**Full Day Hansard Transcript (Legislative Council, 24 March 2009, Proof)**

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Extract from NSW Legislative Council Hansard and Papers Tuesday, 24 March 2009 (Proof).

# LAW ENFORCEMENT (POWERS AND RESPONSIBILITIES) AMENDMENT (SEARCH POWERS) BILL 2009

## Second Reading

**The Hon. JOHN HATZISTERGOS** (Attorney General, and Minister for Industrial Relations) [3.48 p.m.]: I move:

That this bill be now read a second time.

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

**Leave granted.**

The Government is pleased to introduce the Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Bill 2009. The bill introduces a scheme for a new class of search warrant—the covert search warrant—to assist police and other law enforcement agencies in the investigation of serious criminal offences, and creates new search warrant powers in relation to the examination of computers. The bill is part of the New South Wales Government's ongoing commitment to providing law enforcement agencies with the necessary armoury to respond effectively to major crime and keep the community safe.

The essential feature of the new covert search warrant scheme is the power to enter and search premises without the occupier's knowledge and delay the subsequent notification to the occupier. The use of covert search warrants is not intended to be an everyday event. In addition to the legislative restrictions of the scheme, which I will expand upon shortly, covert search warrants will not be necessary in many cases. Furthermore, the execution of a covert search warrant is considerably resource intensive and logistically difficult. Surveillance teams are required to ensure that the occupier is elsewhere, a covert entry to the house must be made, the area needs to be monitored to ensure that the occupier does not return, and so on.

The new scheme recognises that there may be cases in which law enforcement agencies would benefit from obtaining covert access to premises to obtain intelligence or evidence in relation to a serious criminal offence. By conducting a covert search, the police could monitor the organisation and development of criminal activity without notifying the suspects that they are under surveillance. Premature notification to a suspect of the existence of an investigation may lead to an investigation failing, notwithstanding the commission of serious offences. Searches of clandestine drug laboratories are but one example of where there may be the need to covertly examine the premises to determine whether the manufacturing process is sufficiently advanced for the seizure of evidence to occur.

These are tough new policing powers, and the Government has therefore taken care to ensure that the scheme is appropriately restricted and accompanied by strict judicial oversight and comprehensive safeguards. Covert search warrants will be available only in connection with certain serious offences and may be authorised only by a Supreme Court judge. Before a warrant can be granted the issuing judge must be satisfied that it is necessary for the entry and search of the premises to be conducted without the knowledge of the occupier, and specifically give consideration to the nature and gravity of the searchable offence and the extent to which the privacy of any person not believed to be knowingly concerned in the commission of the offence is likely to be affected. Furthermore, while the issuing judge may authorise that service of an occupiers notice be delayed for up to six months at a time, service may be delayed beyond 18 months only in exceptional circumstances and may not be delayed beyond three years in total.

Law enforcement agencies will be required to report certain matters to the issuing judge following execution of the covert search warrant, a copy of which is to be furnished to the Attorney General. In addition, agencies will be required to report annually on the exercise of covert search warrant powers, as will the New South Wales Ombudsman, who will have an ongoing oversight role in relation to the scheme. The scheme is based on the existing scheme for covert search warrants for

terrorism offences and incorporates the same safeguards and protections, in particular, the need to seek approval from a senior officer prior to making an application and the need to seek a warrant from the Supreme Court. The scheme also draws upon the operation of covert search warrants in other Australian jurisdictions. As mentioned, the bill also creates new search warrant powers in relation to the examination of computers. These powers are based on existing Commonwealth provisions and will strengthen the ability of New South Wales law enforcement agencies to effectively investigate technologically concealed criminal activity. I now turn to the main detail of the bill.

New section 46A provides that covert search warrants will be able to be obtained only in relation to specified serious offences. These are generally indictable offences punishable by imprisonment for a period of seven years or more that involve various drug, sexual and other serious offences. New section 46B provides that only a Supreme Court judge may issue a covert search warrant. New section 46C provides that applications for covert search warrants must be authorised by certain senior police officers and members of the Police Integrity Commission and the New South Wales Crime Commission. New section 47 contains the grounds on which an application for a covert search warrant may be made. The eligible applicant must suspect on reasonable grounds that there is, or within 10 days will be, in or on the premises a thing of a kind connected with a searchable offence and consider that it is necessary for the entry and search to be conducted without the knowledge of the occupier of the premises.

New section 47A contains the authority conferred by covert search warrants—namely, entry to the subject premises without the occupier's knowledge, the impersonation of another person for the purpose of executing the warrant, and the doing of anything else that is reasonable to conceal from the occupier anything done in the execution of the warrant. The executing officer may also gain access to the subject premises, if necessary, by entering adjoining and adjacent premises without the knowledge of the occupier of those premises. Provision is made elsewhere in the bill for the occupier of the subject and adjoining premises to subsequently be notified of the entry.

New section 48 sets out the grounds on which the two kinds of search warrants may be issued and enables a standard warrant to be issued instead of a covert search warrant in specified circumstances. New section 49 specifies that things may be seized and detained in the execution of a search warrant and also enables a covert search warrant to authorise the placement of things in substitution for seized things. New section 49A authorises the return or retrieval of certain things seized or placed under a covert search warrant. Amended section 62 of the principal Act sets out the information to be contained in an application for a search warrant, including the considerations for the issuing judge when determining whether to issue a covert search warrant. As I mentioned, these include the extent to which it is necessary for the entry and search of the premises to be conducted without the knowledge of the occupier, the nature and gravity of the searchable offence, and the extent to which the privacy of any person not believed to be knowingly concerned in the commission of the offence is likely to be affected. The offences in section 63 of the principal Act are extended to the provision of false or misleading information in a report or occupiers notice in relation to a search warrant.

Section 66 of the principal Act is amended to require a covert search warrant to specify certain matters. New regulations will be developed prior to the commencement of the scheme in order for relevant forms to be prescribed in this regard. Section 67 of the principal Act is amended so as to alter the current requirements for service of occupiers notices in relation to the execution of standard warrants and to provide for service of occupiers notices in relation to the execution of covert search warrants. At present an occupiers notice is required to be personally served on an occupier on entry to premises, or as soon as practicable after, unless service is postponed. Service may be postponed on more than one occasion for up to six months at a time. New section 67 subsections (4) to (7) instead require personal service on entry or within 48 hours after entry. If this proves impossible an eligible issuing officer may make orders to bring the entry to the notice of the occupier otherwise than by personal service. These changes will create more certainty for both occupiers and law enforcement agencies alike.

New section 67 (8) requires service of an occupiers notice in relation to a covert search warrant as soon as practicable after the warrant is executed unless it is postponed under new section 67A. New section 67A enables an eligible issuing officer to postpone service of an occupiers notice in relation to a covert search warrant for an initial period of up to six months and on further occasions for up to three years in total. An eligible issuing officer may not postpone service for periods exceeding 18 months in total unless satisfied that there are exceptional grounds to justify the postponement. New section 67B requires an adjoining occupiers notice to be served on an adjoining occupier whose property is entered under a covert search warrant within specified

periods, unless service is postponed or dispensed with by the eligible issuing officer. Section 73 of the principal Act is amended to provide for the expiry of a covert search warrant 10 days after the date on which it is issued. New section 74A requires a person executing a covert search warrant to report certain matters to the eligible issuing officer who issued the warrant within 10 days after the execution of the warrant or, if the warrant was not executed, within 10 days after the expiry of the warrant. A report is also to be provided if premises are entered for the purposes of returning or retrieving a thing under new section 49A. Copies of reports provided under the new section are to be given to the Attorney General.

New sections 75A and 75B contain the computer examination powers to which I referred earlier. New section 75A enables the removal of computers and similar devices from premises, the subject of a search warrant, for up to seven working days, or longer on application, for examination. New section 75B creates new search warrant powers in relation to the search and examination of computers, including access to computers "networked" to a computer at the search premises. New section 76A provides for applications under part 5 in respect of covert search warrants to be dealt with in the absence of the public. New section 76B makes it an offence to publish certain applications, reports and notices concerning search warrants. As I mentioned, the Ombudsman will have an ongoing oversight role in relation to the covert search warrant scheme.

Amended section 242 of the principal Act provides for the Ombudsman to monitor the operation of provisions of the Act relating to covert search warrants and to make a yearly report to the Attorney General and the Minister for Police. In addition, new section 242A requires the Commissioner of Police, the Commissioner for the New South Wales Crime Commission and the Commissioner for the Police Integrity Commission to each report annually on the exercise of the covert search warrant powers. In summary, the bill represents an important bolstering of law enforcement capability to assist in combating major crime in New South Wales. The Government takes these powers very seriously and is seeking to introduce them only with the strictest of safeguards and strong and effective oversight. I commend the bill to the House.

**The Hon. JOHN AJAKA** [3.48 p.m.]: The Law Enforcement Powers and Responsibilities Amendment (Search Powers) Bill 2009 amends the Law Enforcement (Powers and Responsibilities) Act 2002 to enable Supreme Court judges to issue covert search warrants. At the outset I state that the Opposition does not oppose the bill, subject to moving amendments LP 2009-003E in Committee. I turn now to the detail of the bill. The bill seeks to amend the principal Act to enable Supreme Court judges to issue covert search warrants that will permit eligible applicants to enter and search premises covertly to investigate certain serious criminal offences.

Eligible applicants under proposed section 46C include specially authorised police officers, who are police officers above the rank of superintendent, the commissioner, assistant commissioner, and the staff of the New South Wales Crime Commission and the Police Integrity Commission. Before a warrant can be granted, the issuing judge must be satisfied that it is necessary for the entry and search of the premises to be conducted without the knowledge of the occupier. He or she must specifically give consideration to the nature and gravity of the searchable offence and the extent to which the privacy of any person not believed to be knowingly concerned in the commission of the offence is likely to be affected.

A searchable offence under proposed section 46A is defined as an indictable offence punishable by imprisonment for a period of seven years or more. The offences include, for example, car and boat rebirthing activities; the unauthorised access to, or modification or impairment of, computer data or electronic communications; destruction of property; and the supply, manufacture or cultivation of drugs or prohibited plants.
Under a covert search warrant authorised persons may, first, enter the subject premises without the occupier's knowledge; secondly, impersonate another person for the purpose of executing the warrant; thirdly, do anything else that is reasonable to conceal from the occupier anything done in the execution of the warrant, such as the placement of objects in substitution for seized objects—a limitation that may prove problematic in the future, when it might be argued that it does not cover occupiers of adjacent premises—and, fourthly, gain access to the subject premises by entering adjoining and adjacent premises without the knowledge of the occupier of those premises. The eligible applicant must suspect on reasonable grounds that there is, or within 10 days there will be, in or on the premises a thing of a kind connected with a searchable offence and consider that it is necessary for the entry and search to be conducted without the knowledge of the occupier of the premises.

These new provisions essentially seek to legalise what would otherwise be a significant trespass on the relevant person's privacy and property, as was pointed out by the Legislation Review

Committee in its second report of 2009. The low threshold of "suspicion on reasonable grounds" raises concern that covert entry and search of premises will be conducted in an arbitrary manner, thereby unduly infringing on the rights of innocent people. The wide-ranging nature of the power, particularly the extension of its application to a broad range of indictable offences when previously powers of this nature were to be legally exercised only in respect of the most heinous terrorist offences, is also another matter of concern. The bill provides for the deferral of the service of an occupier's notice in relation to covert search warrants for up to six months, with possible extensions up to three years, after entry to the premises. New section 67 (8) provides for the service of an occupier's notice in relation to a covert search warrant as soon as practicable after the warrant is executed unless it is postponed under new section 27A.

Postponement for a period of up to six months is subject to a reasonable grounds test, to be determined by the eligible issuing officer. Service of an occupier's notice may be delayed beyond 18 months only in exceptional circumstances. Service of an occupier's notice can be postponed on more than one occasion but must not be postponed for more than three years in total. The bill also provides for the expiry of a covert search warrant 10 days after the date of issuance, rather than the 72 hours for a normal warrant. The personal service of an occupier's notice has been a traditional safeguard of the rights of the individual subject of the search warrant. The bill creates new powers to remove computers and other similar devices from premises which are the subject of any search warrant for a period of up to seven working days, or longer on application, and to search computers which are networked to computers at the premises. Two conditions must be met before a thing found at the premises may be moved to another place: firstly, it must be significantly more practicable to do so, having regard to timeliness and cost; and, secondly, there must be reasonable grounds to suspect it contains a thing that may b e seized under the warrant.

It appears from section 75A (3) that where the thing is removed under a covert search warrant the person executing the warrant is not required to advise the occupant that the occupier may make submissions to the issuing judge on the matter. The issuing judge may authorise the removal of a thing for a period exceeding a total of 28 days on the basis of exceptional circumstances, pursuant to section 75A (4). This appears to apply to both covert and normal search warrants. Proposed section 75B authorises a person executing or assisting in the execution of a warrant to operate computers and other equipment at the subject premises to access data that the person believes on reasonable grounds may be seized under the warrant and, in certain circumstances, to copy that data or take the data storage device from the premises.

The bill makes it an offence to knowingly provide false or misleading information in a report or occupier's notice in relation to a search warrant. However, I note that there is no provision in the bill to cover the lower threshold of recklessness or negligence. The bill alters the requirements for service of an occupier's notice in relation to standard search warrants. Subsections (4) to (7) of new section 67 require personal service upon entry or within 48 hours of entry. When this is impossible an eligible issuing officer may make orders to bring the entry to the notice of the occupier other than by personal service. The bill removes the requirement relating to warnings or evidence to be given of the identity of a police officer in exercising powers under a covert search warrant. The bill introduces a requirement that an applicant is not required to disclose the identity of a person from whom information was obtained if the applicant is satisfied that to do so might jeopardise the safety of the person. The Legislation Review Committee stated:

This section seems overly cautious as the identity of the person will presumably only be disclosed to a judge of the Supreme Court and its non-disclosure may make it difficult for the judge to decide how compelling the evidence is in regard to the need for a covert warrant.

The bill provides for the Ombudsman to monitor the operation of the Act's provisions relating to covert search warrants and to make a yearly report to the Attorney General and the Minister for Police. It requires the Commissioner of Police, the Commissioner for the New South Wales Crime Commission and the Commissioner for the Police Integrity Commission to report annually on the exercise of powers under covert search warrants by police officers and staff of the New South Wales Crime Commission and the Police Integrity Commission. The bill also amends the Terrorism (Police Powers) Act 2002 to enable eligible persons executing covert search warrants under that Act to exercise similar powers under that Act, as well as consequential amendments to other Acts and the Law Enforcement (Powers and Responsibilities) Regulation 2005.

