial powers against the decisions of the court. It puts aside all principles of criminal law such as reasonable doubt, the balance of probabilities, mens rea, hearsay evidence and the criminal standard of proof. Those principles will play second fiddle to this new law that is being introduced without proper oversight. When one is acquitted they are acquitted. Not guilty should mean not guilty.

Legal experts including the New South Wales Bar Association and the Rule of Law Institute of Australia are saying that this legislation in its current form is bad, yet the Baird Government is flatly dismissing those professional views. There is a potential for someone who is affected by prejudicial beliefs or gut feelings to use a special order against someone who may be innocent. The bill is so loose—it has no protections, oversight or safeguards—that it could capture innocent people who have unknowing facilitated a crime. The Hon. Mick Veitch cited the example raised in the Bar Association correspondence about a father who lends the family car to his son without knowing the son will use the car to commit a serious criminal offence and who is suddenly caught by an order.

This legislation is questionable and should be treated with the utmost suspicion. It effectively sets up a rival criminal justice system that is heavily weighted in favour of those with the power to issue serious crime prevention orders. It has the potential for abuse and the powers it grants may threaten the liberty of the people of New South Wales. The case has not been justifiably made that our society is in need of laws such as these. That is why those in the know such as the Law Society of New South Wales, the International Commission of Jurists, the New South Wales Society of Labor Lawyers, the New South Wales Bar Association and the Rule of Law Institute of Australia have expressed clear concerns. This legislation requires serious amending. Otherwise it should be thoroughly rejected.

The Hon. LYNDA VOLTZ (18:22): I join my colleagues in asking the Government to consider the Opposition amendments to the Crimes (Serious Crime Prevention Orders) Bill 2016 and the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016. The problem is that there has been no serious attempt at consultation on these cognate bills. As I understand it, no consultation was held with the Police Association nor representatives of the legal profession before this bill was arbitrarily introduced. I am not surprised that the Police Association has written in support of the bill. That is not the question. The question is: Was there consultation on these bills before their drafting or introduction with either the Police Association or the legal profession?

Another question is about where these bills have come from. I would be interested to know if the bills have been introduced at the request of the police. I can see that departmental people are present, so perhaps the Parliamentary Secretary in reply can inform us about the genesis of the request. It would be enlightening to know who requested the legislation. Was it introduced on the whim of the Government? That might explain why there has been no consultation. Interestingly, the member for Ku-ring-gai stated in the other Chamber that the bills are part of the Government's election commitment and therefore do not need consultation. It appears that the member for Ku-ring-gai must be taking some lessons from Sophie Mirabella if that is his view of how to run legislative processes. He thinks that only election commitments are important and not the consultation afterwards.

Consultation on this legislation is extremely important. The Opposition believes the legislation has a number of flaws. Therefore, it will be putting forward amendments to make it workable. If the Government is serious about giving these powers to the police I urge it to consult with us over the amendments because they will make the situation workable. If the Government does not accept the amendments that will say only one thing to the people of New South Wales—that is, the Government is not serious about this legislation. If the Government were serious about these orders it would introduce this legislation in the way that similar legislation has been introduced in other jurisdictions.

For example, the Rann Labor Government introduced public safety orders in South Australia. Importantly, that Government included judicial oversight in the legislation by requiring police officers to ring a magistrate before issuing an order. A senior police officer would apply to the court for an order authorising the police officer to make a public safety order. It was just a simple phone call to a magistrate that would be followed up by an affidavit, but it put oversight into the process and gave it some rigour within the judicial system.

Similar legislation in the United Kingdom is subject to the Human Rights Act and the European Convention on Human Rights. In the United Kingdom public safety orders can only be obtained by the Director of Public Prosecutions. That is not happening in New South Wales. Nowhere else is there legislation such as this State's legislation that will rely on hearsay evidence, not be subject to judicial oversight and have no right of review. In South Australia if an order is issued for more than seven days a person can appeal in the court against the order that has been issued by a magistrate. We would have liked the Government to have sat down with the Police Association, the legal profession and the Opposition and crossbench members before introducing these bills to see if there were ways of creating legislation that contained the needed protections. There is serious concern that this legislation is likely to contravene the prohibition on arbitrary arrest and detention in article 9 (1) and the right to a fair trial in article 14 (1) of the International Covenant on Civil and Political Rights.

