Indeed, it was the former Labor Government that started the scoping studies and other reviews in relation to this issue. We are pleased to provide certainty for the future of this business. We are excited by what the future of this business can provide, we are pleased to be able to make those regional operations commitments to the Illawarra and, of course, to safeguard the entitlements of employees as they transfer to the new owner. On that basis, I ask all members to consider these details. I commend the bill to the House.

Debate adjourned.

Bills

CRIMES (SERIOUS CRIME PREVENTION ORDERS) BILL 2016

CRIMINAL LEGISLATION AMENDMENT (ORGANISED CRIME AND PUBLIC SAFETY) BILL 2016

Second Reading

Debate resumed from 22 March 2016.

Mr GUY ZANGARI (Fairfield) (16:31): I speak on behalf of the Opposition regarding the Crimes (Serious Crime Prevention Orders) Bill 2016 and the cognate Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016. I thank Minister Grant and his staff for providing us with a briefing on this important legislation. However, I am unsure as to why this legislation has come into this House through the Minister for Justice and Police rather than through the Attorney General.

Members on this side of the House are always supportive of new initiatives that lead to a well-resourced police force and a fair and just judicial system. We understand that the proceeds of crime contribute to the scourges within our communities and that together we should do everything in our power to assist in the fight against criminals and organised crime. I turn first to the Crimes (Serious Crime Prevention Orders) Bill 2016.

This bill will provide for serious crime prevention orders [SCPOs] to be issued by the Supreme Court where it is satisfied, on the balance of probabilities, that a person or a business is involved in serious crime-related activity. Further, an SCPO may be issued by the District Court or the Supreme Court following a conviction for a serious offence. In each case the order may be issued on the application of the NSW Crime Commission [NSWCC], the Office of the Director of Public Prosecutions [ODPP], or the Commissioner of Police.

Under this legislation "serious offence" and "serious crime-related activity" are defined as they are in the Criminal Assets Recovery Act 1990. However, this legislation goes further and has an additional definition of "involved in serious crime-related activity" which captures not only the engaging in serious crime-related activity but also any conduct that "facilitated another person engaging in serious crime-related activity" and conduct that is "likely to facilitate another person engaging in serious crime-related activity".

Turn044

This means that a person who is completely unaware of any connection to criminal activity can be considered to be involved. A serious crime prevention order [SCPO] lasts for a maximum of five years and a breach by an individual would be punishable by up to five years imprisonment and/or a fine of 300 penalty units equalling $33,000, and for a corporation 1,500 penalty units equalling $165,000. In considering an application for an SCPO, a court may rely on hearsay evidence. A respondent will be put on notice and served with the material. An SCPO would include such prohibitions or requirements that a court considers appropriate in order to prevent or disrupt involvement in serious crime.

Part 2 clause 6 provides some protections by listing what cannot be included in an SCPO, including protection for legal professional privilege, confidential information and special protections for banking businesses. It is concerning that an SCPO may be issued to any person who is not charged with a criminal offence or if they have been acquitted of a criminal offence, even if the facts substantiating the SCPO are largely the same.

Part 2 clause 11 provides for a right of appeal to the court of appeal on a point of law but a restricted appeal right on facts. The scope of appeal from a discretionary decision is very narrow. If the applicant considers that it is in the public interest to do so, an application may be made to the Supreme Court to wind up a company convicted of breaching an order. The Supreme Court may subsequently make an order to wind up a company where the company has been convicted and it is just and equitable to do so.

I now turn to the detail of the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016. This bill will amend the Law Enforcement (Powers and Responsibilities) Act 2002 to allow for a senior police officer, defined as the rank of inspector or above, to issue public safety orders [PSOs]. Public safety orders will prevent a person from attending a place or an event for a limited time period. This order may be issued if the

senior police officer is satisfied that the individual would pose a serious risk to public safety or security. The definition covers everything from property damage to serious injury or death of a person.

The threshold for someone to be made subject to a public safety order is vastly different to that of a serious crime prevention order [SCPO]. While the SCPO requires some serious connection with criminal activity, a PSO only requires the opinion from a senior police officer that an individual could pose a risk to public safety or security. No charges, evidence or convictions are necessary. Once issued, public service orders can last for up to 72 hours. Should the order relate to an event that lasts longer than the 72-hour period the order will remain in place for the duration of the event.

Any person subject to an order lasting for 72 hours or more has the right to appeal the decision to a single judge of the Supreme Court. In the event the order lasts for less than 72 hours the individual will have no capacity to appeal the decision or have the matter reviewed. There will be no right to be heard before any order is made. Provisions are in place that would allow for the issuing of multiple orders for a series of events which could, for example, be enforced on Saturday nights. This would provide a way to bypass the time restriction without engaging an individual's right to appeal.

I note that while a serious crime prevention order can only be issued to individuals aged 18 and over, a public safety order can apply to individuals under 18 years of age and to persons with impaired intellectual functioning. Should the person being served with a public safety order be under 18 years of age or have impaired intellectual functioning, the senior police officer issuing the order must also serve a copy of the order to the person's parent or guardian, but only if it is reasonably practicable to do so.

Turn045

Failure to provide the parent or guardian with a copy of the order does not invalidate the order. In his second reading speech the Minister noted how these new powers are modelled on the United Kingdom [UK] style serious crime prevention orders [SCPO], which aim to disrupt the activities of serious criminals. However, our SCPO legislation goes well beyond any comparable legislation in the UK, with fewer safeguards set in place for our New South Wales counterpart. In the UK only the Director of Public Prosecutions may apply for an SCPO whereas in New South Wales this power will also be conferred on the Commissioner of Police and the Crime Commissioner.

The UK model also occurs in the context of strong domestic human rights legislation and the European human rights framework, both of which provide protections from power courts. There are no comparable protections in New South Wales or Australian law. Further, in the UK the guidelines for the Crown Prosecution Service make it clear that if there is evidence to support a criminal prosecution, then that course of action should be pursued. The SCPOs in the UK are only to be pursued where there is no real prospect of a criminal conviction.

The proposed New South Wales model has no such protection, giving rise to the real risk that the law enforcement may use the much easier and simpler process of the SCPOs rather than going through difficult criminal trials. This legislation would also permit authorities to pursue a SCPO even where a person has been acquitted of criminal charges. This cannot occur under the UK model. Creating such orders while using UK-style serious crime prevention orders as the basis is a pretty bold move, as the New South Wales legislation contains insufficient protections, especially compared to what exists at present in the UK legislation.

Ultimately, this legislation proposes two new systems of orders—the serious crime prevention order and the public safety order to be issued by the police. These orders would become available in addition to existing orders under other New South Wales and Commonwealth criminal laws, as well as the anti-consorting laws put in place by the O'Farrell Government. The public safety order regime establishes something one can liken to being a rival of the criminal justice system, and it seriously interferes with existing legal rights and freedoms.

The Opposition will not oppose the bill in the Legislative Assembly, as we seek carriage of the bill so that it may be examined in the other House where the Labor Opposition will propose amendments to make this legislation workable. We welcome a number of changes to this legislation, including narrowing the basis on which a serious crime prevention order can be sought; specifying that only the Supreme Court may issue a SCPO with full rights of appeal; ensuring the capacity of the Supreme Court to admit hearsay evidence is the same as in any other legal proceeding, not greater; removing the capacity to seek a SCPO if a person has already been acquitted of a serious criminal charge and the subject matter is substantially the same; ensuring protections against self-incrimination; and removing schedule 5 from the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill.

We firmly believe such changes would make this legislation far more workable while providing appropriate protections for the people of New South Wales. The Opposition is always willing to work with the Government on any police legislation and any measures to crack down on organised crime. I put on record our

thanks to the New South Wales Bar Association, the Law Society of New South Wales and the New South Wales Society of Labor Lawyers for voicing their concerns about the legislation, and looking out for the rights and civil liberties of New South Wales residents. They noted also that they received no consultation from the Government prior to this legislation being presented to the House.

Ms GABRIELLE UPTON (Vaucluse—Attorney General) (16:43): I support the Crimes (Serious Crime Prevention Orders) Bill 2016 and the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016. I am pleased to hear that the Opposition will back us in on these important bills, which fulfil the Government's election commitment to the voters of New South Wales during the 2015 election campaign.

Turn046

These bills will continue to place pressure on serious and organised crime that occurs in our community. This is something all members of this House and the wider community should support. Organised crime by its very nature is insidious and preys on the most vulnerable people in our community. It attempts to legitimise crime by making it a business that exploits misery.

The DEPUTY SPEAKER: Order! The member for Canterbury will cease interjecting.

Ms GABRIELLE UPTON: Members on this side of the House believe that community safety is paramount. We always have and always will have a strong commitment to tackling serious crime head on. No ifs no buts, simply a determination to protect our community from harm. Therefore, when we find better smarter ways of waging war on serious crime, this Government will do the right thing and take the fight up to those who wish harm on our community. Not only will criminals be prosecuted and jailed, they will also be driven out of business and prevented from setting up shop again.

I turn now to the provisions of the bills. Serious crime prevention orders are designed to restrict the activities of persons or businesses involved in serious crime. Temporary public safety orders will be issued by senior police to prevent people from attending events and locations for a limited time if they pose a serious threat to public safety or security by engaging in violent behaviour. Amendments to the existing confiscation scheme will allow the State to remove the profit incentive from criminal activity. The bills also enhance dealing with the proceeds of crime offences in the Crimes Act 1900. Taken together these are important, sensible and strong measures that will enable us be tougher on serious crime. Most importantly, these measures have built-in checks and balances. That fact is lost on some of the more strident opponents of these bills. They choose to ignore the fact that serious crime prevention orders can be applied for only by the Commissioner of Police, the Crime Commissioner or the Director of Public Prosecutions. Those applications are then considered and tested by the courts.

Critics of the reform claim to be up upholding the rule of law. However, they fail to acknowledge the role of the judiciary in the decision-making process. Before issuing a serious crime prevention order, the court must be satisfied that the order would protect the public by disrupting serious crime. These reforms are adapted from the United Kingdom Serious Crime Act 2007 and have been tailored for our justice system. When these reforms were implemented in the United Kingdom, its Parliament stated that the Government must be flexible and innovative in providing law enforcement with new tools to combat the skilled, intelligent and adept participants in organised crime. That is what these bills do—they provide law enforcement agencies with innovative tools that are designed to protect the community and to respond to intelligent, adaptive and at times defiant organised crime groups in our community.

Many features of the New South Wales legislation are consistent with the United Kingdom legislation. A recent review of the United Kingdom legislation confirmed that these orders are effective in disrupting criminals from carrying out their illegal activities in England and Wales.

Turn047

As serious crime prevention orders are a significant new power, the Government has made certain that there are countervailing safeguards in the bill. First, the scheme is limited to people aged 18 and over. Second, 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 a person in serious crime-related activities. The bill preserves procedural fairness principles by requiring the applicant to serve notice of the order personally against a person at least 14 days before the hearing date of the application. The person against whom a serious crime prevention order is sought, and other people whose interests may be affected by the order, can appear at the hearing of that application and make submissions to the court in relation to that application.

A serious crime prevention order can contain only such prohibitions, restrictions, requirements and other provisions as the court considers appropriate for the purpose of protecting the public by disrupting a person's

involvement in serious crime. While the bill is silent on the types of orders that the court can make, the bill specifies the kinds of provisions that a serious crime prevention order cannot contain. These include orders such as those requiring a 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 also provides for an appeal process against the making of a serious crime prevention order. Most importantly, the Act will be reviewed after three years of operation to determine whether the policy objectives of the reform remain valid against the practice.

I will now consider the safeguards contained in the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016 for public safety orders, which enable senior police officers to make a temporary order prohibiting a person from attending an event or a specified place where the person's presence would pose a serious risk to public safety or security. The bill contains a number of effective safeguards to ensure the appropriate use of public safety orders. First, in deciding whether a public safety order is reasonably necessary, the senior police officer may take into account certain matters such as whether the place the person is prevented from attending is a workplace, an educational institution, a place of worship, 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.

Second, in deciding whether to issue a public safety order, a police officer will need to consider whether the degree of risk that is posed by a person justifies imposing prohibitions on the person, bearing in mind any legitimate reason that the person may have for being at the 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-violent advocacy, protest, dissent or industrial action. A public safety order also cannot be issued to prevent a person from entering their principal place of residence.

Third, there are safeguards to limit the duration of a public safety order. An order can last for a maximum period of only 72 hours. Where the order relates to an event that occurs over a period longer than 72 hours, the order can last only for the duration of that 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 that is of concern.

Fourth, 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. The public safety order must be in writing and must also contain the reasons for making or varying the public safety order. Further, if the person is a child under the age of 18 or has impaired intellectual functioning, the bill requires the senior police officer to also serve a copy of the order on the person's parent or guardian if it is reasonably practical to do so.

Turn048

Finally, the bill provides for appeal rights to a person who is the subject of a public safety order. The person has a right of appeal to the Supreme Court if the public safety order lasts for more than 72 hours and appeal must be made before the order expires. An appeal to the Supreme Court will consist of a merit review, which means that the court may take into account all the relevant factual material and any applicable legislation or common law principles. This bill does not remove the existing rights of persons to refer any complaints about police conduct to the NSW Ombudsman or to the Police Integrity Commission if there are allegations of misuse. These reforms are important—put simply, they make it easier to combat organised and serious crime. This Government will not stand idly by and give organised criminals the upper hand. An increasingly sophisticated and crafty style of organised crime—which we know exists—needs a stronger and a smarter response, and that is exactly what this bill delivers. I commend the bill to the House.

Ms JODIE HARRISON (Charlestown) (16:56): I speak on the Crimes (Serious Crime Prevention Orders) Bill 2016 and its cognate bill, the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016. These bills are unprecedented pieces of legislation announced by the Deputy Premier with the NSW Police Commissioner by his side. It is deeply concerning that the Minister for Police has not consulted legal professional bodies, law reform agencies or civil liberties organisations. This process has been secretive and opaque and has inevitably led to the introduction of this incredibly bad legislation. The legislation was dropped into Parliament with no prior discussion, let alone consultation with this side of the House. From this one can only surmise that this is a piece of legislation designed purely for political point-scoring.