The expansion of powers outlined in this bill will assist the police in their fight against the most serious criminal offences. Underlying the changes are significant safeguards to protect the delicate balance between the demands of law enforcement and the civil rights of the individual. By affecting such a great expansion of powers, just as we place our everyday safety in the hands of the police,

so here we entrust police with the weighty responsibility of protecting the innocent from undue incursions into their privacy and property, and with the task of using these new tools with only the highest level of integrity. As I said earlier, the Opposition does not oppose the bill, but we will be moving amendments in Committee.

**The Hon. TREVOR KHAN** [3.58 p.m.]: The Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Bill 2009 causes me considerable concern. It raises fundamental issues regarding the rights of citizens of New South Wales and the circumstances in which those rights should be abrogated. In considering the bill I am reminded of the words of the full bench of the High Court in the decision in *George v Rockett* , 1990 170CLR104, delivered on 20 June 1990. At paragraphs 4 and 5 of the judgement the full bench in part observed:

A search warrant thus authorizes an invasion of premises without the consent of persons in lawful possession or occupation thereof. The validity of such a warrant is necessarily dependent upon the fulfilment of the conditions governing its issue. In prescribing conditions governing the issue of search warrants, the legislature has sought to balance the need for an effective criminal justice system against the need to protect the individual from arbitrary invasions of his privacy and property.
Search warrants facilitate the gathering of evidence against, and the apprehension and conviction of, those who have broken the criminal law. In enacting s.679, the legislature has given primacy to the public interest in the effective administration of criminal justice over the private right of the individual to enjoy his privacy and property. The common law has long been jealous of the prima facie immunity from seizure of papers and possession: see Holdsworth, A History of English Law, vol.10, (1938), pp 668-672). Except in the case of a warrant issued for the purpose of searching a place for stolen goods, the common law refused to countenance the issue of search warrants at all and refused to permit a constable or government official to enter private property without the permission of the occupier: Leach v. Money …

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

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**LAW ENFORCEMENT (POWERS AND RESPONSIBILITIES) AMENDMENT (SEARCH POWERS) BILL 2009**
**Second Reading**

**Debate resumed from an earlier hour.**

**The Hon. TREVOR KHAN** [5.04 p.m.]: The judgement in *George v Rockett* continued:

*Leach v. Money (1765) 19 State Tr.1001; Entick v. Carrington (1765) 19 State Tr.1029.*
Historically, the justification for these limitations on the power of entry and search was based on the rights of private property: *Entick* at p 1006. In modern times, the justification has shifted increasingly to the protection of privacy: see *Feldman, The Law Relating to Entry, Search and Seizure, (1986), pp 1-2.*

State and Commonwealth statutes have made many exceptions to the common law position, and s.679 is a far-reaching one. Nevertheless in construing and applying such statutes, it needs to be kept in mind that they authorize the invasion of interests which the common law has always valued highly and which, through the writ of trespass, it went to great lengths to protect.

Therefore we should not pass this bill in an historical vacuum. It is far too important for that. We are being asked to overturn centuries of tradition, to strip away rights and privileges that were hard won many centuries ago by those who fought against arbitrary invasion and the taking away of possessions by those in authority. I recognise that in these times to speak of rights and to talk of liberties is to potentially invite derision and ridicule from members opposite. We have already heard from the Minister for Police arguments that could loosely be described in other debates as, "if you have done nothing wrong, then these laws should give you no concern". Government members in the other place have advanced the same argument in debate on this bill.

The sad fact is that such an argument as that truly lacks intellectual rigour. Indeed, it demonstrates a lack of insight, a lack of understanding of the need for all parliaments to guard the rights of citizens against potential predation by the Executive arm of Government. History tells us that we should be justifiably sceptical of placing too much authority in the hands of the Executive arm of Government. Regrettably, we live in an age where it seems that to have a concern about long-held traditions, such as the sanctity of the home, the protection against self-incrimination and the right to privacy, is seen as bowing to forces of evil and corruption. Nothing can be further from the truth. There are long-held principles in our liberal democracy that should not be surrendered simply because the political temperature to which the Government is exposed makes it expedient to trample on them.

Indeed, if one were to accept the arguments of some Government members, one would not simply stop at this bill. If what is said is that only the guilty need worry and that we need to give the police additional powers to fight crime, why not just give them even further powers? Perhaps we could remove the right to silence. Perhaps we could reverse the onus of proof. What about allowing detention without being brought before a court or, indeed, being charged for seven days? No doubt someone such as Dr Haneef would speak on such a proposal. Perhaps we could take a leaf out of the book of the former American Vice-President Dick Cheney and find sleep deprivation and water boarding acceptable investigative tools.

The simple answer is that merely giving police all the powers that some may ask for is not a proper test. It is not a proper exercise of our responsibilities to the people who elected us. There must be checks and balances. There must be oversight. Indeed, there must be caution. In those circumstances I congratulate the shadow Attorney General on seeking to introduce amendments that will mitigate some of the worst aspects of this bill. The shadow Attorney General has demonstrated an insight into the dangers inherent in this legislation, which it seems Government members are, for whatever reason, prepared to ignore. I believe that the bill in its present form is fundamentally bad. No doubt my view on this bill is coloured by having practiced in the area of criminal law for more than two decades.

However, my experience of the law and the application of laws do not cause me simply to oppose every legislative amendment. When I practiced law there were many occasions on which hardworking police officers were hamstrung because of decisions or rulings that seemed unduly technical or restrictive.
This is not one of those occasions. There is no doubt also that in practicing law for more than two decades I formed many associations, indeed friendships, with members of the New South Wales Police Force. I would have to say, that my general experience was that police officers, and particularly detectives, rarely complained about the difficulty of obtaining search warrants or telephone interception warrants and the like.

Their primary complaint related to their difficulty in convincing more senior police officers to allow them to obtain the warrant. Their concern was that they were hamstrung by budgetary constraints and the desire of more senior police to want the quick kill of low- and middle-ranking criminals, thereby allowing the bigger fish to get away. In short, what I saw and continue to see in so many instances when prosecutions fail is that they fail not because of an inadequate suite of investigative tools, but rather because senior- and middle-ranking police officers fail to allow front-line police to use that suite of tools effectively. This Government and this police Minister are failing to resource the police appropriately to enable them to get out there and do the job that they should be doing. To that extent, this bill can be seen as a distraction, an attempt by this Government to hide its shortcomings by appearing to act tough.

This bill seeks to add another quiver to the bow without an explanation as to precisely why that quiver needs to be added at this time. And what of the insinuation, the reference, the spin that some members of this Government may now wish to put on this bill and why it is worthy of support. I refer, of course, to the spin that this bill is required to deal with the rampant gang warfare being waged on our streets, in our airports and in our suburbs by outlaw motorcycle gangs. We need only go to the Legislative Assembly and read the speeches given by Government members that refer to the introduction of this legislation to see that that does not appear to be the case. For instance, we could look at what the member for Miranda said about bikie gangs. I advise that the terms "bikie", "outlaw motorcycle gangs", "Hells Angels", "Comoncheros", "Banditos", or "rebels" did not pass his lips.

Perhaps we could go to the contribution of the member for Kogarah to find out whether she used any of those terms. When we do that we find not a murmur, not a syllable, not an utterance of

those words. Of course, coming from the Kogarah area one would have thought that the member would have had at the font of her mind the incident that occurred some years ago quite close by at Milperra. One would have thought if this legislation was about dealing with one of the most important issues of criminal activity that she would have talked extensively on the subject. But what we find is not a word. Then again, we could go to the contribution from the member for Maitland, who we all know was a diligent and, to say the least, competent Crown Prosecutor. One would have thought that with his extensive background in the law, with his role in prosecuting persons uphill and down dale, we could turn to him for an explanation as to why these laws were introduced. If it were about bikies, if it were about outlaw motorcycle gangs, then no doubt it would appear in his speech. But again, we find not a murmur, not a syllable, not an utterance.

What we know is that in this place it has been the Leader of the Opposition, amongst others on this side, who has time and again raised the issue with the police Minister of what is happening to combat outlaw motorcycle gangs. Each time we have heard from the police Minister that action on that front would await developments in South Australia. Whilst those questions have been asked in this place, and the Minister for Police has batted them away, what we have seen in this State is motorcycle gangs spiralling into violence. The Minister for Police has been oblivious. Indeed one might think he has acted like the Captain of the Titanic who, standing on the bridge on that fateful night, asked for a coat because there was a bit of a nip in the air but failed to see the iceberg as the ship approached.

The bill seeks to amend the Law Enforcement (Powers and Responsibilities) Act 2002 to enable the issue of search warrants that, in addition to authorising powers currently able to be exercised under standard search warrants, enables police officers, staff of the New South Wales Crime Commission and the Police Integrity Commission to enter and search premises covertly for the purposes of investigating serious criminal offences. The bill authorises police officers to defer the service of an occupiers notice for up to six months with a possible extension—up to three years—after entry into the premises has been effected. The bill also amends the Law Enforcement (Powers and Responsibilities) Act 2002 to create new powers for officers to remove computers and similar devices from premises the subject of a search warrant for up to seven days or longer on application for examination and to search computers that are networked to a computer at the premises.

I consider that the bill involves providing police officers and others with what could be fairly described as exceptional and unprecedented powers to invade the privacy of citizens and to invade the sanctity of the home without the citizen's knowledge. It is the case that powers similar to those in the bill were provided to law enforcement agencies, and more particularly the New South Wales Police Counter Terrorist Co-ordination Command and units of the New South Wales Crime Commission involved in terrorism-related investigations. There can be no doubt that the events of 9/11, the Bali bombings and subsequent events demonstrated that there are forces at work intent upon committing mass murder and destroying our society as we know it.

We are all aware that there are forces at work that are essentially engaged in a war against Western civilisation that will stop at nothing to see our defeat. I did not see any conflict between my concerns about this bill and my previous support for legislation that armed appropriate authorities with the weapons they needed to execute their war against terrorism. This bill, however, is not one that relates to terrorism. What this bill seeks to do is to transpose the extraordinary powers designed to be used in a war against terrorism into the law of our civil society. It is worth considering the words of the former Premier, the Hon. Bob Carr, when he spoke on the Terrorism (Police Powers) Bill 2002 on 19 November 2002 when he said, in part:

We have balanced two competing imperatives in drafting this legislation. Yes, we do need to be able to react effectively at short notice to the threat of a terrorist strike, or in the immediate aftermath of an attack. But, second, we need to remain calm in the face of terrorism and not surrender unnecessarily civil liberties that are part of the fabric of our working democracy. I would rather that these laws were not necessary. Sadly, they are.

The new powers given to police are confined to limited circumstances. As I have said repeatedly, it is not my instinct to fling at police and security agencies crudely increased powers. In any democracy there must be a healthy suspicion of law enforcement powers. We must carefully monitor their use. We have time-limited the increased powers and created a special trigger before they can be invoked. That is an alternative model to just saying that police shall have these extra powers to search, and to do so in all these circumstances.

Later he said:

The new powers are not intended for general use. In ordinary circumstances we rely on standard police investigations and the co-operation of Australian and international law enforcement and intelligence agencies. However, when an attack is imminent, all resources must be able to be mobilised with maximum efficiency. Similarly, when an attack has just occurred, there is an increased chance of catching the terrorists, and this chance must be seized.

One sees that the comments of the former Premier are carefully constructed and recognise the extraordinary circumstances in which the Terrorism (Police Powers) Bill 2002 was introduced. Additional powers were only provided to the Executive arm of Government and to the New South Wales Police Force, because of the existence of potentially credible and devastating terrorist threats. The Premier made it clear at that time that such additional police powers were not appropriate to be used in everyday civil society. It is plain that the then Premier recognised that the extension of such powers into everyday civil society could constitute an unnecessary surrender of civil liberties and consequently could attack the very fabric of our democratic society.
The words of the then Premier were echoed some 2½ years later, when the then Attorney General, the Hon. Bob Debus, spoke in the other place on the Terrorism Legislation Amendment (Warrant) Bill 2005. In part, he said:

The citizens of this State have a right to expect that their privacy will be protected from unjustified searches and interference from the State. Society recognises, however, that there are certain circumstances when an individual's right to privacy must be weighed against the greater public interest in order to allow law enforcement agencies to uphold the law and prevent criminal activity, especially when many lives are potentially at stake. The threat posed by terrorism clearly poses unique challenges. The Madrid bombings, which killed 191 people in March 2004, gave an indication of the type of threat and the devastation posed by terrorism in today's society. Closer to home, the Bali bombings in October 2002, which killed 88 Australians among the 202 lives lost, awakened our community to the possibility that Australians could be targeted by terrorist acts, both at home and abroad.

General criminal activity has never aimed to perpetrate the mass taking of life, the widespread destruction of property, or the wholesale disruption of society in the way that terrorism does. The powers in the bill are not designed or intended to be used for general policing. Their use is restricted to the NSW Police Counter-Terrorism Co-ordination Command and to the units of the NSW Crime Commission assigned the task of investigating and responding to terrorism. Law enforcement agencies already have a wide array of investigation powers at their disposal and they will all continue to be employed in the fight against terrorism.

This scheme provides police with another tool that answers some of the more difficult characteristics of terrorist activity. For example, while both terrorists and organised crime gangs operate secretively and are aware of the possibility of official surveillance, terrorists operate over a much longer time frame. A terrorist operative may arrive in Australia years before any attack is planned, with no orders other than to lie low. So the first requirement of counter-terrorism covert investigative powers is that they be able to operate over a long period, enabling investigators to target terrorists from the early stages of their activities.

Covertness is the second requirement. In the preparatory stages of a terrorist plot any hint to the terrorist operatives that their plans or activities have been discovered or that they are under surveillance could mean that they simply abort the entire terrorist operation, allowing the organisation the opportunity to regroup and change the object of its plans. This scheme will allow police to enter private premises without the knowledge of the occupiers for the purpose of preventing or responding to terrorist threats.