It is not as though the Opposition is not interested in dealing with serious crime. We have a strong record on the matter. In 2009 we introduced the Crimes (Criminal Organisations Control) Act. Another Act was introduced in 2012. We also supported the introduction of the Coalition Government's consorting laws. However, it is worth noting what happened under the section 93X provisions of the consorting laws. In his review conducted 12 months after the Act the Ombudsman noted:

> ... 40% of all people subject to the consorting provisions in the first year of use are Aboriginal. The proportion of women and young people subject to the consorting provisions who are Aboriginal i s especially high. Two thirds of the 83 children and young people aged between 13 and 17 years ar e Aboriginal. Ju st over half of the 109 women ar e Aboriginal.

That shows what can happen with these types of laws and who they might be applied to.

Let us put aside Reverend the Hon. Fred Nile's ethnocentrisms on where he thinks the laws will be applied; we have the Ombudsman's evidence as to where the law will be applied. That is why we need the judicial oversight and the mechanisms to protect people, and we need to ensure that they are used against the appropriate people. We want them to be used against real criminals such as those in our society who think they can shoot people with a gun at Bankstown Centro. We want the police to have powers against real criminals but we also want protections so we do not see the sort of statistics contained in the Ombudsman's report, which indicate an overwhelming representation of disadvantaged groups in our community. We do not want our legislation to be used in that way.

The Law Society of New South Wales has raised a number of concerns about this legislation. It noted that the proposals under the bills appear to be an attempt to circumvent the usual protections of criminal justice procedures. In addition, it was concerned that individuals who could not be said to be serious criminals could be subject to these orders, with significant criminal consequences if they are breached.

The Law Society is seriously concerned that the alternative processes proposed by the bills would see an effect upon the balance between Executive and judicial powers; the longstanding rules in relation to

hearsay and evidence removed; arbitrary outcomes in respect of confiscation of proceeds of crime; the court's discretion fettered in relation to making certain declarations about asset forfeiture; an extraordinary expansion of police powers where individual police officers are granted the discretion to issue public safety orders that restrict individual movement and carry five-year prison terms for breach, without, in some circumstances, any avenue for appeal; and a further expansion of police powers to search and detain without warrant.

There is overwhelming evidence, particularly in some regional areas of the State, where those powers are used. I ask that the Parliamentary Secretary, in his speech in reply, explain the origins of this legislation and who requested it. I would also be interested to know what type of consultation was conducted at the time the request was made. It would be a step too far to pass this legislation without that judicial oversight; nowhere else in the world would that happen. I hope the Government will accept the Opposition's amendments because I would like this legislation, with amendments, to be passed.

The Hon. DAVID CLARKE (16:32): On behalf of the Hon. Niall Blair, in reply: I thank honourable members for their contributions to this debate. Before concluding, I will address some of the matters raised in this debate. Concern was raised as to whether there are sufficient safeguards in relation to both serious crime prevention orders and public safety orders. As explained by the Attorney General in the other place, the Crimes (Serious Crime Prevention Orders) Bill 2016 contains a number of safeguards to prevent serious crime prevention orders from being misused.

In making an order the court must be satisfied that there are reasonable grounds to believe that making the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime-related activities. The bill preserves procedural fairness principles by requiring the applicant to personally serve notice of the order at least 14 days before the hearing date for the application. The person against whom a serious crime prevention order is sought, and other persons whose interests maybe affected by the order, can appear at the hearing of the application and make submissions to the court in relation to the application.

A serious crime prevention order can only contain such prohibitions, restrictions, requirements and other provisions as the court considers appropriate for the purpose of protecting the public by preventing, restricting or disrupting the person's involvement in serious crime-related activities. Serious crime prevention orders are to be made by judges. This in itself is a fundamental safeguard. While decisions of courts in the United Kingdom are not binding in New South Wales, the principles I have outlined in respect of serious crime prevention orders may offer useful guidance.

Notably, they state that a serious crime prevention order must address a real or significant risk of future offending behaviour. It must be proportionate and commensurate with that risk. A serious crime prevention order should be practical, enforceable, precise and certain. While the bill is silent on the types of orders that the court can make consistent with the scheme in the United Kingdom, it specifies the kinds of provisions that a serious crime prevention order cannot contain. This includes orders such as those requiring the person to answer questions or provide information orally, or where the order requires the person to answer questions in writing or provide documents or other information that is subject to legal, professional privilege.