The legislation seeks to introduce a controversial serious crime prevention order [SCPO] regime into New South Wales. Do not be misguided by the title of this bill. The Government is insisting that the measures to be introduced are preventative and not punitive. The measures are, however, clearly punitive in practice. They

impose severe restrictions on individual rights and freedoms, including restrictions on with whom a person can communicate and where a person can live, work or travel, and attach the stigma of serious criminality to the recipients. It is difficult to see how such severe restrictions on an individual's freedom of movement could be characterised as anything but punitive.

This sentiment is supported by the NSW Bar Association, which has attacked the Deputy Premier over the proposed draconian powers. This group has labelled them as unprecedented and extraordinarily broad powers that have the potential to interfere with the liberties of New South Wales citizens and impact their day-to-day lives. The NSW Bar Association is damning in its criticism of the nature and scope of the proposed legislation, calling it open ended with no guidance provided to the kinds of orders that might be appropriate. An eligible applicant for an SCPO may be the New South Wales Commissioner of Police, the New South Wales Director of Public Prosecutions or the New South Wales Crime Commission.

Turn049

However, the Government has made no case as to why the powers of eligible applicants should be expanded so widely. If these bills are passed, a broad range of people will be subject to a serious crime prevention order [SCPO]. This will inevitably include law-abiding citizens of New South Wales. A person need only to have been convicted, engaged or involved in serious crime-related activity. This means the laws can apply in an extraordinarily broad range of circumstances and to an extraordinarily broad range of people. To be classified as having been "engaged in serious crime-related activity" there is no requirement for a conviction. A person may be found to have engaged in serious crime-related activity even if the person was charged and acquitted of that offence.

To be classified as having been "involved in serious crime-related activity" is a broader category again. The person need not have engaged in any criminal activity, let alone "serious crime-related activity". It is sufficient that the person has merely facilitated or engaged in conduct that is "likely to facilitate serious crime-related activity". A person may "facilitate" another person's actions unintentionally and unknowingly. In theory, facilitation may extend to a father simply lending the family car to his son—unaware that the son intended to use the car to commit a serious criminal offence. No proof is required that the alleged "facilitation" was intentional, known or ought to have been known. Clearly this regime could be misused against innocent individuals who have committed no offence.

The proposed test for making an SCPO imposes a low hurdle. An SCPO may be made by a court if "the court is 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". This stands in stark contrast to the test which currently applies to high-risk offenders, where a judge must be "satisfied to a high degree of probability that the offender poses an unacceptable risk of committing" a serious violence or sex offence "if he or she is not kept under supervision".

The legislation provides no guidance as to what kinds of orders might be deemed appropriate. "Appropriate" may range from a person needing to report regularly to a police station to employment restrictions and travel restrictions. It may restrict certain activities—for example, using the internet. While the SCPO does not involve detention in prison it can impose a curfew requirement, where persons are required to confine themselves to a specific location for a certain duration. This may operate for up to five years.

So for up to five years a person can have his or her civil liberties significantly constrained. The potential for this law to interfere with privacy and the freedom of movement, expression and communication of the people of New South Wales is manifest. If the SCPO is contravened, they are liable to imprisonment. The bills effectively set up a rival to the criminal trial system as an SCPO can operate as an alternative to prosecution. If passed, these bills could potentially result in police applying for an order instead of bringing a prosecution in the criminal court, where perhaps they think they have an underwhelming case.

Another concern is that if a prosecution fails to get a conviction and convince a court of a person's guilt, an eligible applicant can apply for a SCPO. What is the point of having a criminal trial system if an eligible applicant who disagrees with the court outcome can disregard it and apply for a SCPO? The SCPO will see an acquitted person's personal liberties denied on account of the very conduct the prosecution failed to prove. Such liberty restricting laws that change our current criminal law fair trial need significant and specific justifications, which I have seen none of.

For example, what specific threats is this legislation aiming to target? What examples are there currently of police officers being unable to investigate criminal activities and prosecute criminal offences within existing legislation? Why should the powers of police and prosecution authorities be expanded so radically? What evidence demonstrates that the current criminal justice process of trial for "reducing serious and organised crime" is

ineffective? Most importantly, where is the evidence that indicates the bills before us will even protect the people of New South Wales? All these matters deserve cautious and careful consideration. So far, the Government has failed adequately to address these key questions and therefore failed to justify this intrusion into the personal liberties and day-to-day lives of the citizens of New South Wales.

Turn050

If the Government is serious about this legislation, it should work with the Opposition to achieve sensible, well thought out legislation that has support across the Parliament. Let there be no doubt that members on this side of the Chamber firmly believe that our communities deserve to be safe and free from the dangers of organised crime and gangs. The residents of my electorate of Charlestown want to know that they can walk the streets, live and sleep in their homes, go to work, go shopping, and go about their daily lives safely and free from organised crime and gangs. I believe, as do my colleagues on this side of the House, that those same community members—the ordinary people in the street—should be able to go about their daily lives free from accidental or deliberate abuse of power. For those reasons I ask that the Government listens to the issues of concern that the Opposition has and will continue to raise about this legislation, which completely oversteps the law and order argument. If the Government wants to protect the people of New South Wales from organised crime and gangs and not just score political points, it should take the time to work with Opposition members and amend the legislation to protect innocent people while still being tough on organised crime.

Mr ALISTER HENSKENS (Ku-ring-gai) (17:05): Unfortunately, members opposite have read almost verbatim from a number of documents that have been propounded by the NSW Bar Association, which are seriously flawed. The initial response of the NSW Bar Association on 13 April 2016 to the Crimes (Serious Crime Prevention Orders) Bill stated wrongly that it was an unprecedented attack on individual freedoms and the rule of law. Since 2007 the laws of England, Wales and Northern Ireland have allowed the Director of Public Prosecutions, the Director of the Serious Fraud Office or the Director of Revenue and Customs Prosecutions to seek serious crime prevention orders from a judge in circumstances where persons are convicted of a serious crime or if they are involved but not convicted of a serious crime.

The onus of proof is the balance of probabilities, which are the essential features of this bill. The laws of the United Kingdom were so successful in disrupting organised criminal activity that the Parliament of Scotland, after watching its operation, last year introduced similar legislation. This bill is clearly not unprecedented as is alleged by the NSW Bar Association. Its precedence has been law in the United Kingdom since 2007. This bill is not an attack on the rule of law because a judicial process must be undertaken before a serious crime prevention order is made. The process is the same as obtaining an injunctive order in civil litigation. Injunctive orders in civil litigation have been part of the rule of law for hundreds of years. It is not an "arbitrary … interference with the liberty of many thousands of New South Wales citizens" unless the NSW Bar Association is suggesting that the judges of this State will operate in an arbitrary fashion. It is unlikely that the bill is an interference with Australia's international obligation to fundamental human rights because it has not operated in breach of the United Kingdom's international obligations since it has been law in the United Kingdom since 2007.

The contention that the bill "sets up a rival to the criminal trial system" by the NSW Bar Association is wrong and has been judicially rejected by appellate authority in the United Kingdom. In *R v Hancox* [2011] EWCA Crim. 102, the court, at paragraph 12, held:

> Like other forms of preventative orders, a serious crime prevention order is not an additional or alternative form of sentence. It is not designed to punish.

Turn051

The contention that the legislation is unconstitutional and beyond the power of this Parliament, relying on Kable's case in the High Court, is also dubious. Mr Hutley, the President of the Bar Association, in an article responding to my opinion piece in the *Australian* made a number of points to which I will respond.

Firstly, he failed to deny that the Bar Association's nine-page submission and press release on 13 April was written by "nameless employees" of the Bar Association. Secondly, he asserted that the United Kingdom position is different because of its Human Rights Act 1998. However, as *R v Hancox* at paragraph 10 makes clear, the only constraint by human rights legislation in the United Kingdom is that any orders need to be "proportionate", that is "the interference with the defendant's freedom of action must be justified by the benefit; the provisions of the order must be commensurate with the risk". The ordinary exercise of a judicial discretion undertakes an analysis of this kind without the necessity of human rights legislation and I am confident that the judges of this State will only grant orders in similar circumstances to the United Kingdom.

Finally, Mr Hutley has repeated the complaint in the 13 April Bar Association documents that the legislation was introduced without any consultation with the New South Wales Bar Association. With all due

respect to Mr Hutley, this legislation was an election promise and although the Bar Association thinks it is self-important, it is not more important than the citizens of this State and basic democratic logic would dictate that consultation was not necessary. As an acknowledgement of the veracity of my opinion piece, yesterday for the first time the Bar Association issued a document addressing the United Kingdom Act upon which this bill was modelled. I will briefly respond to the six points which are set out in that paper.

First, the Bar Association takes exception to the fact that a person acquitted of an offence can be subjected to a serious crime prevention order when such a provision is not in the United Kingdom legislation. But in the United Kingdom, although it does not have a similar provision, people who have not been convicted of an offence can still be subjected to a crime order. So the difference between the New South Wales legislation and the United Kingdom provision seems to be a recognition in this bill that there is a difference between the standard of proof in civil and criminal cases and it is possible that although someone has not been found guilty beyond reasonable doubt there may be sufficient evidence on the balance of probabilities to justify, not a punitive order as the Court of Appeal in England said, but a preventative order against the person. I also note that in any civil case, when a serious allegation is made against a person a higher standard of proof than an ordinary civil case is required—it is called the Briginshaw standard. It is highly unlikely that a defendant acquitted on the balance of probabilities would be able to be found to the Briginshaw standard of a civil case such to allow a serious crime prevention order.

The second matter that the Bar Association raised in its paper yesterday was that hearsay evidence would be permitted in New South Wales when it is not permitted in the United Kingdom. However, there are many exceptions to the hearsay rule in New South Wales even under our existing laws. The fact that a judge is acting on hearsay evidence will strongly influence the judicial discretion if that hearsay evidence is not of sufficient veracity to warrant an order. Again, the use of hearsay evidence will have only a limited difference from the way in which the legislation operates in the United Kingdom.

Thirdly, the Bar Association made a distinction between the New South Wales and United Kingdom legislation around the words "the reasonable grounds to believe", which I suggest is a distinction without any difference and not a valid point. Fourthly, the Bar Association said that the New South Wales legislation does not have non-limiting examples of the types of orders as appears in the United Kingdom legislation.

Turn052

However, the flexibility given to judges should be admired and not criticised.

Fifthly, the difference between the class of applicants mentioned in the United Kingdom legislation and in this bill is not significant because in both the United Kingdom and New South Wales the most important protection of the rights of the individual is the fact that judges are the ones who will give the orders. Judges are not robotic officers required to make certain orders depending on the character of the applicant.

Sixthly, the Bar Association made the point that there is an express right in the United Kingdom legislation for third parties to make representations in proceedings if orders that are proposed to be made could affect them. Under the existing common law of Australia, decided in the Super League case and in other cases, third parties need to be taken into account when injunctive orders are made. I am confident that the courts of this State will apply that common law without the necessity for it to be expressly stated in this bill. For those reasons I commend the bill to the House.

Mr ALEX GREENWICH (Sydney) (17:15): I strongly oppose the Crime (Serious Crime Prevention Orders) Bill 2016 and the cognate Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016. These bills are extreme and unnecessary and could interfere with people's basic rights such as liberty, privacy and freedom of association.

Serious crime prevention orders will enable government authorities to impose sweeping restrictions on the freedoms of suspects based on unreliable evidence and low thresholds of risk. It is easy to envisage the misuse of such orders. Serious crime prevention orders could apply to a wide range of people. An application for an order can be made against anyone who has ever been convicted of, tried for, or allegedly involved in—including unknowingly—a crime that could incur a five-year sentence. Where a person has been tried they could have been acquitted or could have had the charge quashed. There is no limit on when the crime, or alleged crime, occurred, and it need not relate in any way to the order being sought.

Most crimes in the Crimes Act and most drug offences can incur a five-year sentence—including, for example, the possession of a marijuana plant. The scope of who can be the subject of an order has clearly been designed to capture as many people as possible. Past and alleged brushes with crime are an excuse to ensure that

more people can be targeted. Serious crime prevention orders have the potential to significantly restrict one's freedom, just short of incarceration. There are no limits on orders; an order can restrict or mandate communication, movement, employment, association, activities and ownership. Forcing someone to answer to police questioning, despite their right to silence, is possible. Orders can last up to five years.

In determining a serious crime prevention order, the courts will be able to consider evidence that is hearsay if the court is satisfied the evidence is from a reliable source. In criminal proceedings there is a longstanding legal tradition against the use of hearsay evidence that could be the basis to incriminate or punish someone, because it is unreliable. The courts will be able to issue a serious crime prevention order if the courts are satisfied that there are reasonable grounds to believe that making the order would protect the public by preventing, restricting or disrupting involvement by a person in serious crime activities. This is extraordinarily broad. Establishing reasonable grounds that a restriction could prevent a crime, particularly using hearsay evidence, is a low threshold to meet. There is clearly no intention to protect innocence; the aim is to ensure that where an order is sought, it will likely be approved.

The Director of Public Prosecutions, the Crime Commission and the Commissioner of Police will be able to make applications for a serious crime prevention order, and they are all officers or agencies of the Executive Government. A government touting its "tough on crime" credentials could encourage a spate of orders to get headlines at the expense of basic human rights. Serious crime prevention orders are an attempt to circumvent a fair trial where there is not enough evidence to prove guilt. There is a dangerous assumption that all suspects are guilty and that fair trials get in the way of catching criminals. This is the type of approach used in dictatorships, not an approach used by healthy democracies.

I am also concerned about proposed public safety orders which give police officers sweeping powers to restrict someone's movement if the officers are satisfied that movement could pose a public safety or security risk. Police would have wide scope in the application of these orders. They would be given broad powers to search vehicles and premises without a warrant if they have reasonable grounds to suspect that the subject of a public safety order is there.

Turn053

They will also be able to issue an order verbally in emergencies.

Being satisfied is a subjective state and "reasonable grounds to suspect" is a low bar to meet. The potential for intimidation and arbitrary restrictions is serious. The Government has provided no information on why existing laws are inadequate; it has merely described the problems and costs of crime. It did not consult with legal experts or human rights advocates before introducing this bill. Crime exists across the world and presents a challenge to all governments. Healthy democracies do not respond by removing fundamental human rights such as access to a fair trial and the right to freedom. Good governments focus on early intervention, rehabilitation and restoration to prevent crime. I oppose the bills.