The Government sees this legislation not only as an investigative tool but also as a preventive tool. When preliminary or support activity is suspected there is a strong need to act to gather further information to prevent any possible future acts of terrorism that may cost innocent lives. This is recognised in the formulation of the applicable test to "prevent or respond to" the attack. Given the global nature of terrorism, information gathered here might be relevant to a planned or potential terrorist attack in another country. As such, the information derived from this scheme may be given to foreign law enforcement agencies, where its use may prevent a possible terrorist attack.

These powers are extraordinary and will be permitted only with the strictest of safeguards, including the following. Warrants may be issued only when there is a reasonable suspicion or belief that a terrorist act has been, is being, or is likely to be committed. Annual reports must be made to the Attorney General and the Minister for Police regarding the exercise of these powers.

Any complaint regarding the exercise of these powers can be investigated by the established bodies, the NSW Ombudsman, the Commissioner of Police and, where appropriate, the Police Integrity Commission. The scheme will be kept under constant legislative review through the existing review provisions in the Terrorism (Police Powers) Act, which requires yearly reports. The scheme is subject to independent monitoring by the Ombudsman for a period of two years.

Those safeguards are an attempt to balance the legitimate needs of law enforcement and the right of privacy that all citizens enjoy. The House will also note that schedule 4 to the bill creates an offence of membership of a terrorist organisation—under section 310J of the Crimes Act 1900. This offence is in the same terms as the membership offence under the Commonwealth legislation. Of course, a terrorist organisation need not be a highly formalised structure, with a formal name or public profile. The Government considers that this provision is necessary as a temporary measure because membership of a terrorist organisation is not an offence known to New South Wales law, and New South Wales is constitutionally prevented from enacting a covert search warrant scheme for the investigation of Commonwealth terrorism offences.

Honourable members will note that this offence is subject to a sunset clause after two years. It is hoped in that time that the development of a covert search warrant scheme can be dealt with at the national level by the Commonwealth and other Australian jurisdictions, and a Federal scheme enacted. I have written to the Federal Attorney General to urge him to pursue this matter. My colleague the Minister for Police has also been successful in having the Australasian Police Ministers Council adopt a resolution requesting the National Counter-Terrorism Committee to draft such a proposal. This would be the more appropriate arrangement, given the 2002 reference of power that New South Wales and the other States made to the Commonwealth in relation to terrorism; and if that should occur, New South Wales would consider repealing this scheme in order to avoid constitutional and operational inconsistencies."

But, of course, the comments were not simply limited to the Hon. Bob Debus in the other place. On 22 June 2005 in this House, the incorporated second reading speech of the Hon. Tony Kelly in respect of the same bill used similar words to those used by the Hon. Bob Debus—indeed one could say identical words—and added:

These are extraordinary powers that the Government is enacting in response to the extreme threat that a terrorist attack poses to the peace and stability of our society. They are only enacted with the strictest safeguards and strong and effective oversight. The Premier, when introducing the *Terrorism (Police Powers) Act 2002* , said that he looked forward to the day when the threat of terrorism had been eliminated from our State and laws and powers like this can be removed from our statute books. I echo those sentiments.

I commend the Bill to the House.

Honourable members would remember that when the Terrorism Legislation Amendment (Warrants) Bill was introduced in 2005, and indeed in the months prior when similar legislation was introduced in the Commonwealth Parliament, a number of commentators, and indeed members of various Parliaments, opined that legislation such as this was the thin edge of the wedge. Those comments were dismissed as lacking credibility and as alarmist. In light of the bill that the House is now debating one might say that the comments were prescient indeed. The observations of the Hon. Bob Debus and the Hon. Tony Kelly raise a number of interesting issues.

The first and most important is what has changed since what was said about the powers in the terrorism legislation, which were not designed or intended to be used for general policing but which are apparently now suitable for that purpose. Why was it that in 2005 the use of powers such as those contained in the bill were to be restricted to investigating and responding to terrorism and yet now apparently are to be applied far wider? Why is it that those on the other side of the House who repeatedly speak of civil liberties, indeed some of whom called for the introduction of a Bill of Rights, now sit so silently as this bill passes through the House? I suspect, that those on the other side will say that circumstances now exist that warrant these powers.

For instance, as I said earlier, the existence of bikie gangs and their involvement in the amphetamine trade means that police now need what I would describe as draconian powers. If that were the argument advanced, one would have to wonder where the proponents of these powers have been for the past several decades. Bikie gangs have been around for many years. Bikie gangs have been involved in the heroin trade, prostitution, and the supply of cocaine, LSD, cannabis and just about every other illicit drug known to man. And that has not been the case for this year, or last year, or even for the last decade, it has been part of the raison d'êtra of outlaw

motorcycle gangs since their inception.

Those gangs have been involved in the illegal supply of firearms for decades. They have been involved in money laundering, armed robberies, kidnappings, sexual assaults and murders. They have been involved in these activities for decades and the Coalition has been calling on the Government to take clear and specific action to deal with those issues. As I have said previously, this Government and this Minister for Police have ignored those warnings and are now confronted with the mess that they have allowed to develop.

This bill should not be seen as a remedy for the problems that confront this State as a result of the activities of outlaw motorcycle gangs. The pure and simple fact is that if the Government were to use that argument it would be ex post facto reasoning. It is simply spin. It is intellectually dishonest. It is time for those opposite who say that they care about the rights of ordinary citizens to have the guts to stand in this House and admit that their support for this bill simply reflects their craven desire to remain in power. It is time for those opposite who claim to support some higher moral good to confess that what motivates them now is not principle but a desire to hold on to the white car and the leather seats.

This is bad legislation in its current form that will achieve outcomes that many do not properly understand. I fear, and I will be happy to be proven wrong, that once legislation such as this is introduced that takes away basic civil rights from all citizens of this State, we will in truth never see those liberties returned. This Government would do better to spend the time of this Parliament in developing proper laws to deal with the violence on our streets caused by organised gangs, including outlaw motorcycle gangs, rather than pursuing this legislation in its current form. I find this legislation a bitter pill and do not hide the fact that I find it difficult to swallow, but swallow it I will.

**The Hon. TONY KELLY** (Minister for Police, Minister for Lands, and Minister for Rural Affairs) [5.31 p.m.]: I speak as a member of this House, not to close the debate as the Minister. I add my support to this important bill, which will provide our law enforcement officers with a valuable tool to use in the fight against serious organised crime in New South Wales. To a large extent this legislation puts some structure around a practice that has existed for some time. Despite attempts by the media to misdirect the public, covert search warrants are intended for use only in the investigation of serious offences. Examples that have been used such as the possession of a starter's pistol in public, the cultivation of two marijuana plants or the smashing of a window simply would not qualify.

Covert search warrants can only be used to investigate serious offences, which means offences specified in the bill where a penalty of seven or more years imprisonment could apply. Specified offences include drug supply and manufacture, homicide, kidnapping, money laundering and so on. In addition, a Supreme Court judge must consider that a covert search is necessary, which clearly would not be the case in an investigation into a trivial matter. Before issuing a warrant the judge must also specifically consider the nature and gravity of the offence.

Criticism has also been made of the provision that will allow law enforcement officers to enter adjoining premises for the purposes of entering the premises to be searched. While media reports have stated that the homes of innocent people will be searched, this is not the case at all. The adjoining premises can only be entered for the specific purpose of accessing the target premises. The judge authorising the warrant must take into consideration whether such entry is reasonably necessary and the extent to which the privacy of any person not believed to be involved in the offence will be affected.

There have been suggestions that covert search warrants will simply make it easier for police to plant evidence. This will not be the case. The standard operating procedures that have been developed to ensure the integrity of standard search warrants will, as far as possible, be adhered to during the execution of covert search warrants. These procedures include the presence of an independent police officer, the use of video cameras, the recording in an official property seizure book of any property seized and the systematic search of premises one room at a time. I could continue to refute claims made by the media in relation to this bill, but I believe this has been well covered by my colleagues.

This covert search warrants scheme has been carefully thought out and developed in order to best balance the needs of law enforcement officers with the rights and privacy of ordinary citizens. I believe that this balance has been achieved in the bill. The Police Association of New South Wales has indicated that the Government's proposals have its full support. It agrees that the checks and

balances contained are adequate. In fact, the New South Wales Police Association raised serious concerns that the Opposition's support for these important measures may have been on thin ice during the past week. I join the association in urging this House to pass this legislation without delay so that police can have the necessary legislative support to fight serious and organised crime.

**Reverend the Hon. FRED NILE** [5.35 p.m.]: As leader of the Christian Democratic Party I support this important bill, the Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Bill 2009. The main purpose of the bill is to introduce a scheme of covert search warrants and create new powers for the examination and search of computers. We know that the police have been carrying out these covert searches of premises for some years but a recent court case has raised the question of the legality of the evidence they have acquired. This bill only puts into place something that has been an approved common practice of the police in the past.

This bill increases police powers and I believe it is necessary, in spite of the Hon. Trevor Khan's criticism of the bill. There are two major reasons: one is the growth of organised crime and its sophistication in the way it operates in Australia, particularly in New South Wales and Sydney, and the second is the use of modern equipment. I understand that sometimes the equipment used by organised crime is far more modern than the equipment the police have available to them. For those reasons it is important that this bill be passed.

I know there has been a lot of media coverage of the television series *Underbelly* on Channel 9, which is a semi-documentary because it deals with real people and real events that occurred in Melbourne, Sydney and other parts of New South Wales. Without in any way supporting the unnecessary violence, nudity and swearing in the program, I believe it has conveyed the seriousness of the operation of organised crime. If we expect the police to combat it we need to make sure they have the weapons to do that.

As other speakers have said, bikie gangs have been involved in violent activities and drug dealing for some time, but there has been an elevation in their sophistication and organisation in Australia, particularly in New South Wales. If we wish the police to deal with violent bikie gangs we have to increase their powers to do so. Members know that over the past few months there has been a dramatic increase in violent activity by bikie gangs. They have been so arrogant that they have been seen to be acting as though there is no police force and they are free to carry out their will. We have seen many shootings in different suburbs, particularly in Sydney's south west. On 30 October last year a young family was lucky to escape alive after their home was riddled with bullets in a brazen shooting in Sydney's south west. The residents in that street woke to the sound of gunfire as more than 30 rounds were fired into their suburban home.
That incident followed a suspected drive-by shooting at Merrylands the previous day when a man and woman escaped uninjured after shots were fired at their home on Hilltop Road. We are witnessing an increase in violent incidents. The two shootings in October occurred less than a week after Moustafa Assoum, the father of two, was shot dead in a street in Warwick Farm. On 8 December nine rounds were fired into a Lalor Park home, one of three homes shot at on that day in attacks that police believe to be linked to bikie gangs. In another drive-by attack, at about 1.20 a.m. on 8 December six people were inside a house in Collett Crescent, Kings Langley, when it was shot at. Ten minutes later four people were asleep in a house in Yvonne Street, Seven Hills, which was peppered by bullets, and a car parked in front of the house was hit.

I am sure that speakers critical of the bill will admit that such events did not occur in previous decades. They did not occur during the Greiner years—in the time of a Liberal Coalition Government in this State—and at first they did not occur during the term of the Labor Government. However, they are occurring now. On 18 December 2008 a three-year old boy was hit in the head by a ricocheting bullet after 30 shots were sprayed into a house in Sydney's west—the fifteenth drive-by shooting in 16 days. At 12.30 a.m. three gunmen opened fire on a house in Vardys Road, Blacktown, when four people were inside. At least nine bullets were found in palm trees at the front of the house and a further 20 bullets were found in window awnings.

On 9 January this year a man ran out of a used car yard only moments after two shots were fired and he told workers, "It wasn't me" before driving off from a shooting that left one man dead in the used car yard and put another man in hospital. On 4 February this year a report that was published in the *Sydney Morning Herald* indicated serious developments involving bikie gangs and newly formed bikie gangs. The article referred also to Notorious, a Lebanese-Australian gang with a long-standing association with a colourful Sydney Sunni Lebanese family. Notorious is in conflict with another Shiite gang, so both Sunnis and Shiites are members of these gangs. Traditionally, Lebanese Muslim migrants to Sydney have been geographically and religiously divided. The Sunni

majority live in Sydney's west and south-west, mainly around Auburn and Bankstown, while the Shiite minority live in the St George area.

A senior police officer told the *Sydney Morning Herald* , "These two groups have no love lost between them." An overlap might be developing between potential terrorist groups and bikie gangs—a serious issue that should not be ignored. On 19 March 2009 a woman associated with the Notorious outlaw motorcycle gang was charged in relation to two drive-by shootings in Sydney's west. The numbers of drive-by shootings have dramatically escalated. On 22 March bikie gangs, without any care for the safety of other passengers at Sydney airport, attacked other bikie gang members. I am thankful that on that occasion no-one used firearms, although the incident resulted in the brutal bashing and murder of one man. However, it is possible that some of those gang members had firearms in their possession.

These incidents, which have drastically altered the face of law and order in this State, warrant the enactment of covert search warrant legislation. This legislation contains many safeguards to ensure that only judges of the Supreme Court will be able to authorise these warrants, as opposed to regular search warrants, which may be issued by magistrates. Police will be required, through the Attorney General, to report annually to Parliament on the use of their powers, which are detailed in proposed section 242A. The Ombudsman will be required to monitor the use of the powers and report to the Parliament through the Attorney General. I believe the safeguards are sufficient for those who are fearful that police powers might be abused.

The bill provides for new powers for the examination and search of computers, including enabling the removal of computers and similar devices from premises the subject of a search warrant. It will enable the search and examination of computers, including access to computers networked to a computer at the premises. The legislation lists a number of serious criminal offences. However, one that is not listed is child pornography. I foreshadow that I will move the following amendment in Committee:

Page 6, schedule 1 [5], proposed section 46A (2), line 10. Insert "or 15A (Child pornography)" after "(Child prostitution)".

**Ms SYLVIA HALE** [5.46 p.m.]: The Greens oppose the Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Bill 2009 and I foreshadow that I will be moving amendments in Committee that will prevent the covert invasion of privacy of innocent neighbours of suspected criminals. Before I speak on the bill I commend the Hon. Trevor Khan for his earlier remarks. I have often been amazed in this House to see how core tenets of civil liberties are so lightly discarded. The Government introduced bills that have done away with the presumption of innocence, the freedom from arbitrary searches or arrest, and freedom of association.