The bill allows a right of appeal against a decision of the relevant court in making a serious crime prevention order. An appeal can be made by the person who is the subject of the order, as well as the applicant. An application for an appeal may occur up to 28 days after the date on which the decision is made unless the Court of Appeal grants leave. An appeal lies as a right on a question of law and with leave of the court on a question of fact. Lastly, the Act will be reviewed after three years of operation to determine whether the policy objectives of the reforms remain valid.

As the Attorney General said in the other place, the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016 contains a number of safeguards. In determining whether issuing a public safety order is reasonably necessary, a senior police officer must take into account certain matters, such as if the place the person is being prevented from attending is the workplace at which the person is regularly employed, an educational institution at which the person is enrolled, a place of worship that the person regularly attends, a place where the person receives a health or welfare service, or a place where the person is being provided with legal services.

The police officer will also be required to take into account the nature of the person or group and any history of behaviour that previously gave rise to a serious risk to public safety. In deciding whether to issue a public safety order a police officer will also need to consider whether the degree or risk that is posed by the person justifies imposing these prohibitions on the person, bearing in mind any legitimate reason that the person may have for being at this specific location or event.

Further safeguards have been incorporated into the bill to clarify that a public safety order must not be issued to prevent non-violence advocacy, protest or dissent or industrial action. A public safety order also cannot be issued to prevent a person from entering their principal place of residence. There are also safeguards to limit the duration of a public safety order. An order can only last for a maximum period of 72 hours, or where the order relates to an event that occurs over a period longer than 72 hours the order would last for the duration of an event.

Importantly, section 87R (4) of the bill ensures that successive orders cannot be issued to circumvent the 72-hour limit. However, a public safety order may be issued for consecutive evenings such as multiple Friday nights covering the same event. The bill prescribes service and notification requirements for making or varying a public safety order to ensure that the person is properly notified. A senior police officer must personally serve a copy of the order made or varied on each person named in the order. A public safety order must be in writing and must also contain the reasons for making or varying it.

Further, if the person is a child under the age of 18 years or has impaired intellectual functioning, the bill also requires a senior police officer to also serve a copy of the order on the person's parent or guardian if it is reasonably practicable to do so. Finally, the bill provides for certain appeal rights to a person who is the subject of a public safety order. A person has a right of appeal to the Supreme Court if the public safety order lasts for more than 72 hours. An appeal must be made before the order expires. An appeal to the Supreme Court will consist of a merits review, which means that the court may take into account all relevant factual material and any applicable legislation or common law.

The NSW Police Force will also ensure that appropriate education, training, policies and procedures are in place to ensure that officers are aware that the purpose of public safety orders is to protect members of the public from associated violence through disrupting and restricting the activities of organisations involved in serious crimes, their members and associates.

The South Australian police experience demonstrates that police understand that these orders are not designed to diminish the freedom of persons to participate in advocacy, protest, dissent or industrial action. Overwhelmingly in South Australia they have been used to prevent violent altercations between members of outlaw motorcycle gangs at public events. This bill also does not remove the existing right of persons to refer any complaints about police conduct to the NSW Ombudsman or the Police Integrity Commission.

Reference has been made throughout this debate to claims by the New South Wales Bar Association. We are always happy to listen to legal stakeholders and since March 2015, when this policy was announced, they have had the opportunity to engage with the New South Wales Government. As the Deputy Premier made clear in the other place, the New South Wales Bar Association has made claims in relation to these reforms that are quite simply incorrect. As has been pointed out by the member for Ku-ring-gai, Alister Henskens, SC, MP, serious crime prevention orders are not unprecedented, as described by the Bar Association, as they are modelled on similar laws in the United Kingdom [UK]. Of course, there are differences but that is hardly surprising given the need to suit the New South Wales legal operational and criminal environment.

When serious crime prevention orders were being introduced in England and Wales, the Scottish government decided to first consider their effectiveness before introducing the orders in Scotland. Notably, in 2015, Scotland determined that SCPOs were effective and necessary to tackle serious and organised crime. In particular, its 2013 discussion paper on SCPOs noted that the experience in England and Wales had shown that these orders make it harder for criminals to carry out their illegal activities and easier for law enforcement agencies to intervene at an early stage when a breach of an order has been found.