Ms JENNY LEONG (Newtown) (17:19): On behalf of The Greens 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. The Greens oppose the bills. They are a threat to basic rights and individual freedoms and they remove key protections from our criminal justice system. The Crimes (Serious Crime Prevention Orders) Bill 2016 allows the Supreme Court pre- or post-conviction and the District Court post-conviction to place restrictions on people or businesses "involved in serious crime or terrorism offences". An application must be brought by the Director of Public Prosecutions, the Crime Commission or the Commissioner of Police and can impose requirements or restrictions on the 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". The court can admit and take into account hearsay evidence if it believes it is reliable and relevant, and the person who is the subject of the order is notified.

"Serious crime related activity" is defined as anything done that is a serious criminal offence even if a person is not charged or they are tried and acquitted. Involvement in such activity includes conduct that facilitates or is likely to facilitate another person "engaging in serious crime". Serious crime prevention orders can include prohibitions, restrictions, requirements and other provisions that the court thinks are appropriate to protect the public by preventing, restricting or disrupting involvement by the person in serious crime-related activity. Orders can be for up to five years and the maximum penalty for breaching them is 1,500 penalty units for a corporation or 300 penalty units for an individual, which amounts to $33,000 or five years jail.

The bill also includes provisions that allow corporations that are the subject of orders to wind up companies and dissolve partnerships. The public safety orders bill creates a new power under the Law

Enforcement (Powers and Responsibilities) Act that allows 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". The order can prohibit a person from attending a specified public event or entering or being within a specific area or premises. The order can only be made if the officer is satisfied that the presence of the person poses a serious risk to public safety or security and the order is reasonably necessary in the circumstances.

When considering what is reasonably necessary an officer must consider: any history of the person engaging in serious crime-related activity; if they are a member of a declared organisation or subject to a control order; the public interest in maintaining freedom to protest or engage in industrial action; if the order would stop a person from being able to work, study or receive health care; 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, especially compared with other measures reasonably available.

A serious risk to public safety or security is defined as something that might result in death or serious physical harm to a person or serious damage to property. Orders can be kept secret by the commissioner on application to the Supreme Court if the application relates to a criminal intelligence report. A notification in writing, including reasons, must be served on the person. If the person is under 18 or has impaired intellectual functioning it can be served on a guardian; however, the order is binding even if that is not done. If the officer thinks the order should be binding as a matter of urgency they can communicate it verbally instead. Breaching an order can result in imprisonment for five years.

There are also changes to make it easier for police to confiscate assets and deal with money laundering. It is clear that the changes proposed in the bills are broad reaching and very concerning. But let us be clear: It is not just The Greens who oppose these laws. The Law Society of New South Wales has raised serious concerns strongly opposing the passage of the bills as a rule of law matter and in order to protect fundamental rights and democratic institutions. It stated:

> The proposals under the Bills appear to be an attempt to circumvent the usual protections of criminal justice procedures ...
>
> The Law Society considers that the extension of executive powers proposed by the Bills would 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 Bills would also potentially place limitations on fundamental human rights protecting against arbitrary arrest and detention, and the freedoms of expression, communication and association. The Bills are also likely to compromise the integrity of court processes, and the Law Society submits that this would erode democratic institutions.
>
> Turn054

The Law Society does not consider the bills to be appropriately targeted at organised crime or community safety. As we have heard from other members in this place, the New South Wales Bar Association is just as strong in its opposition to this legislation. It says:

> The Bill creates 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 adequate judicial oversight, and in many cases basic rules of evidence are circumvented.

The question has to be asked: Why were the New South Wales Bar Association, the Law Society and other legal and professional bodies involved in law enforcement, legal reform, civil liberties and human rights not consulted about this bill? This is a process that would usually be handled by the Attorney General, but it has not been done in this case. Consultation with those key law bodies, key advisory groups, and human rights and civil liberties organisations has not been undertaken. In his second reading speech, the Minister said:

> 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.

In the same speech, the Minister also provided perhaps the most compelling argument against these laws when he stated:

> 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.

These broad-reaching and seriously concerning new powers are not necessary. They undermine fundamental principles of the criminal justice system, including the right to presumption of innocence, the right to a fair trial and protections against double punishment. Rather than creating new powers and offences, police resources should continue to be directed towards solid and effective police work.

Mr JIHAD DIB (Lakemba) (17:26): I speak in debate on the Crimes (Serious Crime Prevention Orders) Bill 2016 to register my concern. I understand that this legislation would enable courts to issue serious crime prevention orders (SCPOs) to restrict the activities of persons and businesses said to be involved in serious criminal activities. It has been introduced as a cognate bill with the Criminal Legislation Amendment (Organised

Crime and Public Safety) Bill 2016, a proposal that will allow senior police officers to issue public safety orders (PSOs) and to tighten the confiscation regime relating to criminal assets. This set of bills is yet another example of a government that goes through the pretence of consultation but does not actually listen and refuses to accept the advice of people and groups that do not fit into its agenda.

Mr Alistair Henskens: Crooks.

Ms Jenny Aitchison: No, the Law Society, mate.

Mr JIHAD DIB: I note the interjection. I make that comment because the case for this legislation has not been demonstrated—nor has there been sufficient consultation. This is a government that is big on the rhetoric of consultation but poor in actually doing it. I note the recent criticisms by the Law Society and Bar Association. They have a much better understanding of the law than I do, so I am quite happy to listen to what they have to say.

I was totally dismayed to witness the passing of the anti-protest laws in the last parliamentary session. But now, having read this bill and having carefully and respectfully considered feedback offered by the broader civil liberties and legal fraternities, I wonder what this Government, and this Minister in particular, is up to. Is there no speed other than "crash or crash through and damn the consequences"? I also wonder what the Attorney General, herself a lawyer, thinks of this bill, which has been damned in many quarters. The fact that this bill is not being introduced by the highest legal officer in the State is a significant concern in itself.

I am no expert in law, but I do know a thing or two about communities and vulnerable people. I wonder how the Premier, given his previous commitments to defending the most vulnerable, feels about how this bill proposes a series of changes that threaten basic liberties. I have spoken at length in this place, as well as elsewhere, about my love of this country, in particular its multiculturalism.

Turn055

Underpinning that has always been my deep respect for and appreciation of the institutions and traditions that have preserved this society as a just and fair one. The universal principles of the rule of law and the separation of powers largely inherited from our British past are fundamental to what we regard as our civilised society. These might seem to some, to the so-called "man or woman in the street", to be lofty, intellectual concepts, but as the thirty-fourth President of the United States of America, Dwight D. Eisenhower, once said:

> The clearest way to show what the rule of law means to us in everyday life is to recall what has happened when there is no rule of law.

Sadly, in 2016 we only need to look around the world to understand what he meant. I have read in detail the opinions offered by the New South Wales Bar Association and the Law Society of New South Wales on this bill and I acknowledge the concerns they have raised. I refer to an old proverb: The more laws, the less justice. While the Government has not explained why the existing laws and the criminal justice system cannot deal with the issues and, rather, says it is targeting and noting the many flaws in the legislation, I have to conclude that with this legislation in its current form New South Wales is at risk of being saddled with more law but less justice.

The bill goes well beyond comparable legislation in other countries, such as Britain, and it threatens long-standing rights that I guarantee the man or woman in the street would assume are protected—rights like the presumption of innocence, the prohibition on arbitrary arrest, the right to a fair trial, the application of rules relating to hearsay evidence, and the right to be protected against double punishment. Remarkably, this bill also permits authorities to pursue a serious crime prevention order [SCPO] even where a person has been acquitted of criminal charges. That cannot occur in the United Kingdom.

In other words, are we saying that a legal court finding can technically and practically amount to nought? This is a major concern. We tell people to have faith in our system, especially the judicial system. How can we undermine that faith? How can we tell them to have faith when in reality the proposed model has few protections built into it. Instruments such as a public safety order [PSO] has the potential to create serious division within the community and to create the potential for exploitation of unintended loopholes.

This legislation proposes two new systems of order: the SCPO and the PSO to be issued by police. This is 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. Again, the Government has failed to explain how it is that existing laws do not provide sufficient mechanisms for dealing with organised crime, which is the supposed target of this legislation. More worryingly, it seems that this PSO regime establishes something like a rival to the criminal justice system.

Why would a government deliberately enact legislation that circumvents the criminal justice system, a system that, notwithstanding its warts, has served us well as a civil, democratic country for centuries? Why would

a government want to do that? I acknowledge that the courts would play a major role in serious crime prevention orders but I note the concerns raised about the broader attacks on the current criminal justice processes. Our legal system exists for a reason, namely, it is there to safeguard and ensure that the privilege of power is exercised consistent with long-standing principles.

I make it very clear that it is important that we deal with crime, especially crime of a serious nature. I place on record the importance of that and I make my comments with the utmost respect for the police. Indeed, that respect comes from my personal experience in working co-operatively with local police at all levels to prevent crime. In fact, one of my favourite experiences was taking part in the Community Awareness of Policing Program [CAPP]. From time to time I still quite proudly wear my cap. It was a great opportunity for me to spend time with local police officers and to experience everything they do on the frontline. Having witnessed that, I have even greater respect for the work they do.

The White Ribbon marches held in Lakemba are amongst the biggest in the State, due to community participation. The Minister for Police is seated at the table. I take this opportunity to commend the Bankstown and Campsie local area commands, who do a fantastic job. I am giving commanders McLean and Eardley a plug because they work so well with their communities. Over the years I have noticed a change in the building of strong relationships with local police in my community.

Turn056

When I was a high school principal I started to see many more kids wanting to be police officers because they wanted to make a difference in their community and make their community a better place. That occurred because the Police Force took the initiative to build relationships.

Members on this side of the House have concerns about the provisions mooted in these bills, and therefore we will be moving proposed amendments. These amendments include: to ensure that only the Director of Public Prosecutions can apply for a serious crime prevention order; to narrow the basis on which a serious crime prevention order [SCPO] can be sought; to remove the capacity to seek a SCPO if a person has been acquitted of a serious criminal charge if the subject matter is substantially the same; to ensure protection against self-incrimination; to specify that only the Supreme Court may issue serious crime prevention orders with full rights of appeal; to ensure the capacity of the Supreme Court to admit hearsay evidence, the same as in any other legal proceeding and not with greater capacity; and the removal of schedule 5 of the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill, which allows senior police to issue public safety orders.

All of us come to this place because we believe we can make a difference. We argue about lots of things but our constituents trust us to make decisions that will improve our communities. We bring to this place a range of life experiences and we work together to achieve the best outcomes not only for our local communities but for the whole of New South Wales. There are times when we make tough calls, but always with the best of intentions. Ultimately this place provides the forum for us to discuss, debate and refine legislation that will make our community better. Not one member of this place will argue against public safety or the valuable role of policing in a civil society.

However, we all have a responsibility to ensure that legislation, particularly these bills as they currently stand, is fair and well balanced. The bills currently before us need serious amendments to ensure that we are tough on crime but at the same time protect the individual freedoms that are the hallmark of our great society. As I said, we come to this place to make a difference, which is an admirable and noble purpose. We need to ensure that we always do so with the fundamental principles of fairness and justice at the core of every decision we make.

Mr PAUL LYNCH (Liverpool) (17:36): Labor is profoundly sceptical of these cognate bills before the House, the Crimes (Serious Crime Prevention Orders) Bill and the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill. This is seriously flawed legislation. The Government has not come anywhere close to establishing a case for the need for this legislation.

Public consultation on the bills has been non-existent. Not only has the Government failed to consult with and subsequently has been opposed by the New South Wales Bar Association, the Law Society of New South Wales and the International Commission of Jurists, all of which bodies include many Liberal Party luminaries, but, as I understand it, it did not consult with the Police Association of NSW.

The member for Ku-ring-gai answered that criticism by saying that this was not an election commitment and so the Government does not need to consult. The logical problem with that debating point is that there are plenty of election policies that governments of either persuasion do consult the community on but this sort of legislation, whether or not it is an election commitment, would normally involve consultation with these bodies.

The proposals go significantly beyond similar legislation in other jurisdictions and lack the safeguards in places such as the United Kingdom and South Australia. The bills even go considerably beyond what was originally proposed by the New South Wales Crime Commissioner, as I understand it. The bills represent a ham-fisted victory of the Minister for Police over the Attorney General and continue the subordination of the Attorney General to the Minister for Police. In many ways, this legislation is similar to the Government's approach to the Inclosed Lands, Crimes and Law Enforcement Legislation Amendment (Interference) Bill.

The Government's public legal defence of these provisions has thus come not from the Attorney General but from the backbench senior counsel and counsel for the former member for Gosford, the current member for Ku-ring-gai. His concern for the alleged trashing of individuals by non-common law and non-traditional mechanisms does not seem to extend beyond his criticisms of the Independent Commission Against Corruption [ICAC]. While he is happy to criticise ICAC, he does not apply the same standards to his own Government's legislation. The only body he seems to hate more than ICAC is the New South Wales Bar Association, as we heard today.

There are also concerns about the constitutionality of these bills, so extreme are they in some aspects. The objects of the Crimes (Serious Crime Prevention Orders) Bill are said to enable the District Court and Supreme Court to make what are called serious crime prevention orders, known in this debate as SCPOs. These are to be made on the application of the Commissioner of Police, the Director of Public Prosecutions or the New South Wales Crime Commissioner. Their expressed aim is to prevent, restrict or disrupt involvement by certain persons in serious crime-related activities.

Turn057

The objects of the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill are expressed to be to amend a number of pieces of criminal legislation. The bill aims to amend the Confiscation of Proceeds of Crime Act to enable forfeiture orders to be made by the Supreme Court concerning the property of a person convicted of a serious criminal offence in substitution of other property that the person used in, or in connection with, the offence, that is unavailable for forfeiture.

The bill also proposes amendments to the Crimes Act concerning the current offence of dealing with property suspected of being the proceeds of crime so as to adopt provisions of Federal legislation. The bill proposes amending the Criminal Assets Recovery Act. It proposes to enable the Supreme Court to make a forfeiture order in respect of property used in, or in connection with, a serious crime-related activity or, if that property is not available for forfeiture, other property of the offender. It also proposes to clarify the circumstances in which an interest in property ceases to be serious crime-derived property for the purposes of the Act on its sale.