I find amazing the preparedness to so lightly discard rights that have been fought for over so many years—rights that involved civil wars in England, a Revolution in France and the War of Independence in America. All these uprisings and wars involved huge attacks on and defences of essential civil liberties. Even though I recognise that the Hon. Trevor Khan is constrained by caucus solidarity from voting against this bill, I think it is appropriate for him to speak out and voice his concerns. I also believe it is incumbent upon Government members—many of them are lawyers—who have legal training and who are interested in civil liberties to speak out and voice their concerns. Clearly, these concerns are mirrored by the concerns of many people in the community.

I now address the bill. The essential feature of the new covert search warrant scheme is the power to enter and search premises without the occupier's knowledge, the power to take certain items or download data from computers, and then to delay the subsequent notification to the occupier. This extends the power already contained in part 3 of the Terrorism (Police Powers) Act 2002, which authorises the use of covert search warrants and creates a similar power over non-terrorism offences. I note that the report on the operation of the Terrorism (Police Powers) Act 2002 has been completed and delivered to the Government, but the Government has not seen fit to make it public. Suppressing potentially embarrassing information is the trademark of this Government. One has only to look at the way the Government fought to keep hidden the Ombudsman's report on the effectiveness of sniffer dogs: that report cast doubt on the efficacy and even the legality of the use by police of sniffer dogs to conduct what in effect were random searches. The report warned also of the potential harm that might befall anyone who, when confronted by dogs and police, might panic and swallow whatever drugs they had on them. The prescience and accuracy of that warning was made all too painfully clear last month with the death of a young Western Australian teenager.

The Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Bill has adopted some of the covert search powers from the terrorism laws, even though this Government assured us that this would not happen. The Terrorism Legislation Amendment (Warrants) Bill was debated in this place in 2005. That bill allowed police to apply for a warrant for covert searches and for those searches to be carried out in a pre-emptive manner in relation to suspected terrorist offences. The current Minister for Police, and former Minister for Local Government, spoke on behalf of the Government in this House on the warrants bill. On 22 June 2005 he distinguished between what he called general criminal activity and terrorism. He said:

General criminal activity has never aimed to perpetrate the mass taking of life, the widespread destruction of property or the wholesale disruption of society in the way that terrorism does. The powers set out in this bill are not designed or intended to be used for general policing. Their use is restricted to the NSW Police Counter-Terrorism Co-ordination Command and to the units of the NSW Crime Commission assigned the task of investigating and responding to terrorism. Law enforcement agencies already have a wide array of investigation powers at their disposal and all these will continue to be employed in the fight against terrorism.

He wrapped up his speech by saying:

The Premier, when introducing the Terrorism (Police Powers) Act 2002, said that he looked forward to the day when the threat of terrorism had been eliminated from our State and laws and powers like this can be removed from our statute books. I echo those sentiments.

Instead, we find the opposite has occurred: covert search powers have now been extended to a wide range of ordinary crimes. The Greens simply do not believe this Government when it assures us that extreme police powers will not spread. We have heard it all before. In 2005 when debating the terrorism legislation my Greens colleague Lee Rhiannon presciently said:

This bill is built on a basis of creating a mirage of security whilst eroding people's rights to privacy and protection from interference by the State.

… I remind members that in voting for this bill they will support a regime that will allow homes in New South Wales to be secretly entered by police for no reason other than the proximity of their property to a suspect's property.

That comment could apply equally to this bill. Let us examine this bill from the perspective of those who are likely to be caught up in its operations: the innocent neighbour, a suspect, the police, the Crime Commission, the Police Integrity Commission and, finally, the judiciary. First, let us consider the innocent neighbour. No-one could possibly suggest that simply living next door to an alleged criminal suspect automatically makes that neighbour a suspect. After all, very few of us choose where to live on the basis of who will be living next door. However, new section 67B allows police to covertly enter adjoining premises for the purposes of gaining access to other premises for which they have a covert search warrant. So, if you are the innocent neighbour of someone who was the target of a covert search your house may be secretly entered. In effect, you are caught up in a covert police investigation by virtue of simply living next door.

Worse still, you will not be asked to give permission, and you may never be told that the police, Crime Commission officers or Police Integrity Commission personnel have entered your home. The eligible officer issuing the warrant will have the power to direct that the service of a notice telling you that your house was subject to a covert entry be delayed for up to three years, or be dispensed with altogether. If police and other agencies obtain these powers they can enter any premises for the purposes of gaining access to their main suspect's premises. They will watch you, determine when you will not be at home, come to your house in plain clothes—or perhaps dressed as plumbers or clergyman, because another clause in the bill allows subterfuge to be used in regards to covert entry—and they will be allowed to go into your home and use it to gain access to next-door premises. Perhaps they will go through the roof, around your balcony or over your fence. This is a gross invasion of the privacy of innocent people. It could also pose a risk. What happens, for example, if you come home unexpectedly? Peter Foster of Banora Point in a letter published in this morning's *Sydney Morning Herald* highlights what could happen if things go wrong:

If I come home, disturb someone rummaging through my possessions and, believing my life is in danger, hit the person over the head with a shovel, where do I stand legally? … He is in my home apparently legally, and by law I am allowed to defend my life and property. To avoid a clash of laws, one would have to go. I'm hoping my right to defend my life isn't the one that goes out the

door.

I ask the Government to respond to that very real concern: police will not be dressed as police and an innocent member of the public may arrive home unexpectedly and attack the intruders not knowing they are police, or perhaps even suffer a heart attack when they see what they believe to be burglars in their home. Citizens will not be asked whether police or others can use their houses in police operations; they will be told only after the fact, if at all. These amendments are an invasion of the privacy of innocent persons and should be expunged from the bill. The Greens amendments will do that.

Were the provisions of this bill widely known and debated—it is notable how little consultative opportunities were provided to the public—many people would find them seriously disturbing and be furious at the thought that police could enter their homes without first informing them. This bill appears to have been prompted by the court case *Ballis v. Randall* . The case arose in response to the judicial covert search of premises in Randwick and Bondi Junction by the New South Wales Police Force in relation to an investigation of a prohibited drug importation ring. Warrants were issued under the Search Warrants Act 1985, which was repealed and replaced with part 5 of the Law Enforcement (Powers and Responsibilities) Act 2002. However, there is little difference in the provisions of both Acts with regards to warrants.

Warrants are supposed to be executed, usually in the daytime, and the occupant informed by a service of notice. In the Ballis case, however, the searches were all conducted at night when it was known that the occupants would be absent. The reason police gave for the night execution of the warrants was that these were to be covert searches. The magistrate granted the warrants and extended the time for serving notice of the warrant on the occupants. An action contesting the validity or lawfulness of the warrants went to the New South Wales Supreme Court. In *Ballis v. Randall* Justice Hall found in favour of the plaintiffs. His judgement reads, in part:

… there is not to be found in the Act's detailed regime governing the issue and execution of search warrants authorisation for their execution covertly. The provisions of the Act, in fact, point in the opposite direction. The regulatory regime is clearly intended to protect persons as occupiers of premises that are the subject of a warrant, by requiring, inter alia, that they be given a notice of rights.

The covert execution of each of the warrants was, in my opinion, clearly contrary to the provisions of the Act. It is plain that the planned covert nature of the execution in each case had the effect of negating the procedural safeguards provided for by the Act. The result is that the execution of each warrant was, in my opinion, unlawful.
Most disturbingly, the facts of the Ballis matter demonstrate that, despite not having the power to conduct covert searches legally, the police went ahead, regardless of the illegality involved. Oversight by a magistrate failed to prevent an unlawful search proceeding.

The Ballis case demonstrates a willingness by some police officers to overstep the legal boundaries in pursuit of evidence. That is a very worrying revelation when considering the bill, which extends police powers and allows police to enter premises secretly, without providing notice at the time, or soon after, to the occupant. It should also be remembered that the covert warrant was not critical to the prosecution of the Ballis matter. Those accused of importation of prohibited drugs were convicted and sentenced following a national and international police investigation, despite anything discovered during the search being inadmissible as evidence. The police argued that they needed a covert search warrant, and the magistrate wrongly and unlawfully issued that warrant.

**The Hon. John Hatzistergos:** The warrant was valid, its execution was not.

**Ms SYLVIA HALE:** They conducted the search, but subsequently that evidence was ruled to be inadmissible. If the police had followed the appropriate procedures, there would have been absolutely no need to do what they did in the Ballis case. As is common with this Government, when it does not like a judicial decision because it is contrary to its wishes, it simply draws up legislation to change the law.

Another disturbing feature of the Government's preparedness to legislate to overcome inconvenient judicial decisions is that its policy in relation to criminal activity appears to be little more than asking the Commissioner of Police what additional powers he wants. Not surprisingly, as one would expect of anyone in the role, the Commissioner of Police scours the Commonwealth, and indeed the world, looking for the most draconian laws enhancing police powers and asks for

them to be implemented, regardless of whether or not they have been shown to be effective. Given that the commissioner's performance indicators include reducing the community's perception of crime rates, it is not surprising that he asks for all the power he can get.

But it is not the role of a responsible government to simply turn over decisions about police powers to the unelected Commissioner of Police. The Government's role is only merely to protect the community; it must also ensure that police powers are not excessive, are not unduly intrusive, and are subject to proper judicial oversight. Although the police and judicial system in New South Wales generally has served us well, there has been a history of abuse and misuse of laws by individual members of both the police and the judiciary. That history must be seriously considered when examining powers, such as those proposed in the bill, to ensure that such powers are not abused or misused by corrupt, dishonest or simply overzealous police or judicial officers.

The bill will increase the likelihood of allegations of theft from property that secretly has been searched by police as well as allegations that evidence has been planted during such searches. These things have happened before in New South Wales—that is what the Wood royal commission was all about. Indeed, corruption has been a feature of every police force in every State in this country. The Government referred to search procedures in the Parliamentary Secretary's speech in reply to debate on this bill in the lower House. For example, the Parliamentary Secretary stated that searches must be videoed and must occur room by room. But those safeguards are not provided for in this legislation; they are operational guidelines only. Earlier today the Minister for Police referred to these procedures but added the proviso that they would be observed "as far as possible".

Covert warrants leave it open for corrupt or overzealous police to tamper with items they find or enable them to plant evidence. They may also give rise to claims of theft or damage from a suspect or from a neighbour of a suspect once the occupiers have been informed that police have been through their homes. Let us consider the case of Henry Charles Landini. On 18 December 2008, a mere three months ago, Mr Landini was awarded damages of $230,000 by the Supreme Court after a New South Wales police officer was found to have fabricated evidence by planting heroin in the boot of Mr Landini's car and in his house. Mr Landini served five years of a 15-year sentence based on that fabricated evidence before he was released. The judge's remarks in Landini's case were scathing:

Conduct of police that seeks to undermine the rule of law by orchestrating the basis for criminal proceedings by fabricating evidence constitutes a species of criminality at the extreme end of the spectrum of official corruption.

At least 100 prisoners who are currently in New South Wales jails claim they are victims of police framings. Undoubtedly some of the claims are spurious, but some are credible. The Wood royal commission found that it was a common occurrence for New South Wales Police officers to commit perjury. In evidence to the commission one police officer, who was a member of the New South Wales-Commonwealth Joint Drugs Task Force, estimated that in one-quarter of the 30 to 40 prosecutions for serious drug offences in which he was involved he gave false evidence. If the Government believes that such behaviour does not happen any more, it is kidding itself.

The New South Wales Police Force has a less than honourable record when it comes to fitting up suspects, yet the Government is proposing to allow police to secretly enter premises. That may work against the interests of justice in two ways: first, it could lead to more innocent people being fitted up with planted evidence; and, second, it could lead jurors to give greater credence to claims by those facing charges that they were fitted up, even if the evidence was actually in the premises before the search. Similarly it is not enough to rely on the judiciary to ensure that police powers are not abused. Individual judicial officers can also act in dishonest or corrupt ways. The most telling example from New South Wales recent history is the former Chief Stipendiary Magistrate of New South Wales, Murray Farquhar, who was convicted of corruptly influencing a fraud case and who had corrupt dealings with high profile criminal figures. If the Government claims that the Farquhar case was a long time ago, it need only look to this week's sentencing of former Justice Marcus Einfeld to see that dishonest behaviour by individual judicial officers has not been eradicated.

While the vast majority of police and judicial officers are honest, diligent and competent, it is not good enough to simply expect that all police will always act appropriately and that all judicial officers will always exercise oversight justly and competently. History tells us this is not the case, and that makes the bill very dangerous. The fact that only uncontested police evidence will be presented to a Supreme Court judge to determine whether a covert search warrant should be issued gives rise to further serious misgivings.

The bill represents a significant shift away from legal traditions and moves us further into the territory of the suspension of ordinary laws, liberties, checks and balances. We have seen this suspension of the rule of law happen more often in New South Wales in relation to terrorism powers and the introduction of special powers related to events, such as the Asia-Pacific Economic Cooperation [APEC] forum and Catholic World Youth Day. New South Wales is rapidly heading down the path towards a police state and is being driven by inchoate public fear and a weak government that is too scared of being savaged by the tabloid shock jocks to bother making good laws. Furthermore, the Government has chosen not to consult anyone in the writing of this bill. The New South Wales Bar Association and others from the legal profession were not consulted at all. In replying to debate on this bill in the other place the Parliamentary Secretary stated, in acknowledging that fact:

I am sure members appreciate that in these kinds of matters it is vital that criminals, especially those engaging in organised illegal activities, are given as little advance warning as possible of the new tools at the disposal of police.

It is just ludicrous. Who could possibly suggest—

**Ms Lee Rhiannon:** It's illogical.

**Ms SYLVIA HALE:** Yes. Why bother bringing it to Parliament at all? After all, they are being let know in advance. The Parliamentary Secretary continued:

Accordingly, in this case the Government took the decision to maintain absolute confidentiality around the consideration of these powers. This is especially so, given that the views of organisations and stakeholders on these kinds of issues, including the Bar Association and the Public Defenders Office, are well known. The Government was therefore able to consider these views in creating new powers.

That is a laughable rationalisation of what the Government has done. We are simply seeing a continuation of instances of the Government failing to consult with people. Indeed, this morning crossbench members were briefed by members of the public expressing concern about a range of items, including the associations legislation and the new child welfare bill. The universal complaint is the lack of consultation, public debate and input into the measures that the Government proceeds with. The Parliamentary Secretary's remarks about confidentiality are plainly patronising and arrogant. The Bar Association has concerns about this, as do the Council for Civil Liberties and the Public Interest Advocacy Centre, despite the Government's claim that it knows what their response would be and therefore has no need for consultation.