The 2007 UK provisions were recently reviewed and were further amended in 2015 to make improvements to the SCPO regime in England and Wales. At that time it was noted that these civil orders are an important and cost-effective means of preventing and disrupting serious and organised crime. Further, the UK government's Serious and Organised Crime Strategy makes a particular commitment for law enforcement agencies to make better use of SCPOs to deter people who are already engaging in serious and organised crime.

As the Deputy Premier has said in the other place, the absence of any reference to the UK scheme by the New South Wales Bar Association in its submission is suspicious and misleading, even after accounting for the differences in the bill before this place. The New South Wales Bar Association stated in a media release on 13 April 2016 that the bill provides for an open-ended scheme. That is incorrect and is contradicted by the Bar Association's own submission to the Government, which is dated the same day and acknowledges the limitations placed on the order by the bill in clause 6 (2).

The New South Wales Government is also confident that the legislation will withstand any constitutional challenge. These bills deliver on the New South Wales Government's election commitment to introduce tough new laws to give police the upper hand in the fight against organised crime. As the Deputy Premier has previously stated, the Government makes no apologies for improving community safety by getting tough on criminals, especially those who deal drugs or weapons or who make a living dealing off the misery of other people. The package of law enforcement powers we have introduced will enable law enforcement agencies to quickly and effectively take restrictive action against crime gang members such as outlaw bikies.

In particular, these powers are much more efficient and effective than the current lengthy and expensive process of having a criminal gang declared under the Crimes (Criminal Organisations Control) Act. The NSW Police Force welcomes these tough new powers, which will enable police to prevent and disrupt serious and violent crime in New South Wales and keep our community safe. These laws are aimed at restricting the ability of criminals to commit crime and will bolster our efforts to target these serious criminals. The Government has no doubt whatsoever that these new laws will be supported by the people of the State of New South Wales. I commend the bills to the House.

The DEPUTY PRESIDENT (The Hon. Paul Green): The Parliamentary Secretary has moved a motion that the bills be read a second time. Mr David Shoebridge has moved an amendment to omit the words "be now read a second time" and to insert the words "be referred to the Standing Committee on Law and Justice for inquiry and report by Friday 12 August 2016. The question is that the amendment be agreed to.

The House divided.

Ayes 15
Noes 18
Majority 3

AYES

Dr Faruqi	Mr Buckingham	Mr Donnelly (teller)
Mr Mookhey	Mr Moselmane (teller)	Mr Pearson
Mr Primrose	Mr Searle	Mr Shoebridge
Mr Veitch	Mr Wong	Ms Barham
Ms Cotsis	Ms Sharpe	Ms Voltz

NOES

Dr Phelps	Mr Ajaka	Mr Amato
Mr Blair	Mr Clarke	Mr Colless
Mr Farlow	Mr Franklin (teller)	Mr Gallacher
Mr Gay	Mr Green	Mr MacDonald
Mr Mallard	Mr Pearce	Ms Maclaren-Jones (teller)
Ms Mitchell	Ms Taylor	Reverend Nile

PAIRS

Mr Secord	Mr Mason-Cox	Ms Houssos
Ms Cusack		

Motion negatived .

The PRESIDENT: I will put the question that the bills be read a second time. Leave has been granted for the short ringing of the bells. The bells will be rung for one minute.

The House divided.

Ayes 28
Noes 5
Majority 23

AYES

Dr Phelps	Mr Ajaka	Mr Amato
Mr Blair	Mr Clarke	Mr Colless
Mr Donnelly	Mr Farlow	Mr Franklin
Mr Gallacher	Mr Gay	Mr Green
Mr MacDonald	Mr Mallard	Mr Mookhey

Mr Moselmane (teller)	Mr Pearce	Mr Primrose
Mr Searle	Mr Veitch	Mr Wong
Ms Cotsis	Ms Maclaren-Jones (teller)	Ms Mitchell
Ms Sharpe	Ms Taylor	Ms Voltz
Reverend Nile		

NOES

Dr Faruqi	Mr Buckingham	Mr Pearson (teller)
Mr Shoebridge (teller)	Ms Barham	

Motion agreed to.

The Hon. DAVID CLARKE (18:57): I move:

That consideration of the Committee of the Whole stand as an order of the day for a later hour.

Motion agreed to.