The bill also proposes to amend the Law Enforcement (Powers And Responsibilities) Act, which is universally known as LEPRA, to enable a so-called 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. There are then consequent amendments to the Criminal Procedure Act. I turn now to the commentary of several bodies who know considerably more about the rule of law than those on the Government benches. The Law Society has written:

> The Law Society of NSW has serious concerns about the Crimes (Serious Crime Prevention Orders) Bill 2016 ("the SCPO Bill") and the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016, ("the OCPS Bill"). As a rule of law matter, and in order to protect fundamental rights and democratic institutions in NSW, the law society strongly opposes the passage of the bills.

The Law Society further wrote:

> 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 and 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 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.

It also says:

> The Law Society considers that the extension of executive powers proposed by the bills would 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.

In a letter dated 13 April the President of the New South Wales Bar Association, President Noel Hutley, SC, wrote to me saying this about the Crimes (Serious Crime Prevention Orders) Bill 2016:

> The bill is an extraordinary and unprecedented piece of legislation with grave implications for the rule of law and individual freedoms in New South Wales. The potential to interfere with liberty and privacy and in freedoms of movement, expression and communication, assembly and association is manifest.

Mr Hutley also wrote:

> The proposed reforms are inconsistent with the fundamental nature of a democracy with a respected and transparent criminal justice system.

In a further later submission the Bar Association said:

> Like the Crimes (Serious Crime Prevention Order) Bill 2016 (NSW) (SCPO Bill) with which it was introduced to Parliament (and which is the subject of a separate submission of the NSW Bar Association dated 13 April 2016), the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016 (NSW) has serious implications for the rule of law and individual freedoms in New South Wales.

The Bar Association also said:

> The New South Wales Bar Association opposes the bill. As with the SCPO Bill, the New South Wales Bar Association is concerned at the manner in which a bill with such serious implications for the liberties of persons in New South Wales was introduced in Parliament. It occurred without any prior consultation with appropriate legal professional bodies, law reform agencies or civil liberties organisations.

The Society of Labor Lawyers has also expressed its concerns about the bills. It points to the following concerns with the Crimes (Serious Prevention Orders) Bill: it exposes New South Wales citizens who have not been charged with any crime to the unlimited scope of a crime prevention order and the associated threats to liberty and privacy; it deliberately circumvents the criminal justice system—a system that has developed over centuries and has many features that prevent arbitrary interference with a person's liberty; and it is unnecessary as police already have adequate powers.

The Society of Labor Lawyers expresses the following concerns about the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill: it facilitates intrusions into the liberty, freedom of movement and association of New South Wales citizens, without the need for a charge, and on the basis of the satisfaction of the lowest ranking police officer; it places power solely within the police, rather than a separate applicant and decision-maker, to control who attends sporting, trade, cultural and social events; there is a lack of judicial oversight, review and appeal rights; the cost of appealing a decision is also likely to be prohibitive; and it provides the potential for police to control a class of people defined by race or other grounds, which may be discriminatory.

These bills follow in the tradition of this Government's ineptitude in dealing with organised crime by legislation. This Government already has legislation to declare crime organisations and a power to issue control orders. It has never been used. The Government introduced provisions to remove a suspect's right to silence. Likewise, that has never been used. The Government introduced new consorting laws in the section 93X provisions. They admittedly have been used. The first person charged was a young man with an intellectual disability.

Turn058

The Ombudsman has since revealed numerous incidents where the powers were used specifically in a way the Government promised they would not be used. This gives no confidence that these laws, if passed, will operate fairly, properly or as intended. The Government says the SCPO regime is based on the United Kingdom model. That is, at best, disingenuous. There are dramatic differences between the United Kingdom model and the positions in this bill. As the Bar Association has pointed, out there is no provision in the United Kingdom Act specifically saying that an order can be made where there has been an acquittal. That certainly can happen here. It is explicitly in the legislation. The member for Ku-ring-gai responded by quoting the Briginshaw principle and said that in practical terms no-one will ever be in that situation. If that is the case they do not need the provision in the bill. His argument is refuted by the provisions of this bill.

Hearsay evidence can be used in this model, but not in the United Kingdom model. The United Kingdom model is subject to the Human Rights Act—which the member for Ku-ring-gai conceded—and the European Convention on Human Rights—on which he was silent. That does not apply to the Government's model. The people who can apply for an SCPO in the United Kingdom are more restricted than they are in this model. Other legitimate concerns about the SCPO regime include: the nature and the scope of the SCPO is extremely broad and open ended, it seems designed to completely ignore the current system of trial and prosecution; there is a real question about the constitutional validity of the scheme; and it presents an unacceptable diminution of the institutional integrity of the State's courts. That is the view of the Bar Association and the Law Society of New South Wales. The portion applying to those convicted of offences is restricted to serious criminal offences.

That, however, is very broad. Most of the offences in the Crimes Act are punishable by five years imprisonment. The provision will include possessing a prohibited plant [*Extension of time*].

Some of the people subject to an SCPO are included by new sections 5 (b) (ii), 4 (i) (b) and 4 (i) (c). It includes people not convicted or even charged with a crime. It may include people acting unintentionally, unknowingly and innocently. The Bar Association points out that it may include a father lending a family car to a son, not knowing that the son intends to use the car to commit a serious criminal offence. The Law Society points out that it may apply to a family member or friend who provides accommodation to someone who engages in serious crime-related activities without their knowledge. The orders are made on the balance of probabilities, not on the criminal standard, and rely on hearsay evidence. The bar for making an SCPO is much lower than that required for an extended supervision order. The right of appeal to the Court of Appeal is very restricted.

There are equally concerns relating to public safety orders [PSOs]. There is no requirement that people subject to a PSO be convicted of anything, despite very significant criminal penalties flowing from a breach. The PSO need not be in writing. No appeal of the PSO is allowed if it is for less than 72 hours. Children and those with cognitive impairments are not excluded from the PSO regime. There is a significant expansion of the power of police to search and detain without warrant. I note the cacophony of complaint by the hard right about the seizure without warrant of Margaret Cunneen's phone while supporting this proposal without demur. It is wholly hypocritical. The SCPOs are based on the opinion of a police officer. That of itself is concerning. Something as significant as an SCPO should not be based on one person's unappealable opinion. It is an opinion about whether a primary purpose is for non-violent advocacy, protest, dissent, or industrial action. The dangers are obvious.

There is no upper limit to the duration of a long duration PSO. The threshold in new section 87R (5) to make a PSO is extremely low, "…a serious risk that the presence of the person or persons might result in:..." certain events. There is no chance for a person to be heard before a PSO is issued and there is no testing of the evidence or assumptions upon which a police officer's opinion may be based. That is in stark contrast to current legislation relating to proclaiming criminal organisations and terrorist organisations. One would have thought that if that is required by former serious situations, then in this situation a similar standard should be imposed. The legislation is extremely vague. There is no hint as to what might make up either a class of persons or an area. Quite remarkably, the Commissioner of Police has complete control over whether an appeal to the court against a long duration PSO is heard in the absence of the person or their legal representative. An urgent PSO can be made by any police officer. The Bar Association regards the constitutional validity of the bill as doubtful.

Turn059

The adults in the room on taking action against organised crime are on this side of the House. We have had a long record of introducing legislation to deal with these sorts of problems. As I say, we are the adults in the room on this issue. We do not support extreme and irrational legislation that is as silly as this. We think improvements can be made, but it is not this legislation as it currently stands. In our view it needs substantial amendment. If it is not amended, inevitably we will be forced to oppose it in the other place. We propose in the other place to put up an extensive series of amendments to try to fix the legislation so that in a proper, sensible and logical way it deals with the problem of organised crime.

Mr GREG PIPER (Lake Macquarie) (17:49): I speak on the Crimes (Serious Crime Prevention Orders) Bill 2016 and its cognate bill, the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016. While I understand the intention of the bills, I will be opposing them on the grounds that this is yet another unwarranted step in eroding our rights and civil liberties. The Crimes (Serious Crime Prevention Orders) Bill 2016 will deliver unprecedented powers to police and is disproportionate to the freedoms it will strip away from our most basic constitutional rights. It goes without saying that we should give our police and law enforcement agencies every reasonable means to protect the broader community from organised crime, serious criminals and the likes of terrorist threats.

I acknowledge at this stage that I believe the Government and the Minister have done much in that area. This is not an attack on the Government broadly on the way it deals with policing in New South Wales. However, I believe this particular bill goes too far. As a Parliament we should not condone this type of legislation, which provides for one more step towards what many see as being a police State. I accept the intention of the Deputy Premier and the Minister for Police, who in introducing the bills to the Parliament last month said the Government would honour an election commitment by delivering tough new powers to police in their fight against organised crime, but this should not be the mechanism.

I accept the Deputy Premier's assertion that these new powers would be used sparingly when required to protect the community from serious criminal activity. But therein lies the problem because we cannot guarantee

that those are the only times when these powers will be used. I know specifically that under this proposed legislation an appropriate court could provide police or other eligible applicant with a special crime prevention order against someone who has been involved in a serious criminal offence. That person does not have to have been convicted or even tried for that offence before an order can be imposed.

The legislation states that serious crime-related activity can mean "anything done by a person that is or was at the time a serious criminal offence" but continues with "whether or not the person has been charged with the offence". That in itself is a questionable scenario and suggests that the whole basis of our legal system—that of being entitled to a fair trial—is now subordinate to someone's subjective judgement. It presents an alternative to the current system where everyone is entitled to a fair hearing in our courts. It is totally contrary to our system of administering the law through a fair court process.

What I strenuously oppose is the situation where police, the Commissioner of Police, the Director of Public Prosecutions or the Crime Commission can apply to a court to seek a serious crime prevention order even when the person has not committed a crime, has been acquitted of a crime or not yet been tried for a crime. We simply should not be party to such changes. We cannot stop someone from attending a rally or a protest or being somewhere the police do not want them to be on the basis that they were tried and acquitted of a crime some stage earlier.

In fact, anyone who has ever been charged, acquitted or convicted over a matter that carries a maximum penalty of more than five years in jail could qualify for a prevention order. As was rightly pointed by the NSW Bar Association, the offence of dishonestly damaging property worth more than $500 with a view to making a gain carries a maximum penalty greater than five years in jail. Therefore, someone who smashes shop windows valued at more than $500 and steals a television could be captured by this legislation. Of course, they should be subjected to penalties. The question is: Are these the sorts of penalties we want to use against them?

It might sound flippant or even unrealistic but that is what this legislation allows. It is out of step with community expectations and disproportionate to the actual crime. I am also at a loss to understand why these sweeping changes are required. If their objective is to protect the public, how will they protect the public any more than existing legislation? Surely those same outcomes can be achieved through less restrictive measures—measures that do not impinge on basic civil liberties to the same extent as this legislation.

Turn060

I have grave concerns about the level of consultation that preceded the introduction of these bills. As I understand it, little or no consultation was carried out involving the general public or key legal and professional bodies. The same is true of consultation with civil liberties groups and law reform agencies, many of which now say that the legislation would almost certainly be defeated if a constitutional challenge were launched. I will not predict what might happen if any such challenge were launched. However, I strongly reject the legislation because it represents a significant erosion of our basic civil rights and creates a dangerous imbalance in the way in which we enforce our laws. I believe that we can do better in our fight against organised crime than what is proposed in this legislation without stripping away the freedoms underpinned by our constitutional rights.

Finally, I fully understand and appreciate that the Government needs to be able to govern. However, I also believe that when such significant changes are proposed the Government has an obligation to undertake meaningful consultation with the community. This is an occasion on which discussion with non-government members would have cast the Government in a much better light. If nothing else, it would at least provide a better understanding of the rationale for such major changes to our fundamental tenets of law. At this stage I cannot support the legislation. I will be interested to see how it is dealt with in the other place and the amendments proposed by members of the Opposition. I wish the Government and the NSW Police Force all the best in keeping the citizens of New South Wales safe. However, we must be much more balanced and nuanced in the way in which we achieve that. We must be extremely careful not to remove the rights that are part and parcel of the New South Wales Constitution.

Ms JULIA FINN (Granville) (17:56): As previously stated, the Opposition will not oppose these cognate bills—the Crimes (Serious Crime Prevention Orders) Bill 2016 and the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016—in this place because it wants to support effective measures designed to combat organised crime. However, we have significant concerns about the Government's legislation and will propose amendments in the other place. Elements of both bills concern me greatly, and I will raise various issues to which I expect the Minister to respond in his reply. The bills propose two new systems of orders. However, the Minister has failed to explain why the two new orders—namely, serious crime prevention orders

and public safety orders—are necessary in addition to the existing extended supervision orders, anti-consorting measures and other statutory measures that are already available.

These bills should have been subjected to a comprehensive public consultation process given the significant erosion of individuals' rights they facilitate. The Minister claims that the Government is getting tough on criminals, including those who peddle drugs or weapons, or who make their living dealing off the misery of others. That goal is commendable, but these bills are not carefully targeted. What safeguards will be provided to ensure that law-abiding citizens' capacity to undertake their day-to-day affairs is not unreasonably compromised by the new orders, or that people acquitted of offences—that is, those who have not been found guilty of criminal acts to which the Minister referred—will not be punished by the imposition of control orders when such orders can be issued on the basis of a reasonable suspicion even when that suspicion is based on a person having previously been charged with an offence but not convicted? The balance of probabilities has been cited, but who will decide that on the balance of probabilities such an order is warranted, and what appeal rights will individuals have? The New South Wales Bar Association has stated:

> The Bill effectively sets up a rival to the criminal trial system, and interferes unacceptably in the fundamental human rights and freedoms of citizens of NSW...
>
> The Bill, if enacted, creates a real danger of excessive interference with the liberty of New South Wales citizens. The powers to constrain freedom of assembly, association, expression and movement to be conferred on police are sweepingly broad, and not subject to any substantial legal constraints or procedural safeguards, and subject to flawed and legally objectionable oversight in which there are inherent elements of unfairness.

The Law Society states that these bills infringe on fundamental rights, that they are neither necessary nor proportionate, and that they encroach on a number of fundamental rights. The society also states that the legislation would circumvent the protection of the ordinary criminal justice system and potentially allow for extremely restrictive and intrusive orders to be made against people, including those who may never have been convicted of, or even charged with, any crime.

Turn061

The Government claims that the object of the Crimes (Serious Crime Prevention Orders) Bill 2016 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 New South Wales Crime Commission, so as to prevent, restrict or disrupt involvement by certain persons in serious crime related activities.