I turn now to the specifics of the bill. In effect, the bill extends covert search powers, which are part of terrorism legislation, to a range of other suspected offences. It will also allow for covert entry of a neighbour's premises in order to gain access to a suspected criminal's premises. Although there are some safeguards in this bill, such as the requirement to apply to a Supreme Court judge for a covert search warrant and annual reporting to Parliament, such warrants may be issued for a wide range of offences, some of which do not involve serious organised crime or violence. Once such warrants are issued, the occupant of premises the subject of the warrant does not have to be informed of the warrant's existence for a period of, potentially, up to three years. The issuing judge may authorise that service of an occupier's notice be delayed for up to six months at a time. Service may be delayed beyond 18 months only in exceptional circumstances, and may not be delayed beyond three years in total.

This implies that consecutive warrants could be issued and multiple covert searches carried out over an extended period without the occupant's knowledge. This does away with the currently overt nature of existing search warrants, which are notified to the occupant. Where no criminal activity is found, covert searches may continue, based on police or other authorised officers being given time to execute more warrants. This harks back to the Haneef case, where the period of the investigation was extended again and again, causing Haneef to be held and interrogated on several occasions, and his premises searched multiple times. Nothing was found in any search. This was an unacceptable suspension of habeas corpus in the dying days of the Howard Government.

The bill is wide ranging. Section 46 lists searchable offences or, rather, categories of searchable offences that are serious. It refers to crimes or categories of crimes that are found within the Crimes Act 1900. The bill could have listed the exact suspected crimes for which covert warrants

could be issued, but instead the way it has been written allows a broad range of offences to be caught up by the provisions. Covert warrants can be issued for many crimes that incur a penalty of seven or more years imprisonment. No doubt some offences, such as homicide, money laundering, violence causing grievous bodily harm or wounding, corruption and the manufacture or sale of firearms, are serious offences that may be associated with organised crime. But not all incidences of these crimes are associated with organised crime, so the Government's rhetoric that this bill is aimed solely at organised crime is not the case. For instance, grievous bodily harm can happen in many circumstances, not just within criminal gangs.

Many more minor offences are also caught by the bill. This is obviously deliberate; otherwise the bill would have listed specific crimes in the Crimes Act by citing subsections. But what we find in this bill is a broad brush approach. Within the categories listed are offences such as theft and destruction of property. In these divisions we find offences that are not as serious as homicide or kidnapping, yet they are indictable and incur penalties of at least seven years imprisonment—offences such as motor vehicle or vessel theft, which would be caught by this bill if committed by more than one person for profit. It is even possible that a covert warrant could be issued in regard to cattle stealing by two or more persons because that offence is punishable by 14 years jail.

The warrants will also be available for the suspected destruction of property. The relevant section of the Crimes Act covers sabotage or where there is a threat of sabotage. A warrant for a covert search could even be applied for when someone is suspected of burning down his or her own home or business to make an insurance claim. The warrants may also be available when persons destroy property in a riot or, indeed, if a person simply threatens to do so. Covert search warrants could be used when persons are suspected of causing damage to mine works or of hindering the working of equipment belonging to a mine. For example, a covert search warrant could be issued to permit the search of homes of climate change activists if a judge were convinced by the police that there was a reasonable suspicion the activists may have damaged mine works or were hindering the working of mine equipment.

The bill proposes that police can investigate a suspect's computer or any other computer to which it is networked. The word "network" is not defined in the bill. I assume this could refer to an office or a home environment where two or more computers are networked via cables or wireless. But it may also refer to emails between the computer within the premises the subject of the warrant and anyone else's computer anywhere else in the world. One assumes the police and other agencies will be able to crack passwords and firewalls in order to download files and view emails. The Government thinks that the solution to crime lies in yet more laws, but that is not the case. The editorial in the *Sydney Morning Herald* of 24 March stated:

This State Government passes draconian laws too readily. NSW already has perhaps the harshest anti-terrorism laws in the country. The Government is seeking, unjustifiably in our view, to extend to other crimes than terrorism the right of police to search houses covertly … draconian laws do not suppress crime; informed police do.

As we saw at Sydney airport, hardened criminals do not respect the law, no matter how draconian it is. The Greens do not object to more police resources being put into the investigation of organised crime, but we object to the substitution of legislative activity for real police work. No doubt the Greens will be accused of being soft on organised crime and bikie gangs. But it is true that all the laws and security available on some occasions will not prevent a crime from taking place. We need to balance the right of innocent citizens to privacy against the legitimate pursuit of criminals. The Greens make no apology for considering laws carefully on their merits and with regard to the civil liberties of ordinary citizens, rather than through the prism of the *Daily Telegraph* . The Greens believe that police and other crime agencies already have adequate powers and warrants to investigate organised crime. They already have search, surveillance and communication interception powers. It is worth noting what the Legislation Review Committee had to say about the bill, and it had many concerns. In Legislation Review Digest No. 2 of 2009 the committee stated:
Authorising an eligible person to covertly enter and search premises using such force as is necessary and to seize, substitute, copy, photograph and record things, and to covertly enter adjoining premises, as provided under Proposed section 47A, is clearly a significant trespass on the relevant persons' privacy and property.

While the argument is made that the public interest must be balanced against personal rights and liberties, this is the only legislation of its type in Australia. The issuing of covert search warrants has so far only been allowed under terrorism legislation.

The review then examines other trespasses on personal rights and liberties and the reasons for them. It states:

· The threshold for invoking the powers is suspicion *on reasonable grounds* which is not high enough to ensure that there will not be covert entry and search of premises of innocent people;

· If a search warrant is not served upon the person at the time of entry there is no opportunity to check whether the occupier and address are correct;

Most of us remember David Gundy, a man who lost his life because the police got the address wrong. The digest also notes:

· It is not necessary that all or any occupiers of the premises be suspected of any criminal acts therefore potentially infringing on the rights—

Constituting another infringement of their civil rights. The digest continues:

· The bill specifically provides for the covert entry of adjoining premises occupied by people with no suspected criminal activity therefore infringing upon the rights of innocent persons;

· While it is an offence to knowingly give false and misleading information when making an application, this is a fairly high evidential threshold to meet. Further, there is no penalty for being reckless or negligent regarding the truthfulness or accuracy of the information given—

That is particularly concerning, given that the police will be the only people able to put evidence before the Supreme Court judge. The digest continues:

· An applicant is not required to disclose the identity of a person from whom information was obtained if the applicant is satisfied that to do so might jeopardise the safety of the person … This section seems overly cautious as the identity of the person will presumably only be disclosed to a judge of the Supreme Court and its nondisclosure may make it difficult for the judge to decide how compelling the evidence is in regard to the need for a covert warrant;

The committee notes the universal complaint:

The Committee is concerned that there appears to have been no robust consultation on the Bill. The initial covert search warrant powers that were introduced under the *Terrorism Legislation Amendment (Warrants) Bill 2005* were done so in relation to the context of the potentially catastrophic consequences of terrorist activities and a public interest test was argued. However, these powers cover a large range of indictable offences which need only attract seven years imprisonment.

Today's editorial in the *Sydney Morning Herald* states

This State Government passes draconian laws too readily … The Government is seeking, unjustifiably in our view, to extend to other crimes than terrorism the right of police to search houses covertly. Introducing South Australian-style gang laws, which allow the Police Commissioner and the Attorney-General to proscribe organizations while keeping secret their reasons for doing so, is a dangerous overreaction—one which infringes on ordinary democratic rights while not addressing the problem.

The concerns expressed by the Legislation Review Committee are so detailed and numerous that this bill should not be passed by this House this evening. It is appropriate for the bill to be referred to the Standing Committee on Law and Justice to allow those with considered views about the legislation to give evidence to the committee and for the committee to report on the bill. Given the serious intrusions on the civil liberties and privacy of people, I think that is a minimal request. There is no overwhelming need for urgency and no argument for this bill to be introduced today rather than in one or two months time. There is urgency, however, to ensure that the civil liberties of our community are protected. To that end I propose to move an amendment to the question, the purpose of which will be to refer the bill to the Standing Committee on Law and Justice for inquiry and report.

[ *The Deputy-President [The Hon. Amanda Fazio] left the chair at 6.28 p.m. The House resumed at 8.00 p.m.* ]
**Ms SYLVIA HALE** [8.00 p.m.]: Before formally moving that the Law Enforcement (Powers and

Responsibilities) Amendment (Search Powers) Bill 2009 be referred to the Standing Committee on Law and Justice, I wish to amend something I said earlier in the debate. I indicated that the search warrant obtained in the Baillis matter had been issued unlawfully. That is not the case. The warrants were lawful, it was the surreptitious execution of those warrants that was unlawful; that is, the magistrate acted lawfully, the police did not. Another interesting case occurred in 2004. The ABC radio program *PM* presenter, Mark Colvin, introduced a story by saying:

There's fresh evidence in New South Wales today of just how hard it is to dig out police corruption once it's put down roots.

Seven years ago, the State's Royal Commission into police corruption found widespread evidence of criminal activity by officers, and recommended strong measures to counter it.

Today, a Police Integrity Commission report tabled in the NSW parliament concludes that the culture is still not dead.

That report detailed Operation Florida, which was designed to weed out corruption in Sydney's north. In particular it referred to the activities of a Mr Ray Peattie, one of six police officers charged and found guilty of a number of offences as a result of Operation Florida. The operation investigated corruption and improper police conduct on Sydney's northern beaches and on the Central Coast from the late 1980s to 2001. The report remarked that Peattie, a detective of almost 25 years service, admitted to taking his first bribe in 1981—$100—when he was part of a team that raided an illegal gambling den. As the heroin trade flourished during the 1980s and 1990s the bribes he palmed became larger. Peattie not only managed to avoid detection during the 1996 Wood royal commission, but also advanced his career during it by being appointed acting crime manager at Manly police station, a position created in all stations to monitor police performance. Peattie also helped write the Manly police anti-corruption plan, a perversity even he acknowledged.

What if the police appoint someone who is expert in preparing material that justifies a covert search warrant and places that before a Supreme Court judge? What if that person is as corrupt as Mr Peattie has been proven to be? What if that person persists in that role for more than 20 years, as Mr Peattie did? Are we in a position, and this is not a fanciful position, to conceivably give that ability to a person who may have a corrupt career spanning more than 20 years? Could we say to such a person, "Right, you produce the material that is going to persuade the Supreme Court judge that a covert warrant should be executed"?

By removing any possibility of that evidence being contested, by making the search covert and secret, we are laying the grounds for actively conniving the development and promotion of a corrupt culture within the New South Wales Police Force, a culture that will drive out adequate police work, proper policing, and substitute for it a determination on the part of police to blame someone for a crime regardless of the quality of the available evidence. This is an extraordinarily serious matter, one that should be investigated by the Standing Committee on Law and Justice. Therefore, I move:

That the motion be amended by omitting the words "now read a second time", and inserting instead the words "referred to the Standing Committee on Law and Justice for inquiry and report."

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [8.05 p.m.]: I thank the Hon. John Ajaka for taking carriage of the Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Bill 2009 and its stewardship through the House on behalf of the Opposition. I also congratulate and thank the shadow Attorney General in the other place, Mr Greg Smith, for the way he conducted himself in this matter. If I could agree with the Hon. Sylvia Hale on one point, and probably the only point on which I will agree with her regarding this bill—

**The Hon. John Hatzistergos:** Point of order: The Leader of the Opposition has forgotten to thank Trevor Khan.

**The PRESIDENT:** Order! Will the Minister repeat his point of order?

**The Hon. John Hatzistergos:** I pointed out that the Leader of the Opposition had forgotten to thank his colleague the Hon. Trevor Khan for his contribution.

**The PRESIDENT:** Order! I therefore do not need to point out that there is no point of order.

**The Hon. MICHAEL GALLACHER:** I will take the opportunity when I see the Hon. Trevor Khan to thank him for participating in the debate, as I do with all of my colleagues. It is extremely important to recognise that the point made by the Hon. Sylvia Hale is the reason the Opposition has taken the tack it has on this bill: the Government has not consulted on this matter. The Government has had a degree of somewhat misleading enjoyment in suggesting that the Opposition is opposed to the bill and that it wanted to weaken the bill, all of which is a complete fallacy.

The Government sprung this bill on the House without any warning. It was brought on when honourable members were expecting legislation dealing with organised crime; primarily outlaw motorcycle gangs—a debate that continues to rage throughout New South Wales. People from various quarters were interested in the position, or lack of it, the Government would take on the South Australian legislation, as it is commonly known. Of course, the Government did not consult with the Opposition or anyone other than those within Government on the bill. Be that as it may, Mr Greg Smith said, "Look, let's not just rush in. Let's have an opportunity to consider what is being provided by this bill".

Greg Smith indicated from the outset that he was not opposed to the bill, but he wanted to make sure that the necessary checks and balances were in place to ensure that the legislative integrity—or, should I say, the investigative integrity—of each criminal investigation for which this bill could be used was maintained at its highest level. In other words, police should remain focused on timetables that would guarantee a thorough investigation and an expedited investigation at exactly the same time. Of course, as the shadow Attorney General he continued to pursue that, quite rightly, by asking questions and trying to obtain advice. However, the Government was not forthcoming; it was not interested in talking to Greg Smith. The Government was not interested in talking to the Opposition.

Thank goodness for the New South Wales Police Association, particularly its representative Peter Renfrey. He convened a meeting with Chief Superintendent Ken McKay, Greg Smith and me. That was the first and only opportunity that the Opposition had been given to consult on the bill, not by the Government, but by rank and file front-line police who were supportive of it.
We sat down and discussed the legislation over a period of time. Both Greg Smith and I discussed our concerns about the haste with which the legislation had been pushed into the Parliament and the way in which the Government was trying to pillory the Opposition for not falling into line and having the temerity to ask questions about where the legislation came from.

Thank goodness for Peter Renfrey and Chief Superintendent McKay who walked us through the rationale behind the legislation and how it would impact on future investigations. It was a very good exercise in demonstrating how a workable outcome could be achieved, provided the New South Wales Government did not interfere in the process. If we had more opportunity to consult with the people on the ground about a raft of portfolios that fall under the control of the New South Wales Government, we might get better outcomes. However, the Government did not want us to know exactly what had caused the legislation to be brought before the Parliament. It is important to put that on the record because no doubt the Attorney General and his colleagues will continue to paint Greg Smith as someone who is opposed to the legislation. I was with Greg Smith during the discussions with the two representatives. It is important that a truthful representation be put on the record about the Opposition's position on the bill.

I am not going to make a long contribution to the debate because the Hon. John Ajaka detailed exactly the position the Opposition has taken in regard to a number of matters. However, I feel it is important to put a couple of aspects on the record at this stage, particularly given the contribution that the Hon. Sylvia Hale has just made, as it may well be of assistance to some honourable members who are considering their position on this legislation. I take honourable members back a few years to the royal commission. It is often referred to in debate and it was referred to earlier this evening.

I am becoming particularly frustrated by the continuing reference by some in this House to the image of corruption still being rampant within the New South Wales Police Force. It is about time people started to acknowledge that members of the New South Wales Police Force from the very top to the very bottom, down to the graduates at the academy, are doing their best to ensure that that image is, and remains, a thing of the past. It is extremely important to recognise some of the initiatives that have passed through this Chamber as a result of representations and submissions made by Justice Wood and others to change the whole approach to policing in New South Wales.

I refer to things such as integrity testing, which never would have been thought of 15 or 20 years ago. We quite often hear historical anecdotes from members of the Greens and others, but

members of the Police Force can now be subjected to quite significant tests of their integrity. An agent provocateur is often used in the New South Wales Police Force, a practice that is accepted by police as part of their job. On very few occasions do we actually hear the Greens recognise that we have come a considerably long way.

**Ms Lee Rhiannon:** That is not true.

**The Hon. MICHAEL GALLACHER:** The Greens will have opportunities later in the debate to say what they want to say. I find it incredibly frustrating when I hear sweeping statements that criticise the good men and women of the New South Wales Police Force. I look forward to any opportunity the Greens might wish to take to correct their earlier comments.

Be that as it may, one of the things that the royal commission did was to change the way in which search warrants are used in New South Wales. Reference has been made to the use of video, and everyone happily goes along with the recommendations of the Wood royal commission as to how search warrants are used in New South Wales. It might shock some members of the House to know that, as a result of the Wood royal commission changes and some practices that existed prior to that, members of the Police Force can take out a search warrant tonight, go to somebody's home and execute that search warrant even though the person may not be present. Shock, horror! You would swear this legislation was breaking new ground. They can actually execute a search warrant on a person's home and they can still enter the home if the person is not there.

But the fact is that police do not do that for the simple reason that they want to ensure that the integrity or the weight of the evidence that is collected is of the highest level. If you talk to police who use search warrants they will often say they prefer to have the person in the home because it gives a higher weight value to any evidence that is taken from the premises. They have the power to execute the warrant if the person is not home, so when some honourable members refer to a new way of executing search warrants they are quite wrong.

Even more remarkable, a police officer can get a search warrant today under the hand of a magistrate, go to a person's home and execute that search warrant. This legislation is even stronger than that because it does not authorise a magistrate to approve an application for a covert search warrant: it has to be done by a Supreme Court judge. It is an even higher test than that which we accept as normal practice every day of the week. Search warrants are issued every day of the week in relation to crimes but no-one says anything about it. Those same search warrants can be executed by police irrespective of whether the person being targeted is on the premises. I think some honourable members need to take a step back and stop trying to make out that this legislation is far more than it is.

I have also been told by quite senior serving police that there is nothing that forces them to issue the occupier's notice on the person within a certain period of time. This legislation puts a time limit in place. One of the amendments that the Hon. John Ajaka will move will seek to reduce the proposed time period from three years to two years. We are seeking to tighten the provision a little. I have spoken to police, as the Attorney General would be aware, and told them we propose to reduce the period from three years to two years and, without naming names, I think the Attorney General would be aware that police are quite relaxed about that. It does not necessarily hamper any investigations. The sorts of crimes we are talking about here are very serious. I listened to some of the contributions and some of the hypotheticals, but I cannot see too many Supreme Court judges issuing covert search warrants for trivial matters. Some fairly substantive evidence will have to be given to a Supreme Court judge—

**The Hon. John Hatzistergos:** The Act says they cannot.

**The Hon. MICHAEL GALLACHER:** The Act says they cannot. Some fairly substantial evidence will have to be presented to a Supreme Court judge before a covert search warrant is issued. I do not know of too many police who will risk getting a covert search warrant for somebody's home when there is no corroborative evidence about that person's criminality leading up to the execution of the search warrant. One of the contributions this evening referred to police fabricating evidence or planting evidence in someone's possession. It is highly unlikely—

**Ms Lee Rhiannon:** They never do that, do they?

**The Hon. MICHAEL GALLACHER:** The point is, they never do it. Once again we hear the interjections. The fact is—

**The Hon. Michael Veitch:** Interjections from whom?

**The Hon. MICHAEL GALLACHER:** Interjections from the Greens. Look at what happens in the courts. Courts are highly unlikely to accept evidence when it cannot be corroborated with any pre-existing evidence of a person's involvement in a criminal venture. Let us say a kilogram of heroin is found in somebody's home and there is no other evidence available to the police that would somehow give them the opportunity to get the search warrant in the first place. That is simply not going to happen.

A court is unlikely to give any great weight to that evidence if nothing is in place to corroborate the submission by the police that the evidence had been found and, therefore, it could be assumed to have been in someone's possession. It would be drawing a long bow for anyone to suggest that that would happen.

There is a lot of scaremongering about the possible impacts of this legislation. I am sure that the Attorney General would be the first to acknowledge that the highly organised criminal figures that will be targeted by this legislation will seek to maintain the integrity of their premises in the likelihood of the police executing a search warrant while they are not there. In the future it will become increasingly unlikely for people involved in serious criminal ventures who have evidence at home—whether it be drugs, computer records, or other evidence—to leave that evidence unsecured. Somebody will remain in close proximity to the evidence to ensure that police do not enter the premises and conduct an investigation.

Highly organised criminals who already do so will ensure that their premises are maintained and secured, and one of the people involved in the criminal venture will maintain a presence at the house at all times to prevent police access. Is the Attorney General able to indicate whether, under this legislation, those same practices will apply in the execution of a search warrant? Will any search that is conducted be videotaped by a person independent of the investigating police, as is the case currently when premises are searched? We need continuity in the search warrant process. Earlier Ms Sylvia Hale said that we do not need more laws to fight crime.

**The Hon. John Hatzistergos:** We want more intelligent police policing. That is what this is about.

**The Hon. MICHAEL GALLACHER:** The Greens have failed to acknowledge the changing nature of criminality. Criminals, in particular the criminals that this legislation is targeting, have become more professional and they are using modern technology in an attempt to stay one step ahead of legislation and police practices. This legislation will give police an additional suite of measures to ensure that investigations are not interrupted by the disappearance of evidence. Police must have the power to prevent crime from occurring. Ms Sylvia Hale said earlier that laws such as this would not prevent crime, but police will be able to use current search warrant provisions to investigate a crime involving the use of a firearm when such an offence is not the primary reason for their investigation. Police have entered premises and decommissioned a firearm, thus ensuring the continuance of the primary investigation and ruling out any necessity to conduct a new one.

Police have been able to enter premises and prevent more serious crimes from occurring by using search warrants and other means of intelligence gathering to build positive briefs of evidence. It is important to highlight some of the provisions in this legislation. A number of members made reference to bikie gangs and to the legislation in operation in South Australia, which they said has not worked. I refer to the reasons why the legislation has worked thus far and I also inform honourable members why it has not been as good as it could have been. I will commence with that point. Anyone who takes the time out to examine the South Australian legislation will find fairly simple provisions dealing with declared organisations. The South Australian legislation is broad, but it is also quite simple.

Once that legislation was passed the South Australian Government handed it over to bureaucrats to implement; unfortunately they only made things more difficult. Barriers were put up, which created a convoluted process that made it more difficult for South Australian police to enforce the legislation. The South Australian legislation created a different environment for police and it also created a whole new ball game for approaching these problems. Traditionally, police and investigative authorities enforce the laws in relation to those who commit a crime. The South Australian legislation targets the organisational structure rather than the individual. People interested in this area of crime are aware of those structural difficulties.

How often do we hear people ask, "How often are the Mr Bigs of this world charged?" The

underlings are always charged. The South Australian legislation will rip away the foundations of these organisational structures revealing that the Mr Bigs of this world are closer to such crimes. Convoluted organisational structures tend to increase the distance of a criminal from a crime, thus hampering the ability of police to identify anyone in an organisational chain. Those who have examined this legislation say that one of the most exciting aspects of the South Australian legislation is t How often do we hear people ask, "How often are the Mr Bigs of this world charged?" The underlings are always charged. The South Australian legislation will rip away the foundations of these organisational structures revealing that the Mr Bigs of this world are closer to such crimes. Convoluted organisational structures tend to increase the distance of a criminal from a crime, thus hampering the ability of police to identify anyone in an organisational chain. Those who have examined this legislation say that one of the most exciting aspects of the South Australian legislation is that it gives police a broader range of measures to target highly organised, professional and well backed up criminal ventures that have access to the best legal assistance and financial advice.

Organisations include bikie gangs through to more legitimate concerns funded on the back of criminal enterprises. Under current legislation it is incredibly difficult for governments to target those enterprises. Over the past two days the Government has made much reference to the New South Wales Crime Commission. However, this State Government gutted that commission. It used to have four investigative teams but it now has only two, and staff numbers have also been reduced. The Government suggested yesterday that the Crime Commission should play a bigger role in the investigation of criminal enterprises, which is a fallacious argument given the changes that have occurred to its staffing levels and to its budget over the past few years.

In essence, this legislation has been a long time coming. We have to look at new measures to target bikie gangs and organised crime. We have to think smarter and change our approach to law and order in this State. Police must be able to take off their gloves, infiltrate these organisations, dismantle them and ensure that those who want to destroy our way of life in this State and in this country are targeted, and organisational structures are destroyed.

**Ms LEE RHIANNON** [8.30 p.m.]: Michael, before you go, your speech contained some interesting aspects about yourself. Were you a police officer in the 1980s?

**The Hon. Michael Gallacher:** Yes, I was.

**Ms LEE RHIANNON:** That is interesting. I have to fast-track to your speech because, obviously, you have some important business to go to.

**The Hon. Michael Gallacher:** I was in internal affairs, just so you know. That might help you.

**Ms LEE RHIANNON:** Do you remember in the 1980s one of the big campaigns to expose—

**The PRESIDENT:** Order! Members will address their remarks through the Chair.

**Ms LEE RHIANNON:** Mr President, you and other colleagues in the House may remember—I imagine Mr Gallacher will remember—the big campaign in the 1980s as concern grew about police corruption was the need to expose the verballing of people. There was much concern as this was a form of police corruption. Police would make out somebody had said something when they had not said it. I was interested to find out when Mr Gallacher was a police officer because tonight he verballed my colleague Sylvia Hale, making out that she said things.

**The Hon. Rick Colless:** You have been watching too much *Underbelly*.

**The Hon. Marie Ficarra:** Oh, you're casting—

**Ms LEE RHIANNON:** I acknowledge the interjections from the loyal foot soldiers for Mr Gallacher. Mr Gallacher was highly dishonest in how he conducted himself tonight. My colleague Sylvia Hale did not make out that all police officers were corrupt. It is important in tonight's debate to identify how this legislation opens up the real possibility of another expansion of corrupt activities within the Police Force. Recently there has been cleaning up of some, but not all, police activities. Because Mr Gallacher so seriously distorted what Ms Hale said, for his benefit and that of other members, I place on record again some of my colleague's comments. Ms Hale said:

While the vast majority of police and judicial officers are honest, diligent and competent—

I will repeat that for Mr Gallacher—

While the vast majority of police and judicial officers are honest, diligent and competent—

Ms Hale then continued:

… it is not good enough to just expect that all police will always act appropriately and that all judicial officers will always exercise oversight justly and competently.

If anything, the imbalance comes from Mr Gallacher's comments. So often his attitude in his contributions to these sorts of debates in this place is, "Listen to me. I speak for the police. Don't question me. I walk arm in arm with police." He is misrepresenting the situation by not giving us a balanced view. The Police Force has serious problems and horrible things go on that we do not hear about from Mr Gallacher. It has a lot to do with how he is running his election campaign. He thinks that if he visits every police station the Coalition is going to win. I am sure we will hear more about that at some other time.

**The Hon. Rick Colless:** That is drawing a longbow.

**Ms LEE RHIANNON:** I acknowledge another interjection from a loyal foot soldier. We have a serious problem with how Mr Gallacher presented his contribution. Often when he is hard up for an argument we see that style of speech. My colleague Sylvia Hale set out very clearly why this bill is not necessary and should be voted down. New South Wales already has a raft of law and order legislation that provides police with enormous powers to fight crime. This bill is very dangerous because it reduces accountability of New South Wales police, and that simply opens the door to increased corrupt activities. It is well known that a line can be drawn from covert activities to corruption. That is one reason this legislation should be opposed.

Debate on this bill reveals the problem we have with Labor and the Coalition: they both so quickly give the police what they want. The police make demands and next thing the Coalition and Labor are competing about who can deliver the biggest package for the police. This bill is another example of police powers being increased and scrutiny being decreased. Our society will be worse off. This bill is a serious development in our law and order system. We are in the twenty-first century and we should be improving our justice system, not watering it down. One disturbing aspect of so much of this kind of legislation is how important justice provisions developed and handed down to us over the centuries are being weakened. That is another reason to place on record that Greg Smith, the shadow Attorney General said, "I am not going to fight the election as a law and order election." Certainly, he did not talk about unravelling any of the bad laws that have been passed, but now so quickly the Coalition steps in to push our laws to the extreme by bringing into our State South Australian type bikie laws.