A serious crime prevention order [SCPO] may be issued by the Supreme Court where it is satisfied that, on the balance of probabilities, a person or business is involved in or may facilitate serious crime-related activity. An SCPO may be issued by the Supreme Court or District Court following conviction for a serious offence, in each case on the application of the New South Wales Crime Commission, the Office of the Director of Public Prosecutions or the Commissioner of Police. An SCPO would last for a maximum of five years. A breach would be punishable by up to five years imprisonment and/or a fine of $33,000 for an individual and $165,000 for a corporation.

It is of particular concern that other jurisdictions such as the United Kingdom provide guidelines to their Crown Prosecution Service stating that if there is evidence to support the pursuit of a criminal prosecution an SCPO should be pursued only when there is no real prospect of a criminal conviction. The New South Wales model contained in this bill offers no such protection. The Minister has not explained why it is appropriate for law enforcement agencies to use the easier civil process of an SCPO instead of a criminal trial. I also note that jurisdictions such as the United Kingdom that allow the imposition of similar orders do not allow their imposition where a person has been acquitted of criminal charges. The Minister has not explained why it is appropriate that an SCPO be put in place when a court has not found a suspect guilty in the prosecution of a matter. Why are there no safeguards to ensure that serious crime prevention orders are not misused? If a court has not found a suspect guilty of an offence, what basis does another agency or individual have to determine whether they are guilty and therefore suitable for an SCPO?

The bill deals with future crime, or crime that has not yet been committed, where there is no evidence beyond reasonable doubt to convince a court that someone has committed a serious criminal offence. Where someone has been prosecuted and acquitted, authorities will be able to use an SCPO to restrict that person's civil liberties. A person could be prevented from going to certain places or engaging in certain conduct based on speculation about a crime which may or may not be committed in the future. The definition of a serious criminal offence for the purpose of an SCPO goes far beyond the offences that the Minister for Justice and Police claims to be targeting. According to the NSW Bar Association, almost all the offences in the Drug Misuse and Trafficking Act are included, including the offence of cultivating or possessing a prohibited plant. That is not a trafficking

offence. Theoretically, individuals charged with cultivating a single prohibited plant who have convinced the court of their innocence, perhaps on the basis of not recognising the plant as cannabis, could then be the subject of control orders for up to five years.

The Bar Association has also pointed out that some very minor firearms offences are captured by the legislation, including supplying a firearm to another person who has a licence to possess such a firearm but failing to inspect the licence prior to the supply. Gun crime has been an issue in my electorate in the past. In the last term of this Government Merrylands held the dubious honour of being the drive-by shooting capital of New South Wales. No-one in his or her right mind believes that gun crime is the result of failing to inspect a licence for validity at the point of sale. Issuing control orders against such people will not further deter gun crime.

These laws are also broader in scope than similar laws put in place by the Commonwealth to circumvent terrorism. In the case of the Commonwealth laws, the restrictions on personal liberty are entirely justified. But in the case of possession of cannabis or growing of cannabis this legislation is unjustified. These are serious concerns. The scope of such orders to undermine our freedoms and public confidence in the appropriate application of the law needs to be considered more carefully in the introduction of serious crime prevention orders. Such orders should be sought only by the Director of Public Prosecutions and should never be issued to people who have been acquitted of an offence, in relation to that offence. The orders cannot be a second bite of the cherry if the police fail to secure a prosecution. Such orders must allow full rights of appeal to the Supreme Court. No limitation should be placed on the right of appeal as outlined in clause 11. The Government claims that the objects of the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016 are:

> (a) to amend the Confiscation of Proceeds of Crime Act 1989 to enable the Supreme Court to make a forfeiture order in respect of the property of a person convicted of a serious criminal offence …
>
> (b) to amend the Crimes Act 1900 to recast the offence of dealing with property suspected of being proceeds of crime so as to adopt certain provisions of the corresponding offence in the Criminal Code of the Commonwealth, and
>
> (c) to amend the Criminal Assets Recovery Act 1990 …
>
> (d) to amend 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, and
>
> (e) to make consequential amendments to the Criminal Procedure Act 1986.

Turn062

A senior police officer at the rank of inspector or above will be permitted to issue a public safety order preventing persons 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, covering everything from property damage to serious injury to a death of a person. Like SCPOs, the New South Wales proposal for PSOs appears to be modelled on other jurisdictions—in this case, South Australia, but without the accompanying South Australian safeguards. While SCPOs require some connection with serious criminal activity, the threshold for a PSO is the opinion of the relevant police officer. This clearly provides insufficient protections against arbitrary decisions. Such a power should rest only with the Commissioner of Police or a deputy or assistant commissioner. It is claimed that the non-violent advocacy, protest, dissent or industrial action rests on the police officer's belief that these are likely to be the primary purpose of a person's presence in a particular location. The Bar Association said:

> Like the Crimes (Serious Crime Prevention Orders) Bill 2016 (NSW) (SCPO Bill) with which it was introduced to Parliament (and which is the subject of a separate submission of the NSW Bar Association dated 13 April 2016), the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016 … has serious implications for the rule of law and individual freedoms in New South Wales.

It is of particular concern that there is no restriction on the application of PSOs to children or people with intellectual impairments. We saw with the consorting laws a young man with an intellectual impairment being one of the first charged, even though it was not clear that he fully understood those laws or that he was consorting with people proscribed by those laws. People under the age of 18 and people with intellectual impairments should not be the subject of these orders. The bills as presented are not about a demonstrated balance of probabilities of involvement in serious crime. They enable persecution on the basis of hearsay and speculation without sufficient oversight. I have serious concerns about these bills and hope they will be significantly amended so that they can assist in preventing serious crime without undermining fundamental rights.

Mr NICK LALICH (Cabramatta) (18:05): I make a contribution to debate on the Crimes (Serious Crime Prevention Orders) Bill 2016 and the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016 which are before us today. The main purpose of the legislation is to create two new systems of orders. The Crimes (Serious Crime Prevention Orders) Bill 2016 will enable courts to issue serious crime prevention orders [SCPOs] to restrict the activities of persons and businesses that are said to be involved in serious criminal activity. The Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016 will allow

senior police officers to issue public safety orders [PSOs] and to tighten the confiscation regime relating to criminal activity.

The Crimes (Serious Crime Prevention Orders) Bill will establish a system whereby the Commissioner of Police, the Director of Public Prosecutions [DPP] and the New South Wales Crime Commission will be able to apply to the Supreme Court for SCPOs. An SCPO may be issued if the court is satisfied that the person has been convicted of a "serious criminal offence" or is "involved in serious crime-related activity for which the person has not been convicted of a serious criminal offence". An SCPO may be issued to persons who are not charged with any criminal offence and if they have been acquitted of a criminal offence, even if the factual situation supporting the SCPO is substantially the same. An SCPO can be in place for a maximum of five years and a breach of an SCPO would see a prison sentence of up to five years or a $33,000 fine for an individual and a $165,000 fine for a corporation.

There are some concerns with the Crimes (Serious Crime Prevention Orders) Bill 2016. The SCPO system could provide unexplained and unwarranted expansion of police powers. SCPOs will also allow authorities to have control over persons who have not been charged with any offence. A person that is issued with an SCPO may be charged, tried and found not guilty in the end. In addition, the SCPO also allows authorities to exert control over someone in relation to what authorities allege is a serious crime-related activity. The Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016 will allow senior officers to issue PSO and schedule 5 amendments to the Law Enforcement (Powers and Responsibilities) Act 2002. Like the Inclosed Lands, Crimes and Law Enforcement Legislation Amendment (Interference) Act which was passed earlier this year, these bills restrict the rights of individuals.

Turn063

These bills are concerning as they may intrude on the liberty and freedom of movement of individuals in this State, place the power to control who attends events solely within the hands of the police; and potentially allow the police to control a class of people defined by race or other grounds which may be discriminatory. I believe amendments should be made to address the concerns associated with these bills.

These bills propose the addition of two new systems of orders on top of the orders already able to be made under other New South Wales and Commonwealth criminal laws as well as the anti-consorting laws implemented by the O'Farrell Government. I believe this legislation is needed, but I think the Government has overstepped. It has gone a bit too far with some of the rules and regulations it has put in this legislation. The Opposition will not oppose the legislation in this House and will allow these bills to go through to the upper House. I believe that, with the Minister responsible in this House, we will be able to come to some agreement and pass these laws, because they are needed.

Mr CLAYTON BARR (Cessnock) (18:09): I speak in debate on the Crimes (Serious Crime Prevention Orders) Bill 2016 and cognate Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016. I trust the endeavours of the Minister for Police, who has introduced these bills, are genuinely about trying to provide the resources necessary for the Police Force to best do its job. That is the intent of the bills, and certainly they go some way towards doing that. My concern is not so much about that but rather the potential for unintended consequences of these particular bills. I will concentrate on those concerns in my contribution.

The Opposition will not oppose these bills in this place. We want to have a conversation with the Government about how to deal with crime but we deem it best to do that in the upper House. As previous speakers have mentioned, we will be moving some amendments in the Legislative Council to have that conversation. Undoubtedly the legislation will be discussed further in the Committee stage and there will be a robust and detailed exchange of ideas in the upper House.

My concern about unintended consequences centres on the essential rights citizens fought to establish over centuries in democracies, including in this country and others settled by the British. These rights underpin most of what we do in Australia today. These rights have been fought for over centuries and we are now seeing them dismantled at a rapid rate. Five years ago a citizen under arrest had the right to remain silent and to present their version of events at a later date. Now they do not. Five years ago a judge had the discretion to take all circumstances into account during sentencing for one-punch assaults. Now they do not. Five years ago people had the right to protest peacefully without threat of arrest. Now they do not.

Changes introduced by Coalition Governments over the past five years have eroded our civil liberties and our right to freedom of expression. Today a citizen of New South Wales has the right to be presumed innocent of a crime until proven guilty beyond reasonable doubt. They have the right to receive written reasons for a decision and they have the right to appeal that decision. Soon, if these bills are passed in their current form, these rights will be lost too. The rights of the citizens of New South Wales are under attack. It is no coincidence that

these bills come to the House on the day of the Federal budget. If these bills are reported at all in the media, it will be buried behind the standard 12-page budget splash of every newspaper in the State. This is not the result of Government naiveté; this is calculated and prescribed so that these bills do not attract the public attention that they ought.

I have recently started reading again the book *Nineteen eighty-four* by George Orwell. I was inspired to re-read this book after the legislation concerning protests went through this Chamber several weeks ago. I had not read it for some 25 years. I have been struck and quite frightened by our progress down the path to the sort of world described in this book. I place on record, in the clearest possible terms, what is being proposed here. As I do so, I ask listeners to keep in mind that this is all being proposed at a time when rates of crime in New South Wales are in fact falling, and I thank the NSW Police Force for its efforts on that front.

Turn064

The Crimes (Serious Crime Prevention Order) Bill was described by the NSW Bar Association, which is a group not prone to hyperbole, as "conferring an extraordinary unprecedented breadth of powers". It allows serious crime prevention orders 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 using the beyond reasonable doubt standard. As long as the 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. People can be punished for something they are merely considered likely to have done and hearsay evidence can be taken into account in deciding that likelihood.

The definition of "involved" is virtually limitless. The NSW Bar Association notes that 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 used the car to commit a serious offence. Some members may baulk at the use of the term "punishment", but that is exactly what the orders are. The orders appear to be limitless in scope. The court can impose whatever restrictions, prohibitions or demands that it likes. A person can be prohibited from attending a certain place or visiting certain people. Someone can be required to present at a police station every day, indefinitely. It seems that we can be prohibited from leaving the country, the State or even our own home. We can also be ordered to provide information in writing, which would be another attack on our already degraded right to silence. Any of these punishments can be handed out to us on the basis of something that we were considered likely to have done when second-hand evidence is considered by a single judge.

The Criminal Legislation Amendment (Organised Crime and Public Safety) Bill will allow a police inspector, with no application to or consultation with higher authorities, to slap an urgent public safety order on anybody they feel poses a risk to public safety and security. The person does not have to do anything wrong. The police inspector must simply be satisfied to whatever standard they choose to set for themselves that a person may damage property or injure another person. They do not need to provide written reasons. A non-urgent public safety order can be imposed by a police inspector or someone higher and can prevent a person or class of person from attending a public event or being at a certain place at a certain time. The NSW Bar Association points out that there is nothing to prevent such an order having such vast restrictions as to effectively place a person under house arrest. It seems there is nothing to prevent a police inspector from banning all people with red hair from attending the National Rugby League grand final or from banning all people of Lebanese descent from attending a service at the Lakemba mosque.

Clearly these orders would not be just, yet under this legislation they would be legal. They would also be difficult or impossible to appeal. In the bill it is only long duration public safety orders that are explicitly appellable in the Supreme Court. This automatically presents a huge financial burden to possible appeal, which will rule out the option of appeal for most people. Raising an objection to the orders would involve judicial review in the Supreme Court, which would be tremendously difficult where a person has been banned from an event or place on short notice. The right to be considered innocent until proven guilty, the right to written reasons as to why a decision has been made, and the right to appeal will disappear under this bill if it is passed in its current form.

The bill will open the door to vindictive and discriminatory policing but also to—dare I say it—corrupt policing. As the Wood Royal Commission found, it is not possible to say that there are simply some rotten apples that can be excised from the Police Force. The reality is that a force as large as the NSW Police Force will always have to face these problems. Should such people find their way into the Police Force in future, this legislation will allow personal agendas and personal gain to be more easily pursued because police officers will have widespread power to control and restrict the actions of the citizens of New South Wales. Are we so naive to think that these powers will never be abused?

By enacting this legislation, the Government is removing the checks and balances that prevent vindictive and discriminatory policing. If this legislation is passed in its current form there will be nothing to stop a policeman in Broken Hill from banning local Indigenous men from being out after dark; there will be nothing to stop police in Western Sydney from banning scores of young Islamic men from attending matches played by the Western Sydney Wanderers at Parramatta Stadium.

Turn065

The victims of such policing, should it occur, would have no recourse—no right to appeal, no entitlement to written reasons—no power and no rights. The checks and balances that have sustained our legal system and the public's trust in it are being swept away in a tide of mendacity and confected paranoia.