If this legislation is passed police can seek the issuing of a covert warrant to enter premises where they suspect a serious crime is being or will be committed. It must be remembered that the serious crimes could be car theft or hindering a mining operation. Under this legislation police can also enter neighbouring premises by pretending to be a tradesman, a clergyman or an ambulance driver—

**The Hon. John Hatzistergos:** A member of Parliament.

**Ms LEE RHIANNON:** I acknowledge the interjection. It would be interesting to know why a member of Parliament would walk into your house—perhaps doorknocking. Mr Gallacher might be out doorknocking hoping to find a police officer to vote for him! The bill allows for the police to undertake these operations and residents may not find out about police entry into their homes for three years, and then suddenly they may be informed. The next aspect of this bill is the most serious measure. It has been mentioned by some members but I do not think it has been sufficiently addressed. The Government can actually determine which Supreme Court judge will approve a secret—

**The Hon. John Hatzistergos:** That is just nonsense. That is just rubbish.

**Ms LEE RHIANNON:** The Attorney General says that is total rubbish. I look forward to his placing the details on record. I certainly understood that the Government would have a role in determining which Supreme Court judge would approve the process. Obviously, the House will hear more about that aspect from the Attorney General. In this bill we have an extraordinary raft of measures that fundamentally are changing how justice will be delivered in New South Wales. One would have thought there would have been wide consultation; there has been nil consultation with groups

active in delivering and monitoring justice. Consultation appears to have started and stopped with the New South Wales police. It is worth placing on record the number of groups and some of the comments of those groups concerned about this legislation. They are lawyers—

**The Hon. John Hatzistergos:** Groups like Hell's Angels.

**Ms LEE RHIANNON:** I have to acknowledge that ridiculous interjection. The Attorney General has been well behaved. Normally when the Greens speak he cannot control himself, but he has been fairly quiet tonight. However, making comments that we are suggesting the Comancheros should be consulted is crazy. The Attorney General knows the list of organisations I am about to read. The fact he makes an interjection such as that when I am about to detail the organisations that have raised this matter with him, which organisations he failed to consult, is of real concern in relation to his attitude to developing justice-related legislation. Lawyers and human rights defenders representing six groups have written to the Premier asking why they were not consulted on the plan to extend already unnecessary police powers.
Their open letter was signed by groups including the International Commission of Jurists, Australian Lawyers for Human Rights, the New South Wales Council for Civil Liberties, the Sydney Centre for International Law, the Public Interest Advocacy Centre and the Combined Community Legal Centres Group, New South Wales.

**The Hon. John Hatzistergos:** What was their position?

**Ms LEE RHIANNON:** That is another worrying interjection. One would have thought by now that the Attorney General would have acquainted himself with that.

**The Hon. John Hatzistergos:** I have, but I am interested in what you say.

**Ms LEE RHIANNON:** I will go through it. The open letters were signed by those groups, and some of their comments were:

None of us, or our members, were aware that the NSW Government proposed such laws, that such laws were considered necessary or on what basis they were considered necessary …

The way that it has been introduced without public consultation and debate and is being pushed rapidly through the Parliament demonstrates the very real, if not urgent, need for consolidated human rights protection.

The letter detailed that covert searches breach human rights to privacy, freedom of speech and freedom of association. It is very clear that a range of organisations has expressed concern about the legislation before the House. I join with my colleague Ms Sylvia Hale in congratulating the Hon. Trevor Khan on aspects of his speech. However, I noticed that at one stage he came close to claiming that there were benefits associated with the South Australian bikie legislation. It looks as though there will be time to explore those contradictions. I hope I am wrong, considering how extreme that legislation is and the degree to which it undermines and in some cases eliminates basic civil rights.

**The Hon. Rick Colless:** What about the civil rights of the people at the Sydney Airport yesterday?

**Ms LEE RHIANNON:** Absolutely, civil rights were abused in a deeply worrying way. No laws would have solved that problem. What we needed yesterday were police and security forces that got in and did their job. I imagine the report on that incident will be quite useful. The comments made by the Hon. Rick Colless are very misplaced.

A sinister aspect of this bill is that it effectively elevates fighting domestic crime to being on a par with fighting terrorism. My colleague Ms Sylvia Hale set out very clearly that these laws are an extension of terrorism laws. I state for the record that those laws should be reviewed, and in most cases withdrawn. Delivering justice and building safe communities are an enormous challenge for governments. In the twenty-first century we have the benefit of centuries of the development and strengthening of a diverse justice system. As lawmakers we have great responsibility to get the balance right in delivering a fair justice system. Balancing police powers with the rights of all citizens to have their human rights observed, their privacy protected and freedom of speech as well as freedom of association acknowledged should be key objectives in formulating laws such as those in the bill that is before the House tonight.

There has been no attempt in the proposed laws we are considering to address the requisite

balance. When the bill is passed, which appears to be inevitable because it has the support of Labor and the Coalition, the House will be passing dangerous legislation that not only undermines the rights of New South Wales citizens but also creates conditions that will return New South Wales to the era of the Askin Government when police corruption was rife. There is a serious problem with this flawed legislation. I am sure that one day the House will have to consider how it will remedy the problem we are about to create. This legislation is not warranted. It represents a serious setback for justice in New South Wales. I urge members to stand up for civil rights and vote against this legislation.

**Reverend the Hon. Dr GORDON MOYES** [8.43 p.m.]: I rise as a Christian Democrat to speak on the Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Bill 2009. The objectives of the bill are, first, that it seeks to establish a scheme for a new class of search warrant—the covert search warrant, authorised by a New South Wales Supreme Court judge—which will provide police and other law enforcement personnel with the power to enter and search premises without the occupier's knowledge. The powers may be exercised in relation to a "serious offence", which is defined in the bill as those involving specified indictable offences that are punishable by imprisonment for a period of seven or more years. Second, the bill provides that any notice to the occupier of the exercise of these powers may be deferred for up to six months with the possibility of a further extension of up to three years with the authorisation of the judicial officer who issues the warrant. Third, it creates a new search warrant power in relation to the examination of computers and similar devices from the premises. In the agreement in principle speech in the lower House the Parliamentary Secretary explained on behalf of the Minister the necessity for covert search warrant powers. He stated:

The bill is part of the New South Wales Government's ongoing commitment to providing law enforcement agencies with the necessary armoury to respond effectively to major crime and keep the community safe.

According to the New South Wales Government, these powers are needed for particular serious offences—for example, when police need to make arrests at a precise point in time, or need to raid a drug laboratory after the drugs are made but before the drugs hit the streets, or if they need to search the home of one member of a criminal group without alerting other members of the group. Yesterday's rival bikie gang war that spilled into the public domain, the recent drive-by shootings at houses across western Sydney, and the bombing of a Hell's Angels clubhouse last month has resulted in an escalation of bikie violence in Sydney. In recent months New South Wales Police have discovered houses in Blair Athol, St Marys and Bexley that are being used by drug syndicates to hide drugs such as amphetamines and cannabis.

The bill should be scrutinised because New South Wales may be the first jurisdiction in Australia to adopt the covert search warrants that have been modelled on Commonwealth anti-terrorism legislation. Queensland and Victoria have legislation authorising covert warrants, but in Victoria the power is limited to terrorism offences, and in Queensland there is a public interest monitor. Because the bill will provide New South Wales Police with exceptional and unprecedented powers to invade the privacy of citizens without their knowledge, it is not surprising that this bill has attracted considerable attention from the legal fraternity. Authorising an eligible person to covertly enter and search premises, using such force as is necessary, to seize, substitute, copy, photograph and record things, and to covertly enter adjoining premises, as provided under proposed section 47A, clearly constitutes significant trespasses on the relevant person's privacy and property.
While the argument is made that the public interest must be balanced against personal rights and liberties, this is the only legislation of its type in Australia. Many members who preceded me in this debate dealt in detail with that aspect of the bill, so I will not attempt to traverse the same subject matter. But because the public interest is concerned about striking the correct balance between personal rights and liberties with law enforcement measures there are some issues I will discuss. In the case of *Coco v. The Queen* (1994) the High Court of Australia highlighted the right to property and strict construction. In this regard the majority of judges—Mason CJ, Brennan, Gaudron and McHugh JJ—cited with approval an article by England's Lord Browne-Wilkinson "The Infiltration of a Bill of Rights" and the important case for protection of privacy, *Marcel v. Commissioner of Police* (1992). To determine whether the protection of privacy is enhanced by this approach it is necessary to identify aspects of privacy that the courts will regard as "basic immunities which are the foundation of our freedom". Furthermore, the "Report of the Senate Legal and Constitutional Legislation Committee on the Provisions of the Surveillance Devices Bill 2004" stated:

There is a very fine balance between maintaining and protecting the' privacy of individuals on the

one hand, and the wider public interest of obtaining evidence with which to prosecute and convict serious offenders. It is also likely that this dilemma will become of increasing significance with the rapidly growing potential for intrusive technological surveillance.

I acknowledge that the Attorney General made the point about the development of technological competencies. Under the current legislation a person whose property has been entered covertly may not become aware of that fact for up to three years. The issuing of covert search warrants so far has been allowed only under terrorism legislation and can be exercised only by the New South Wales Police Counter Terrorism Coordination Command and units of the New South Wales Crime Commission involved in terrorism-related investigations.
The extension of such powers to a wider variety of offences and their potential exercise by members of the New South Wales Police Force is a matter of concern. It is in that context that I place on record the United Nations Code of Conduct for Law Enforcement Officials. Article 1 states:

Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

Article 2 states:

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Article 7 states:

Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

When introducing covert search warrant provisions in New South Wales for the first time in 2005 then Attorney General Bob Debus reassured Parliament that they were not intended for general policing because—he tried to make this point of difference—general criminal activity, as opposed to terrorism, has never sought mass killing, widespread destruction or wholesale disruption of society. Mr Debus said:

Law enforcement agencies already have a wide array of investigation powers at their disposal and they will all continue to be employed in the fight against terrorism.

This bill sets a dangerous precedent in that it makes extraordinary powers generally available to the police, and this may infringe on some basic liberties, as some of our colleagues have spoken about previously. Recently the International Commission of Jurists warned against allowing anti-terrorism powers to be extended to ordinary crime. Justice Michael Kirby said that protecting individual's privacy against the arbitrary use "of the great power of entry and search" is critical. By applying the investigative techniques of counter-terrorism to ordinary criminal offences the bill strips away that protection.

The initial covert search warrant powers were introduced under the Terrorism Legislation Amendment (Warrants) Bill 2005 in the context of potentially catastrophic consequences of terrorist activity, and the public interest test was argued. The objectives of bikie groups such as the Bandidos, Comancheros, Hells Angels and Notorious solely focus on the drug trade, extortion, money laundering, firearms and turf wars. The objectives of al-Qaeda, Jemaah Islamiah, Abu Sayyaf and the Irish Republican Army are completely different from the objectives of these kinds of organised crime. We must not approach the root of the problem with a one-size-fits-all approach. According to former New South Wales Assistant Police Commissioner Mr Clive Small, the New South Wales Government treats the crackdown on bikie violence in a political sense rather than in an operation and crime sense. In an ABC report Mr Small said:

They want bad stories off the front page of the newspaper so they want a get-tough-on-crime announcement as a solution. An example is, "Now we're having an increase in adverse reporting of bikie crime in the media, so the solution is we'll enact more laws. Don't worry about tackling the problem, just give us a good-time story to make it look as if we're doing something".

The European Human Rights Commission observed that it is desirable that the power to authorise secret surveillance of suspects in criminal cases be limited to judges because:

… in a field where abuse is potentially so easy in individual cases and could have such harmful consequences for democratic society as a whole, it is in principle desirable to entrust control to a judge.

In 2001 the New South Wales Law Reform Commission recommended:

The power to issue warrants should be limited to judicial officers. It is important that a decision to authorise such intrusive conduct as the carrying of covert surveillance be made by an impartial authority, skilled in the appraisal of evidence and the likelihood of obtaining information or evidence by other means, and experienced in the weighing of the community interest to investigate and prosecute offences against the privacy interest of individuals … As well, the respect judicial officers command in the community would ensure public confidence in a system that vests control over the issuing of warrants for covert surveillance in them.

I congratulate the Government on taking those points of view into account. However, it is important to point out that under this bill only judges who agree to be nominated and are approved in writing by the Attorney General will be declared eligible. I differ from a previous speaker, Ms Lee Rhiannon: she said that those judges would be selected by the Government. That is not true; judges must agree to be nominated and approved in writing by the Attorney General as eligible. Hence, arguments have been made that this bill will erode the public's confidence in the independence of the judiciary from Executive interference. One key tenet of a parliamentary democracy is the clear separation of powers between the Executive, the Legislature and an independent judiciary. It is critical that the integrity of our courts be maintained.

The proposed covert powers of entry in the bill may be exercised in relation to a wide variety of offences, which are set out in proposed section 46A. As the first speaker on behalf of the Opposition outlined the offences in great detail, I will not go through them. These offences should include matters involving theft, producing false instruments, and computer offences, for example. Given the magnitude of the invasion of privacy and the breach of civil liberties sanctioned by the bill, if such extraordinary powers as these are to be available they should be available only to a much narrower and more important category of circumstances, such as when there is an imminent risk of serious bodily injury or death to persons. However, the range of serious offences for which a covert search warrant can be issued will be extremely broad and can include some offences which have a relatively minor impact, so long as they may attract a prison sentence of seven years.

**The Hon. John Hatzistergos:** But a judge has to agree to issue the warrant, bearing in mind the nature and gravity of the offence.

**Reverend the Hon. Dr GORDON MOYES:** A judge can issue the warrant, bearing in mind the gravity and nature of the suspected crime. I thank the Attorney General for that. The generalised and widespread use of covert search warrants will constitute a potential public safety issue, and will place innocent lives at risk. There is substantial potential for innocent people to be injured in all these operations. What remedies and compensation will be available if a member of the public tries to stop what appears to be a breach of the law is still uncertain. Ms Sylvia Hale used the example of finding a covert operative in her house at night. What protection does she have if she attacks him with a shovel?