The checks and balances are disappearing from our legal system at a time when the checks and balances are disappearing within the Government. The Attorney General is charged with promoting and retaining fairness in the legal system. Where is she now? She has been usurped. It is the police Minister who runs our legal system now. That alone is unprecedented. The Attorney General should be bristling at this bill, and should be stepping in to defend the office she holds and the legal principles she is supposed to administer. She is not, and it should be noted that this erosion of the basic foundations of our legal system is happening with her approval. This is Premier Mike Baird's New South Wales. We are seeing the unprecedented and seemingly unceasing march of police and government powers across long-established boundaries. [*Extension of time*]

Basic liberties and freedoms, fought for over centuries, are going or gone already. Basic processes that protect fairness in the face of the police and the judicial system are going or gone already. If these laws come into force and injustices mount, as they inevitably will, soon the public's confidence in the notion of justice in New South Wales will be going—if it is not gone already. Then we will have a serious problem. The Opposition has foreshadowed that it will move amendments in the other place, and I urge Government and crossbench members to consider and accept them.

Ms JO HAYLEN (Summer Hill) (18:20): The Crimes (Serious Crime Prevention Orders) Bill 2016 and the cognate Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016 grant broad powers to police to make serious orders against citizens that limit civil liberties. Australians are reasonable people. We accept that a peaceful society is founded on a bargain: We citizens are prepared to forgo some individual rights in order to ensure the greater good and safety of the community. But at the centre of that bargain lies our centuries old judicial system that, while imperfect, offers basic protections that safeguard each and every one of us. The balance between individual rights and collective safety is a delicate one, and it should not be messed with.

Any reform to police powers or judicial protections requires careful consideration of the impacts on citizens and proper consultation with the community. Neither has occurred in this instance. These bills tip the balance too far towards police, and I note the strident opposition from the New South Wales Bar Association and Law Society of New South Wales. Noel Hutley, SC, President of the New South Wales Bar Association said that the first bill:

> … creates 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 adequate judicial oversight, and in many cases basic rules of evidence are circumvented.

Gary Ulman, President of the Law Society of New South Wales, said:

> The Law Society submits that if the Bills become law, it would be to the serious detriment to the rights of individuals in NSW, and to the integrity of democratic institutions in this state, including our courts, without any evidence that public safety would in fact be enhanced.

New South Wales Labor does not support the bills in their current form and will move substantial amendments in the other place to protect our judicial system and the rights and freedoms of New South Wales citizens. Those same citizens will see through these bills and know them for what they are: a cynical political wedge, lobbed on the eve of a Federal election. They will also recognise the bills as another overreach by the Minister for Justice and Police. The bills come on the back of the Government's anti-protest laws, the inclosed lands Act—legislation that threatens peaceful protesters like the Knitting Nanas with seven years prison or stiff fines and up-ends fundamental rights with respect to private property. I do not support those kinds of powers being handed over to the police.

This legislation would see attempts to empower police officers to issue public safety orders, barring entry to public events or places on the suspicion of illegal activity and with no judicial oversight. Schedule 5 amendments to the Law Enforcement (Powers and Responsibilities) Act will permit a senior police officer to issue

a public service 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.

Turn066

In this case, the opinion of the police officer would be considered sufficient cause to issue the public service order. The New South Wales Council for Civil Liberties rightly argues that the bill would give police unprecedented discretionary powers to stop a person or class of persons from attending public events, premises or areas. There are very few rights of appeal, and a public service order can be made against minors and persons with impaired intellectual functioning.

Let me be clear: Public service orders would have disproportionate impacts on vulnerable members of our community, including young people, Indigenous people and people with disability. We should be worried about this. Legal Aid and community legal centres such as the Marrickville Legal Centre in my electorate and the neighbouring Redfern Legal Centre will be overwhelmed, if these laws are passed, by young people looking for help—even more overwhelmed than they are already. Those legal centres will find it harder and harder to help because Liberal-Nationals governments continue to slash legal aid across this country. I am profoundly concerned that young people will be caught by these orders for no good reason, with few legal or judicial protections to support them. The bills merely transplant a model from the United Kingdom into New South Wales. It is another attempt by this Government to look as though it is being tough on crime. There has been next to no consultation with the community, and there appears to be little evidence that the laws will work.

If there are problems with gun crime we should toughen gun laws. If there are problems with gang violence we need laws that deal specifically with gang activities. We should not apply blanket laws that significantly diminish the rights of New South Wales citizens. We need to protect public safety, but it cannot be at any cost. We need to maintain proper judicial oversight to ensure that we get the balance right. The Labor Opposition's amendments will do that. We will fight for fundamental protections, including ensuring that a person cannot be issued with a serious crime protection order if they have already been acquitted of crimes that are substantially the same as those referred to in the order. Labor will limit who can apply for such orders and will narrow the rationale upon which serious crime protection orders can be pursued. We will apply basic legal protections—including protections with respect to self-incrimination and the weight of hearsay evidence—and we will remove schedule 5 from the organised crime and public safety bill so that senior police cannot issue public safety orders.

Australians are reasonable people but they need to be included in the conversation. They do not need restrictive and anti-democratic laws imposed on them by this police Minister. These bills are part of an alarming trend when it comes to lawmaking in this State. They are reactionary and disproportionate laws, and the legal professionals and citizens are right to ask: Where is the Attorney General in all of this? The chief defender of our legal system in this State has surrendered important ground, and we will bear the cost of that.

There is no need for these laws. Let us, instead, approach this matter through a parliamentary inquiry. Let us have a proper investigation as to what is required so that we get the balance right. We need proper scrutiny of the massive changes that are being proposed here. This is a vast reorganisation of our legal system and we need to make sure that we get it right. New South Wales Labor does not support the bills in their current form and we will seek to make serious amendments to them in the other place.

Mr JOHN ROBERTSON (Blacktown) (18:28): In speaking in debate on the Crimes (Serious Crime Prevention Orders) Bill 2016 and the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016 I make clear at the outset that no-one in this Chamber supports organised crime. Obviously, the pursuit of organised crime is a significant and important issue, as recognised in many debates that have occurred in this Chamber during this and previous Parliaments. There is always a risk that laws such as these overreach or have unintended consequences. Whilst everybody in this Chamber is keen to look at ways of keeping up with the progress of organised crime—how organised crime develops new techniques and tactics to try to avoid being caught out—it is important that we do not overreach.

Turn067

On a generous reading it might be argued that things such as public safety orders are an overreach or an unintended consequence. On a more extreme reading it might be argued that the Liberal Party is no longer a liberal party that argues against over-regulation and limiting the ability of people to move about and participate in our community. A former Minister in the Fraser Government once said to me at a dinner that there is no Liberal Party in this nation anymore; it is a liberal party in name only. Many might argue that this bill reinforces the view that the Liberal Party is no longer a liberal party.

Whilst many of the measures in this bill could be argued to be overreaches that may have unintended consequences, my colleagues have adequately covered those matters. I am particularly concerned about public safety orders and their implementation and consequences. I think that Joh Bjelke-Petersen would be cheering from the other side if he looked at these public safety orders and their consequences. These laws would make Joh proud. For those too young to remember Joh Bjelke-Petersen—

Mr Geoff Provest: I do.

Mr JOHN ROBERTSON: I acknowledge the interjection of the member for Tweed. I remember him too. Under Joh Bjelke-Petersen's Government four people walking down the street together could be determined to be an illegal march or protest. As a proud member of the Electrical Trades Union I can say that many of my colleagues were arrested and locked up for standing up for the rights of working people. The issue with these bills is the public safety orders, their implementation and who they can be applied to. I am particularly concerned that in extreme circumstances racial or religious profiling might be used and orders will be applied to people on those grounds. In particular, I am concerned about the increased powers that are being given to police to control the activities of people.

I am all in favour of empowering our police to keep us safe, but in doing so we must ensure that there are checks and balances in how laws are applied. In these circumstances I am very worried that a public safety order can apply to any person, including a child or someone who is intellectually impaired, or a class of persons. Nothing in the bill prevents a class from being defined on racial or other discriminatory grounds. Once a police officer issues a public safety order a person can be prevented from entering or being present at a public event. The bill defines a "public event" as a sporting, cultural, social or trade event. Of course, a social event could be absolutely anything.

Whilst it might be appropriate for courts to deal with these matters, it is not appropriate to allow a police officer to verbally issue a public safety order on the spot which would restrict a person's ability to attend an event for 72 hours with no right of appeal. It is absurd in the extreme that I can walk down the street and a police officer can decide to apply one of these public safety orders to me. There might be some in this Chamber who would think that it is a great idea, but the fact that it could occur to me let alone to a minor only highlights the ridiculous nature of this legislation.

Under the bill a person can be prevented from entering or being present at specified premises or in a specified area. That is obviously a matter of concern. In particular, the notion of a 72-hour public safety order being issued with no right of appeal is extraordinary. It smacks of Joh Bjelke-Petersen reaching from the grave to influence what happens in New South Wales.

I am also concerned that if an order is extended an appeal right only exists in the Supreme Court. That concerns me because it seems in New South Wales we have a legal system, not a justice system. There is a huge cost impediment to the average person appealing a matter in the Supreme Court. Most people in my electorate would not have the funds to pay for that process. As I said, if the orders continue to roll over for longer than 72 hours the only appeal right is through the Supreme Court. The cost of that is so prohibitive that people in my electorate—some of whom might be racially profiled or profiled on religious grounds—will not be able to appeal their orders. I find that extremely disturbing.

Turn068

But there is a more disturbing aspect of the legislation. The legislation requires that a police officer must satisfy himself or herself whether the presence of a person poses a serious risk to public safety or security. I think that is important. It is less obvious, however, why it also includes the risk of depreciation in the value of property. We face the prospect that depreciation in the value of property can result in the imposition of one of these public safety orders.

We have reached the point of absurdity when a police officer will make a decision on a person's actions because they might cause a depreciation in the value of property. If the police officer did make such a judgement, that person would be slapped with one of these orders and would be unable to attend an event or continue to go about their business peacefully. This is the absurdity of these laws. That is why those of us on this side oppose these laws; they are extreme.

As I said at the outset, no-one on this side is opposed to laws that tackle the problems associated with organised crime. But this bill goes well beyond dealing with organised crime. This bill imposes restrictions on people's ability to move around their local community while getting on with their business. That is something I would have thought would be anathema to those on the other side. I would have thought they would be appalled and disgusted by those sorts of restrictions being imposed on people.

I am disappointed that members on this side will not be voting to oppose this legislation in this House; we will only be voting to oppose it in the upper House. Nonetheless, I think this is a bill that does not deserve to be passed by this Parliament. It goes well beyond making our community safe and puts powers in place in this State that are reflective of what we saw in the 1970s from Joh Bjelke-Petersen.

Mr RON HOENIG (Heffron) (18:36): I will make a brief contribution to this debate on the Crimes (Serious Crime Prevention Orders) Bill 2016 and the Criminal Legislation Amendment (Organised Crime and Public Safety Bill) 2016. I do not intend to go to the clauses of the two bills in any detail; many members have already done that. I do want to say, however, that in my view the legislation in its current form is an abomination. It is the product of an attempt by the Government to wedge the Opposition and to give the appearance of being tough on law and order.

It cannot be anything else because it proposes, under the name of dealing with organised crime, such extraordinary powers, and these proposals have not gone through the normal consultative processes. One thing I find extraordinary is how in recent years this Parliament has set up parallel systems of justice to try to control a whole range of behaviours, overturning systems of justice that have been in place since King John signed the Magna Carta in 1215.

One of the reasons this colony, State and country was founded on those systems of justice is because they were tried and true, tested through trial and error over a period of some 800 years. Out of those systems of justice, handed down to us by the law lords of England and the judges of Australia over those 800 years, have come many of the basic freedoms and liberties that we have today—freedom of association, for example. That freedom arose out of the common law, out of the decisions of judges over those many years.

Turn069

On 25 April each year we pay due respect to those tens of thousands of Australians who made the ultimate sacrifice in the name of freedom, and that freedom has been handed down from generation to generation for all Australians to enjoy. We have not had to go through our own civil wars to obtain our rights. We do not have a Bill of Rights. We regard the International Covenant on Civil and Political Rights as a development of our common law because our system entrusts members of Parliament with respecting the traditions that have been handed over by our forefathers; they do work. Indeed, it is our function to get the balance right so that we do not risk interfering with the normal freedoms our democracy provides.

No member of this House, and certainly not I, who have been involved in the criminal justice system all my life, takes issue with attempts by the government of the day to deal with laws related to organised crime and the frustration that has occurred as organised crime has become more effective and more insidious. However, if we are going to embark upon the exercise proposed in this bill, what is wrong with the normal consultative process? What is wrong with engaging in a process of consultation in respect of law reform by consulting the NSW Law Reform Commission, the New South Wales Bar Association and the Law Society of New South Wales to ensure that we do not get it wrong? Some provisions in this legislation are an abomination. I foreshadow that Labor will seek to amend this legislation in the other place in an effort to rescue the Government's own attempts.

The New South Wales Bar Association has pointed out that there already exists a broad range of powers under State and Federal laws to control the conduct of individuals where there are risks to public safety. These include control orders under the Crimes (Criminal Organisations Control) Act 2012, preventative detention powers under the Terrorism (Police Powers) Act 2002, banning powers under division 5 of the Major Events Act 2009, move on powers under part 14 of the Law Enforcement (Powers and Responsibilities) Act 2002, and control order powers under division 104 of the Criminal Code Act 1995. Those powers exist. In looking at the first three objects of the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016 it is hard to take issue with the Confiscation of Proceeds of Crime Act to empower the Supreme Court to make forfeiture orders beyond what they currently have; to recast offences under the Crimes Act with property suspected of being the proceeds of crime; and to amend the Criminal Assets Recovery Act to enable the Supreme Court to make forfeiture orders.

At first blush, because it has not gone through the consultation process, they appear to me to be sensible ways in which to deal with the proceeds of organised crime. However, I consider issues such as amending the Law Enforcement (Powers and Responsibilities) Act 2002 to enable police officers to make public safety orders to be over a gross overreach and they could intrude on the freedom of individuals. For example, they could intrude on members of this House who might be meeting with constituents concerned about something at a particular location and a police officer forms the opinion that a serious offence might be committed. That serious offence could be malicious damage.

Turn070

One of the problems with the offences referred to in the definitions contained within the bill is that they relate to a conviction for any offence that carries a sentence of five years or more if one is considering, for example, exercising that power. Malicious damage carries a sentence of five years, as does the offence of possession of a cannabis plant or tax or revenue evasion. Illegal gambling also carries such a sentence. We must imagine having an open-ended scheme of serious crime prevention orders under which a father could be convicted of facilitating serious criminal-related activity for lending his car to his son while being unaware that his son intended to use the car to commit a criminal offence. This example is contained in the submission of the Bar Association and it highlights the problem of having open-ended provisions in legislation without having engaged in a consultation process.

I caution members of this House and the other place that we need to be extremely careful about setting up parallel systems of justice that are distinct from the basic tenets of our system of justice. Our justice system deals with the presumption of innocence and proof of guilt beyond reasonable doubt. It depends upon evidence being properly admissible and not giving credence to hearsay upon hearsay upon hearsay. If we are going to impose these sorts of burdens on our courts then we run the real risk of the High Court determining, as it has had to do when this Parliament has previously attempted to overreach its powers, that legislation is unconstitutional. In the view of some members of the Bar Association—including at least one member of the inner Bar, who sits on the other side of this House—there is a real risk that this legislation is unconstitutional.

A legitimate question is: Where is the contribution to the debate on this legislation of the Attorney General? Where is the member for Wakehurst's contribution to debate on these bills? I am sure that the views of the member for Wakehurst on this legislation would enlighten members to a greater extent than have the views expressed by the Minister for Police.

Mr TROY GRANT (Dubbo—Minister for Justice and Police, Deputy Premier, Minister for the Arts, and Minister for Racing) (18:46): in reply: I thank members for their contributions to the second reading debate on the Crimes (Serious Crime Prevention Orders) Bill 2016 and the cognate Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016, including the member for Fairfield and shadow Minister for Police and spokesman on other portfolios, the Attorney General, the member for Charlestown, the excellent member for Ku-Ring-Gai, and the members for Sydney, Newtown, Lakemba, Liverpool, Lake Macquarie, Granville, Cabramatta, Cessnock, Summer Hill, Blacktown and Heffron.

During the course of debate on these cognate bills a number of assertions were made about overreach by this Government in its articulated attempt to give police the opportunity to target organised crime and the commission of that organised crime by this legislation empowering them to disrupt and, with public safety orders, prevent imminent crime within a 72-hour period. A number of the examples given by speakers from the opposite side of the Chamber showed a level of overreach that was quite astounding. I acknowledge that there were sensible contributions to the debate, particularly from the members for Blacktown and Cessnock. But the contribution of the member for Charlestown was appalling.

Turn071

A large part of the contributions made by those opposite in the debate relied on a level of fear and the non-existence of safeguards within this legislation. I acknowledge the concerns that have been raised during the debate about whether there are sufficient safeguards in relation to both serious crime prevention orders and public safety orders. In her contribution the Attorney General very thoroughly articulated each of those safeguards that are contained in these cognate bills. I advise those opposite and members in the other House when they are considering these bills to read the Attorney General's contribution because that should go a significant way in allaying their concerns and moving them away from some of the nonsense, arguments and scenarios that were presented in this House.

Serious crime prevention orders are to be made by judges; they are not made by Constable Charlie Brown from whatever station and imposed arbitrarily on little Miss Pollywaffle walking down the street minding her own business. These are orders applied for by the Commissioner of Police, the Director of Public Prosecutions and the Commissioner of the NSW Crime Commission and then they are made by a judge—

Mr Alistair Henskens: After hearing evidence.

Mr TROY GRANT: As the member for Ku-ring-gai rightfully points out, after hearing evidence put forward in applying for one of these orders. These are not stuck in the glove box of the patrol car, they are not torn off the back of a packet of Coco Pops, they are not a loose tool that the NSW Police Force intends to use and abuse. Quite frankly, the contribution of the member for Charlestown was extraordinary. The first thing she said, which I wrote down—and I have just named the three officers in the State who apply for these orders; not Constable Charlie Brown but the Commissioner of Police, the Director of Public Prosecutions and the

Commissioner of the NSW Crime Commission—was that "Applications for these orders have the potential to be misused and abused". That is and cannot be construed as anything other than a direct character assassination and an attack on the integrity and ability of the three people who hold those offices.

Mr Alistair Henskens: And the judges.

Mr TROY GRANT: In addition, again by direct correlation because there are only four officers involved in this process, it is a direct attack on the integrity, judgement and ability of the judge who ultimately does or does not issue these orders. The contribution of the member for Charlestown was absurd and offensive and she should be ashamed of it. In addition, she said she would have liked some examples of situations where these orders are necessary. I suggest that the member for Charlestown ask her own Labor colleagues, the shadow spokesman for Police and the Hon. Adam Searle in the other place, for a copy of the list that we gave them when we briefed them in relation to these laws. If they failed to supply that information to their party room that is not my fault; they should look at their own internal processes.

In the mix of the nonsense contained in this debate the member for Charlestown should have a serious look at what she suggested in her contribution about the integrity and judgement of the Commissioner of Police, the Director of Public Prosecutions, the Commissioner of the NSW Crime Commission and any Supreme Court judge or District Court judge who grants these orders. The making of serious crime prevention orders by judges is a fundamental safeguard.

Turn072

Those opposite should be satisfied that this legislation will not be abused. It is there to address a specific purpose and that is to keep our community safe and to disrupt the behaviour and activities of those engaged in or about to engage in serious crime. In addition, while the decisions of United Kingdom courts spoken of in this debate are not binding in New South Wales, the principles they outline in relation to serious crime prevention orders do offer useful guidance for Australian judges into the future. 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. It is judged within a framework of safeguards. There is no correlation between that experience based guidance and the nonsensical examples given by those opposite. They have stuck their colours to a mast and stated that the civil liberties of organised crime individuals and those intent on doing the community harm are more important than victim's rights and public safety. That is quite an incredible statement for the Labor Party and an independent member from Sydney to make. I do not include the member for Lake Macquarie in that description.

In relation to public safety orders, the NSW Police Force will ensure that appropriate educational training, policies and procedures are in place to ensure that officers are aware that the purpose of a public safety order is to protect members of the public from associated violence through disrupting and restricting activities of organisations involved in serious crime, their members and associates. We are not speaking of Miss Daisy going about her business, being pulled over by Constable Charlie Brown and slapped with a public safety order. That is a ridiculous assertion by those opposite. The experience of South Australian police on this issue 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. This is about crime. It is about public safety. It is about preventing crime and enhancing public safety, not the raft of nonsense suggestions given by those opposite throughout this debate.

In South Australia such orders have overwhelmingly been used to prevent violent altercations between members of outlaw motorcycle gangs at public events. This legislation would have been invaluable at the time of the Milperra bikie massacre. It would have been a useful tool to prevent that horrendous incident. The New South Wales Bar Association is an organisation that has provided information to those opposite and public commentary on this legislation. The member for Ku-ring-gai has addressed in full references and claims made by the New South Wales Bar Association throughout this debate. I commend his contribution to the debate. I recommend that every member of the other place read it to gain an understanding of the false premise upon which the Bar Association has based its conclusions. Those opposite have been misguided in their conclusions.

The Government is always happy to listen to legal stakeholders. As the member for Ku-ring-gai stated, this policy was announced in March 2015 and stakeholders have had since then to engage with the New South Wales Government. The New South Wales Bar Association has made claims in relation to these reforms that are simply incorrect.

Turn073

The member for Ku-ring-gai articulately pointed out that the serious crime prevention orders, as claimed by the NSW Bar Association, are not unprecedented 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 member for Ku-ring-gai articulated very well the response from the Scottish Government, which first considered their effectiveness before deciding whether these orders should be introduced in Scotland. Notably, they did that in 2015, determining the orders were effective and unfortunately necessary in tackling serious and organised crime.

In particular, their 2013 discussion paper on serious crime prevention orders noted that the experience in England and Wales has 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 order has been found, a sentiment expressed by the member for Cessnock and the member for Blacktown in their contributions, and confirmed by the experience and assessment of the application of these laws in Wales and the UK.

In 2007 the United Kingdom provisions were also recently reviewed. Our legislation contains a three-year period for the review. Further amendments were received in 2015 to make improvements to the regime and at this time it was noted that these civil orders were an important and cost-effective means of preventing and disrupting serious and organised crime and for that this Government makes no apologies. Further, the United Kingdom Government's serious and organised crime strategy makes a particular commitment for law enforcement agencies to make better use of these orders to deter people who are already engaging in serious and organised crime.

The absence of any reference to the United Kingdom scheme by the NSW Bar Association in its submission is suspicious and misleading, even accounting for the differences in this legislation, and it is disingenuous in the extreme, especially where the United Kingdom jurisprudence contradicts it. The NSW Bar Association also stated in a media release on 13 April 2016 that the bill provides for an open-ended scheme. This is incorrect. It is another inaccuracy 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 under proposed section 6 (2).

As stated by the member for Ku-ring-gai, I understand that the alleged author of the Bar Association's position in the media has claimed some distance from being the author to being an unnamed employee and those opposite have been led astray and are misguided. The New South Wales Government is also confident that the legislation will withstand any constitutional challenge. We are always happy to listen to legal stakeholders but when an organisation has not expressed an interest in policy announced in March 2015 until it distributes an inaccurate, highly inflammatory media release and submission on the same day and adds a personal attack on the integrity and relationship between the Attorney and me—to its long-term shame—over a year later, then its credibility is completely diminished.

In conclusion, these 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 acknowledge that the Opposition recently distributed—about 3 o'clock—some amendments relating to various issues associated with public safety orders and has spoken about them in this debate. The Government, as always, will give them all due consideration. However, let me be clear: the amendments will need to be practical so that the effectiveness of the scheme is not undermined.

Turn074

The Government will address the amendments in the Legislative Council. As I have stated, the Government makes no apology for improving community safety by getting tough on criminals, especially those who deal in drugs or weapons, who live off the misery of others, and who put guns in the hands of assassins.

The package of powers that the Government has introduced will enable law enforcement agencies to take restrictive action quickly against crime gang members such as outlaw bikies. While not expressly referred to in the bill, the orders could also be useful in preventing acts of terrorism that could involve the behaviour that these reforms are attempting to address. The NSW Police Force and the New South Wales Crime Commission have welcomed these tough new powers, which will enable them to prevent and disrupt the commission of serious and violent crime in New South Wales. This legislation will keep our community safe and will enable us to confiscate the assets of serious criminals. It is aimed at restricting the ability of criminals to commit crime and it will bolster our efforts to target serious criminals. I commend the bills to the House.

Motion agreed to.

Third Reading

Mr TROY GRANT (Dubbo—Minister for Justice and Police, Deputy Premier, Minister for the Arts, and Minister for Racing) (19:05): I move:

That these bills be now read a third time.

Motion agreed to.

TEMPORARY SPEAKER (Ms Anna Watson): Government business having concluded, private member's statements will now be proceeded with.

Private Members' Statements

PARLIAMENTARY DELEGATION TO LEBANON

Ms TANIA MIHAILUK (Bankstown) (19:06): I recently had the pleasure of participating in a visit to Lebanon undertaken by a State Labor parliamentary delegation headed by the Leader of the Opposition, Mr Luke Foley. A number of my colleagues also participated in the visit, including the Hon. Shaoquett Moselmane; the member for Lakemba, Mr Jihad Dib; the member for Granville, Ms Julia Finn; and the member for Cessnock, Mr Clayton Barr.

My electorate of Bankstown is home to one of the largest Lebanese communities in not only New South Wales but also Australia. More than 31,000 people in the wider Bankstown local government area identified as having Lebanese ancestry at the last census. That is a large proportion of my community. The Bankstown Lebanese community reflects the multiculturalism of Lebanon in that it comprises Maronite and Orthodox Christians as well as Shia and Sunni Alawi Muslims, who include the Druze community. An interesting fact that many people may not know is that there are more Lebanese people outside of Lebanon than within it.

Lebanese migration to Australia began in the mid-1800s. However, the majority of Lebanese migrants to Australia, and indeed to the Bankstown area, came in the 1970s and 1980s to escape the horrors of the Lebanese Civil War. It was when I was a student at Punchbowl Public School that I had the pleasure of becoming friends with many Australians of Lebanese heritage who had survived the civil war and who came here to live in peace, and particularly in Bankstown. It was an honour finally to be able to visit Lebanon, particularly given that I had been encouraged to do so for years by many of my Lebanese-Australian friends. I was offered many opportunities to visit Lebanon when I was the Mayor of Bankstown, but I had young children at the time and I could not take up those offers. Therefore, I was delighted finally to have the opportunity to visit in my capacity as the member for Bankstown.

I place on the record my gratitude to His Excellency Mr Glenn Miles, the Australian Ambassador to Lebanon, his wife, Kathy, and the embassy staff, who went to great lengths to assist our delegation, including by escorting us to various meetings and ensuring our safety at all times. Our delegation had the honour of meeting some of Lebanon's religious and spiritual leaders, including Sheikh Abdel-Latif Derian, the Grand Mufti of Lebanon, and Mar Bechara Boutros al-Rahi, Patriarch of Antioch and all the East. The delegation was also able to meet with representatives and candidates of the major Lebanese political parties and the Government of Lebanon, including: Dr Samir Geagea, MP, Executive Chairman of the Lebanese Forces Party; General Michel Aoun, MP, Leader of the Free Patriotic Movement; Sheikh Amine Gemayel, MP, Leader of the Kataeb Party; Justice Minister Ashraf Rifi; the Hon. Sleiman Frangieh, MP, Leader of the Marada Party; Foreign Minister Gebran Bassil; Speaker Nabil Berri; and former Lebanese Prime Minister Saad El Hariri.

Turn075

It was a fantastic opportunity to spend time with political leaders, especially as the Lebanese presidential election gets underway. The delegation was able to visit a number of Lebanese villages and cities with strong links to the Lebanese-Australian community in New South Wales, such as Batroun, Zgharta, Bnachii, Al Koura, Byblos, Syr El Dannieh and El Minieh. The delegation had the honour of meeting a number of mayors from that region, including Mr Mustapha Akl, Mayor of El Minieh; Mr Mustapha Wehbe, Mayor of Bhanin; Mr Nazir el Chami, Mayor of Merkaba; Mr Khaled el Dhaibi, Mayor of Der Al Amor; Mr Khodr el Oueik, Mayor of Burj el Yahudiya; Mr Hassan el Ghamraoui, Mayor of el Badawi; and Mr Khalid Saif, Mayor of Adwa. The delegation met many other dignitaries as well.

I also acknowledge some of the cities that the delegation visited, including Syr El Dannieh, where the delegation was hosted by Omar Yassin, and El Minieh, where Mustafa Amad assisted us in organising a wonderful event. It was a treat that hundreds of locals came from those villages to meet members of the delegation. I also thank Mr Kasim El Kheir, one of the local members of parliament who hosted us at his home, Mr Ahmad Fatfat and Mr Qassem Abdel Azziz. Those members of parliament were very respectful and met with us for many discussions. I thank them for their hospitality.

In the village of Hadchit, many of whose former residents live in Bankstown and the surrounding suburbs in Western Sydney, the delegation was invited to attend mass. We also had the pleasure of visiting the family and friends of Bishop Tarabay of Sydney. We had the wonderful pleasure of visiting St Charbel's monastery and the home that Bishop Tarabay grew up in. I again acknowledge and thank everyone who assisted the delegation. I had the opportunity to attend the Anzac Day service in Lebanon. More than 320 Australian soldiers are buried in the cemetery in Beirut, including Lance Corporal William McLeod, a resident of Bankstown. Lance Corporal McLeod was a member of the 1st Railway Construction Company, part of the Royal Australian Engineers, stationed in Lebanon during hostilities in World War II. He passed away on 17 April 1942.

Overall it was a tremendous pleasure to experience Lebanon for the first time as part of the parliamentary Labor delegation. Lebanon is a spectacularly beautiful country, with a growing economy, incredibly hospitable and friendly people and an undoubtedly bright future. Despite more than a decade of civil war and disturbance, Lebanon is a beacon of hope in the Middle East. Lebanon has a friend in Labor in New South Wales.

BATHURST ELECTORATE INFRASTRUCTURE

Mr PAUL TOOLE (Bathurst—Minister for Local Government) (19:12): It gives me great pleasure to talk about the significant investment that the New South Wales Government continues to make in the electorate of Bathurst. I will speak about a couple of projects currently being funded that are making a big difference to the lives of so many in the community. The first is in Rylstone. Rylstone is a small community that the Government has invested in heavily over the past five years. One of the smaller amounts of Government funding is $11,000 to support the further development of the Rylstone and District Historical Society Cottage Museum. It is important that we support organisations made up of hardworking volunteers who give a lot of their time and who want to make a difference in the community. The $11,000 will assist in funding extensions to the building. The society has been working tirelessly since 1984 to establish the museum in Rylstone village. Not only is the museum important locally because it tells the history of the Rylstone community, it also attracts many visitors to the region.

Turn076

I congratulate them on their efforts in establishing, growing and expanding the cottage museum. The museum itself is an old cottage—an 1890s weatherboard home built for local blacksmith James Nash. It provides a fantastic insight into what domestic and rural life was like back then. There are many displays in the museum: costumes, rustic furniture, kitchen and small farming tools, schooling and musical instruments, and photographs of pioneers of the town and the district. The funding from the New South Wales Government will help the society support a new enclosure and fit out of the cottage veranda to create additional space to add to the museum's collection.

The Government is supporting the museum with grant funding but the museum itself is also putting in in-kind funds to support it. It is great that this program is a partnership between the New South Wales Government and the community organisation. I thank the Minister for Regional Development, the Hon. John Barilaro, for supporting this project with the funding that has been given. The refurbishment of the cottage museum will help strengthen and preserve the historical and cultural fabric of this regional community. I am very pleased about this important investment made by the Government.

The New South Wales Government is also investing $160,000 in the Lithgow courthouse to improve the safety and efficiency of hearings and provide better facilities for vulnerable witnesses. High definition audiovisual link systems will be installed. This is one of 17 courthouses across the State in which additional work will occur in 2016. The work at Lithgow is to begin in June this year. I met with local solicitor Ross Higgins and the registrar at the courthouse. They were very excited about this investment and the changes that are being made. It is the first time that Lithgow courthouse will have audiovisual links. Many detainees will be able to appear from prison and evidence can be taken from interstate and overseas witnesses. The technology will make a huge difference to the way proceedings are conducted as prisoners will no longer need to be transported lengthy distances to Lithgow for court appearances on matters that may only take a couple of minutes. Visual links will reduce the risk of escapes, cut delays caused by waiting for prisoners to physically arrive at court and free up police to do other front-line work.

The courtroom in Lithgow will have audiovisual technology, which is important when presenting evidence. There will also be a document camera capable of zooming in on exhibits and projecting them on a large liquid crystal display [LCD] screen. The upgrade will also include improved technology for vulnerable witnesses to give in-camera evidence from a private room. This technology is important because it provides children, sexual assault victims and other vulnerable witnesses with a private and comfortable space in which they can testify away

from the stressful environment of the courtroom. This Government is supporting communities, particularly those who may be at risk or vulnerable, throughout the State.

TRIBUTE TO ROBYN KEMMIS

Mr ALEX GREENWICH (Sydney) (19:17): It is with great sadness that I acknowledge the passing of the extraordinary former Deputy Lord Mayor of Sydney, Robyn Kemmis, who unexpectedly passed away in December. Robyn's untimely death is a great loss to the City of Sydney and inner city communities. I first met Robyn when I stood for the Clover Moore Independent Team for council in 2012. We doorknocked and ran street stalls together and she proved to be someone I could trust and ask for advice. We became fast friends. Robyn was first elected to council in 2004 when the city was amalgamated with South Sydney council by the then Labor Government which wanted to secure control of town hall. She was on Clover Moore's Independent Team and served until the following election in 2008. I, along with many others, was pleased that she decided to run again in 2012 after a break that allowed her to focus on family matters. She served as Deputy Lord Mayor from her election.

Robyn worked hard for inner city communities, particularly vulnerable and disadvantaged groups. She believed in community building and engaged with people on the ground, making herself accessible to everyone. She wanted to empower people and worked on making community connections. She brought Glebe resident groups together, linking public tenants with other local community groups. She would attend public tenant meetings and rough sleeper barbeques in Redfern and helped link rough sleepers and young people on the street with services including Aboriginal and community health services.

Turn077

Robyn believed strongly in ensuring that all young people had opportunities and hope. She worked hard to keep the Glebe Youth Service and other youth services that help young people get their lives on track. Her dedication to the Millers Point public housing communities saw her meet regularly with tenants and attend delegations to the Minister with me. She wanted tenants to be a part of the decisions that affected them and wanted those government decisions to be compassionate and fair. We worked together to get the Government to keep some properties for the most vulnerable tenants. I know that the Millers Point communities grieve greatly at the loss of their strong advocate.

Before joining council Robyn had an active career in public service and administration. She was Deputy Vice Chancellor (Administration) of the University of Technology Sydney for more than a decade. Robyn's list of achievements would make the most successful among us feel inadequate. Many of these are surfacing only now as we look back on her life, because she was always a modest person and more comfortable with working behind the scenes. She was an active feminist and founded a number of groups to advance the status of women both here and in London. She was part of the group of 14 women, including Anne Summers, who established Elsie, which was Australia's first women's refuge. It opened in 1974—a time when family violence was considered a private domestic matter.

Robyn's values had social justice at their heart, and this was the foundation of her advocacy. She worked for environmental protection; lesbian, gay, bisexual, transgender and intersex equality; Aboriginal communities; housing for disadvantaged people; women's rights; and opportunities for all. She was passionate and effective in her position, always focusing on outcomes. Robyn was greatly respected throughout inner-city communities. She was a champion of Sydney, a voice for our community's most vulnerable, and a compassionate and caring friend for many people.

I was grateful to see Robyn at Carols in Pyrmont just a few days prior to her passing. She was upbeat and happy, and, as always, displayed her great sense of humour. When I spoke with Clover Moore, the Lord Mayor of Sydney, soon after hearing about Robyn's passing, we commented on what a wonderful and full life Robyn had had and how she continued to inspire people. I extend my condolences to her family and friends, especially to her partner, Lyn. It is with sadness that I say goodbye to a loyal and trusted friend. I commit to continuing her work to make the city a fairer and better place.

SOUTH COAST TRAIN TIMETABLE

Mr RYAN PARK (Keira) (19:21): Tonight I speak about an important issue in the electorate of Keira: the South Coast train timetable. Madam Acting Speaker Watson, who comes from the region, will know that Keira has a large population of commuters, particularly in the northern suburbs of the Illawarra. The largest proportion of commuters come from the north. They reside in a beautiful area but are forced to commute to Sydney for work.

This means that they rely heavily upon public transport. Unfortunately, for a number of years now the South Coast train timetable simply has not worked.

I am pleased that in recent times the Government has finally listened to concerns and agreed to a trial to include Austinmer commuter station in the revised timetable. This will take some pressure off the surrounding area of Thirroul and give people in a large commuter area the opportunity to access public transport services. I first raised my concerns in November 2003. We now have a three-month trial, and I acknowledge the member for Kiama for assisting me in getting that win. As the community has made clear to me, we are now a few weeks into the trial and are approaching a point where we need to make a decision about whether it will continue.

The Government wants people to use public transport. But in order for people to do so it must ensure that those in large commuter populations are serviced effectively. There have been reports in the media that the car park at Austinmer station, which was previously a ghost town after changes to the South Coast train timetable, has seen a 500 per cent increase in the number of cars parked there. This is important because it represents a massive increase in the number of people accessing public transport rather than being forced to use their motor vehicles.

Turn078

Austinmer commuters in the Keira electorate are saving approximately 13 minutes in the mornings and 13 minutes in the afternoons. I acknowledge the Thirroul Transport Committee and the thousands of locals who have contacted me in support me of this change.

The Government has monitored car parks and this has proven to be a great success. Opal ticketing and load factors have also been tracked. The Minister is aware that the load factors on our trains are well above capacity during peak periods. Anyone who has anything to do with public transport knows that. We want an update on how the trial is progressing and an announcement that the change will remain in place. The people of the northern suburbs who fought hard to achieve this small but important change want to know that it is permanent. Commuters have contacted me through various means, but one commuter captured the situation on social media. Via Twitter, Erin wrote:

> 40 odd people waiting for the 7.31am train this morning from #austi to #central this morning @RyanPark_Keira #win.

The community has been dealing with this timetable for a number of years, which has been inconvenient to say the least. They now want a guarantee that the change will be permanent. We have a large commuter population and it would be great if jobs were closer to home and people did not have to rely on public transport all the time. Unfortunately, that is not the case.

One of the disadvantages of living so close to a global city is that the labour market and opportunities are often absorbed and taken up within the city. The people of the Illawarra have always dealt with that fact. We will continue to ensure that wherever possible we will provide opportunities for local investment and jobs. The reality is that we need public transport and we rely on it perhaps more than most communities. I hope that the Minister will be sensible. In his correspondence he said, "We will be monitoring the trial closely." I hope we see a move towards a permanent change and that other stations such as Woonona are slotted into the timetable to ease the pressure around Thirroul.

THE RIVERINA ANGLICAN COLLEGE

Mr DARYL MAGUIRE (Wagga Wagga) (19:26): Tonight I pay tribute to two educators—one is a teacher and the other is chairman of a board. Together, with the board and their staff, they have formed a formidable team in establishing The Riverina Anglican College [TRAC] in Wagga Wagga. Tonight, Dr Ian Grant made an announcement that he is to retire from the position of founding principal, which he has held since 1998. The Riverina Anglican College accepted its first students in 1999, which is the year that I was elected to this place. Dr Grant will farewell TRAC in December, but not before he finishes some important work. When the school was founded 18 years ago there were two buildings and 25 students. In an interview with the *Daily Advertiser* Dr Grant said:

> I'm always thankful for the belief those first few parents had when we started the school, they really put their faith in me. Being a foundation principal is very different from being a principal nowadays, in the way that I have managed to be very hands-on and do lots of different things throughout the years.

Despite initially studying medicine, Dr Grant admitted he discovered quickly that his real passion was for teaching and education. He said:

> I realised I wanted to deal with young, sharp developing minds. I love seeing the spark of understanding when a child learns something new.

Dr Grant will find a replacement before he leaves in December to do other things, including writing history books. TRAC was developed as part of the new schools policy of the Anglican Diocese of Canberra and Goulburn. An organising committee for an Anglican school in Wagga Wagga had been in place since the early 1990s and a public meeting in 1998 rekindled those efforts. Bishop George Browning of the Anglican Diocese spoke to an enthusiastic crowd of more than 100 and the organising committee, now under the chairmanship of Neil Stubbs, took over. A Riverina Anglican College Ordnance was passed through the Synod and, in a show of good faith, it advertised for a college principal.

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The other person I want to pay tribute to is past chairman of the board Neil Stubbs, who relinquished the position in about 2000. Mr Stubbs was the other part of the formidable team that helped deliver this wonderful asset to the region and to the city of Wagga Wagga. Neil Stubbs was the Chief Executive Officer of the Forrest Centre. I met with Mr Stubbs a couple of days ago and we discussed his retirement.

The team went on to build a magnificent college at Estella. The very competent people on the board made a wonderful contribution. They include: Mr Peter Davies, who located a block of land on Farrer Road, Wagga Wagga; the architectural company Noel Bell, Ridley Smith and Associates; Mrs Patricia Oliver who organised uniforms and also the temporary establishment of the college at Charles Sturt University's south campus site when the school was in its early days; Mr Charles Houen who provided legal advice; Mr Keith Wheeler who oversaw the release of media details; Mrs Helen Wotsko who assisted in the accountancy establishment; and the Regional Bishop, Bishop Godfrey Fryar, who provided support and liaised with the Anglicans in Goulburn and Canberra. As a result of that work the college opened in 1999, in the year of my election.

I have had a very strong association with this college. The achievements of this college in all pursuits, including academia, sport and other interests, have been fantastic. In 2005 the school received its first Duke of Edinburgh Scheme award. It has excelled in mathematics, food technology and so on and now has spread across the Farrer Road site and developed into a major school that any local member would be very proud of. I congratulate Dr Ian Grant on his contribution to the education of our students and also Neil Stubbs. It is said that an education is the greatest gift that can be given to a child. I congratulate them on their enormous contribution and leadership to the TRAC Anglican College.

TEMPORARY SPEAKER (Ms Anna Watson): Private members statements having concluded, and in accordance with the standing and sessional orders, the House now stands adjourned until Wednesday 4 May 2016 at 10.00 a.m.

The House adjourned at 7.32 p.m.