**Ms Sylvia Hale:** Indeed.

**Reverend the Hon. Dr GORDON MOYES:** I will not visit your home unexpectedly. There have been cases of police and other law enforcement agencies that have abused and misused their considerable powers, although the proposition of the Leader of the Opposition that this is often overstated accords with my experience of what happens in the Police Force. Accountability and transparency in law enforcement cannot be guaranteed and assured with the passing of this bill. There are no checks and balances to ensure that all lines of inquiry have been explored, scrutinised and properly investigated. During the APEC lockdown in September 2007 the police commissioner said, "This is just the way we do business in NSW now ." I ask members of this House: Is it really what we want for the future of New South Wales? Do we want New South Wales slowly to turn into this kind of police state? Moreover, under this bill, no review mechanism is possible with a covert warrant. Potentially, householders can wait three years to find out that their privacy has been illegally invaded, while in the meantime every aspect of their personal life could have been monitored. In a time of economic depression can innocent civilians be in a financial position to challenge such a warrant in court? The bill empowers law enforcement officers to enter neighbouring property for the purpose of exercising a covert search warrant. This might be a curtailment of the civilian's fundamental right to privacy. Having discussed this matter with the

Attorney General, I make the point that, for example, a bikie gang's household which is to be under covert surveillance may be heavily fortified and, indeed, almost impenetrable and the only way for a covert search to be undertaken is to go through a neighbouring property.
The bill empowers law enforcement officers to enter neighbouring property for the purposes of exercising a covert search warrant. This might be a curtailment of the civilian's fundamental right to the invasion of privacy, but having discussed it with the Attorney General, I point out that, for example, in the case of the household of a bikie gang that is to be covertly surveilled the place may be heavily fortified and almost impenetrable and the only way for a covert search of the property to take place is via a neighbouring property. The bill empowers law enforcement officers to enter neighbouring properties for the purpose only of exercising a covert search warrant. The innocent neighbours have their rights well protected under this bill.

Furthermore, the amendments also permit entry without notice upon the premises of an adjoining occupier, including by impersonating another person. This provision has the potential to place the neighbour's life at risk if a covert search warrant goes horribly wrong. Occupiers of the adjoining property also do not have to be notified until the person, the subject of the search warrant, is notified. Again, this could involve a delay in notification of up to three years. Hence, police are entitled to enter the premises of all law-abiding citizens under false pretences and without notice. While I acknowledge the Government's efforts to reduce the elements of organised crime in our society, this bill sets New South Wales on a slippery slope.

The bill raises a number of significant concerns about intrusions on personal rights and liberties. First, the threshold for invoking the powers is suspicion on reasonable grounds, and I believe that is not high enough to ensure that the premises of innocent people will not be covertly entered and searched. Second, if a search warrant is not served upon the person at the time of entry, no opportunity is provided to check whether the name and address on the warrant are correct. Third, because it is not necessary that all or any occupiers of the premises should be suspected of any criminal acts, potentially their rights may be infringed upon. Fourth, the bill specifically provides for the covert entry of adjoining premises occupied by people with no suspected criminal activity, thereby the rights of innocent persons may be infringed upon. Fifth, although it is an offence to knowingly give false and misleading information when making an application, the evidential threshold is fairly high.

Further, no penalty is provided for one being reckless or negligent with regard to truthfulness and accuracy in the giving of information. And finally, an applicant is not required to disclose the identity of a person from whom information was obtained if the applicant is satisfied that to do so might jeopardise the safety of the person. Proposed section 62 seems overly cautious given that the identity of the person will presumably only be disclosed to a judge of the Supreme Court and that its nondisclosure may make it difficult for the judge to decide how compelling the evidence is in regard an application for a covert warrant.

In conclusion, in New South Wales we are witnessing democracy in deficit, wherein the rights of the ordinary citizen are being blatantly ignored in expense of political will by a Government wanting to get tough on crime by any means necessary. I will examine the proposed amendments of the Opposition and the Greens in closer detail and speak to them in Committee.

**The Hon. JOHN HATZISTERGOS** (Attorney General, and Minister for Industrial Relations) [9.03 p.m.], in reply: I thank honourable members for their contributions to this debate. A number of matters referred to by them require responses, and I will do the best I can in this reply and in the course of the Committee stage to address the issues that have been ventilated. I begin by recounting a little history because a number of members have claimed that this legislation is extraordinary, unprecedented and new and will set us down a slippery slope.

Part 5 of the Law Enforcement (Powers and Responsibilities) Act contains general search warrant provisions available to New South Wales police in serious criminal investigations of indictable offences. Section 67 (3) (b) of the Act provides that if an occupier of premises is not present during a search, then an occupier's notice is to be served as soon as practicable after advising the occupier that a search has taken place—that is the current law. Section 63 (4) of the same legislation makes it possible to defer the service of an occupier's notice where an authorised officer is satisfied that there are reasonable grounds to do so, and the services of notices can be postponed but not on any one occasion for a period in excess of six months.

**Ms Sylvia Hale:** If that is the law why do you need additional powers?

**The Hon. JOHN HATZISTERGOS:** Just a moment. There are already provisions recognised in

the legislation under section 67 (3) (b) and section 67 (4) of the Law Enforcement (Powers and Responsibilities) Act that enable delayed service of an occupier's notice and, moreover, enable services of notices to be postponed but not on more than one occasion for a period exceeding six months. In the past police have used those provisions of the legislation to execute covert search warrants. That was the position up until the decision in *Ballis v. Randall* . Contrary to the arguments put by Ms Sylvia Hale the decision in *Ballis v. Randall* was not that the search warrant was invalid but that the method of execution was invalid. The existing practice of the police, relying on provisions that were passed by this Parliament, enabled a method of deferred service of the notice and enabled provisions for postponements on any one occasion for a period not exceeding six months. That was police practice for sometime until the decision that was taken in Ballis. It was a mechanism that was used by police for the investigation of serious crime, following a policy decision by this Parliament to include those provisions, which were ultimately not countenanced by the courts. Police would appear before a magistrate and get an ordinary search warrant.

What does this legislation do? It will enable the practice but it will put in place a whole series of safeguards in relation to it. Police will have to get a judge of the Supreme Court to sign off on a warrant, not a magistrate. The offence will be not just any offence; it must be one of the offences referred to in the legislation, including offences involving a seven-year period of imprisonment. The applicant cannot be just any police officer, but must be an officer of the rank of superintendent or above. A wide discretion is placed in the hands of the judge to determine whether it is reasonably necessary for a warrant to be issued. The argument that this legislation is new, novel and unprecedented and tramples on people's rights flies in the face of that historical account and the inbuilt protections that will ensure that appropriate safeguards are put in place.

Why is it important to have a system of deferred notification of search warrants? The ability of police to conduct searches without compromising the progress of investigations is essential, particularly in long-term investigations. We already know that telephone interception capabilities and surveillance devices offer benefits similar to those provided by a covert search warrant. Evidence is gathered without suspects being aware. However, whilst telephone interceptions and surveillance devices are important, on occasion it is necessary to locate and gather physical evidence. For example, it might be clear through a recorded conversation that a group is operating a clandestine laboratory to produce amphetamines but without officers actually entering the laboratory it would not be clear what stage, if any, the production had reached. A search warrant is necessary to obtain this information, and it is most beneficial if the search is carried out without notifying the occupiers so that if the laboratory is not yet at the stage of producing any drug, the investigation is not jeopardised and police can continue to investigate the crime.
Similarly, the investigation of serious fraud or money laundering may be necessary to physically locate part of the paper trail to link suspects in an investigation or to gather evidence about the nature of the scheme without advising the principals. Covert access to premises can also provide investigators with documents, such as plans and maps, that would not be recoverable at the end of a conspiracy. Access can be gained to firearms that can be disabled and to communication systems that allow other methods of covert surveillance to be pursued. Criminals are becoming increasingly familiar with electronic and telecommunication surveillance technology. Thus it is necessary for law enforcement agencies in New South Wales to have this covert search warrant capability.

I appreciate that some members are not familiar with the law in other jurisdictions. This law is not unprecedented in Australia. It is not a New South Wales phenomenon, as Reverend the Hon. Dr Gordon Moyes suggests. Queensland is an Australian jurisdiction that currently has explicit covert search warrant schemes in place for non-terrorism offences. They cover a wide range of offences, including homicide, attempted murder, conspiracy to commit murder, offences involving serious risk to life or for which a person is liable to be sentenced to life imprisonment, organised crime, and serious indictable offences in a systemic way involving a number of people with substantial planning and organisation. A whole series of offences potentially can be brought under the Queensland legislation.

Victoria has a number of search warrant provisions, but not one of them requires the occupant to be notified. If police want to execute a search warrant in Victoria, they can obtain one without any of the protections in this legislation and they do not need to notify the occupant. This issue was examined by an inquiry conducted by the Victorian Law Reform Commission into warrants, powers and procedures. Recommendation 76 of the committee's report stated that the legislation should be amended to allow covert warrants with express authority clearly stated in the warrant, to specify the circumstances in the warrant, and to restrict the availability of the use of covert warrants—in other words, putting a structure around the obtaining of covert warrants. The Commonwealth is currently considering an amendment to its legislation to enable a deferred notification search

warrant scheme.

In short, the practice in New South Wales was sanctioned by the Parliament through the sections of the Law Enforcement (Powers and Responsibility) Act to which I referred. That was not countenanced by the court, notwithstanding that had not been the practice of New South Wales police. There are precedents in Queensland and Victoria, and I have referred to them. The legislation requires an application to be made by an officer of the rank of superintendent or above to a Supreme Court judge and the application must relate to a serious offence. The applicant has to be upfront and tell the Supreme Court judge that the intention is to execute the warrant covertly. A time limit applies. Members have referred to a limit of three years. But every amount of time that is sought to execute a warrant has to be accounted for. The applicant has to give a reason for the time period and must report back after the warrant has been executed. The matter is monitored by the Ombudsman to ensure compliance. Members have said that we need considerable consultation on these matters. To be frank, I am happy to consult. I consulted this morning—

**Ms Sylvia Hale:** After the event.

**The Hon. JOHN HATZISTERGOS:** The proposal was available for discussion. The Premier announced it and detailed legislation was available. It then went to the Legislation Review Committee and submissions were made to that committee.

[ *Interruption*]

I know that some members have entrenched positions. It would not matter how much consultation was conducted, the Greens would always oppose such legislation. They are so predictable in their response to these issues.

**Ms Lee Rhiannon:** We are not talking about us. What about all the legal groups?

**The Hon. JOHN HATZISTERGOS:** It would be useful if for once you actually bothered to read the legislation and listened to the history I have outlined.

**Ms Sylvia Hale:** That is nonsense. Just because the police have acted illegally in the past does not mean that you should now try to make their actions legal.

**The PRESIDENT:** Order! I remind members that interjections are disorderly at all times.

**The Hon. JOHN HATZISTERGOS:** As painful as it was, I listened to the contributions of Ms Sylvia Hale and Ms Lee Rhiannon to see whether I could find any little kernels of wisdom or useful. Regrettably, I found very little. A classic example of the entrenched hostility towards this legislation and the rubbish that we have to put up with in this debate is the ridiculous claim that the Government chooses the judges to determine applications for covert search warrants. The suggestion that the Government would roster a "friendly" judge so that police can get a warrant from some form of political fix is insulting and ridiculous.

**Ms Lee Rhiannon:** You are verballing.

**The Hon. JOHN HATZISTERGOS:** Ms Lee Rhiannon knows what she said. I will refer to her other comments in a moment, but first I will deal with this particular claim. All members know that the existing procedure for the appointment of eligible judges—not only for this legislation but for other legislation, including applications for search warrants under the terrorism legislation—flows from the decision in Kable's case, which provides legal restrictions on conferring administrative responsibilities on the Supreme Court because of the separation of powers. Therefore, these types of applications have to be made in the capacity of the judge personally, not in the capacity of the Supreme Court. That is why a judge has to be declared an eligible judge. Firstly, judges consent and then they are declared. The rostering or availability of a judge to perform a particular task is a matter for the court. I do not choose judges and put them on a 24-hour roster as some sort of political fix. That is a ridiculous claim.

**Ms Lee Rhiannon:** What about section 46B (2)? You have a clear role in it. There is nothing wrong in acknowledging that.

**Ms Sylvia Hale:** It states that the Attorney General may, by instrument in writing, declare judges.

**The Hon. JOHN HATZISTERGOS:** Routinely they come to me and I sign them, and that is all that

happens. The claim of a sinister and clandestine agenda on the part of the Supreme Court and the Attorney General to ensure that we get search warrants spread around like confetti is absurd. This mechanism is used not only in New South Wales legislation; it is also used in Commonwealth legislation for the reasons I have indicated. I am very surprised that Ms Sylvia Hale, with her legal acumen, would not be aware of that.

The Leader of the Opposition referred to standard operating procedures, how warrants could be executed, the presence of an independent police officer, and the use of video cameras to record the search. If lights cannot be turned on in the subject premises, infrared recording is possible, although the quality of the tape will be inferior. The recording of any property seized must be entered in an official property seizure book. The search of the premises will be conducted one room at a time. Obviously there will be occasions when it will be dangerous for an independent police officer without proper training to enter premises, for example, a clandestine laboratory, and there may be other reasons why standard procedures may not be able to be adhered to. It is in the interests of law enforcement officials to ensure the integrity of the search that they are conducting. That is the reason that those procedures are in place, and it is desirable that they be adhered to.

I am aware that some bodies, such as the Bar Association, have claimed that the powers will be used generally. They will not be used generally. They will not be an everyday event. These are incredibly resource-intensive and logistically complex operation to put in place. They are highly sophisticated operations involving significant degrees of planning and monitoring in order to ensure that their integrity is preserved and the safety of the wider community is protected. Of course, there is a limitation with regard to the nature of the offences involved. The other issues raised in relation to integrity centre on accountability safeguards.
I remind honourable members that false or misleading information in applications is defined in section 63 of the Act. The bill provides for penalties of up to two years imprisonment, or 100 penalty units, if, in connection with an application, information is provided by an authorised officer that the person knows is false or misleading in a material particular. Matters were raised in relation to an occupier's safety. The public safety concern is one of the reasons why the execution of a covert search warrant is incredibly resource intensive, and very complex. Earlier I made the point that they are highly sophisticated operations; they involve a significant degree of planning and monitoring in order to ensure that the integrity of the operation is preserved and the safety of the wider community is protected. Before the legislation commences, standard operating procedures will be developed encompassing essential public safety concerns.

I now address other issues in relation to remedies, which have been raised also by the Bar Association. The powers in the bill are accompanied by myriad safeguards to protect against abuse. Reports on the execution are required to be provided to the court, with a copy to the Attorney General. Agencies would be required to report annually on the exercise of the powers, including documenting the number of complaints, as will the NSW Ombudsman, who will be responsible for ongoing monitoring of the scheme. As the majority of challenges to a warrant are made at the time of the ensuing prosecution, it is important to recognise that nothing in the bill will alter the burden or the standard of proof requirements in relation to criminal offences. If the fact that a search is conducted in the absence of an occupier raises questions about the legitimacy of the evidence seized, the onus will be on the police and thereafter the prosecuting authority to prove the case against the accused person beyond reasonable doubt. Therefore, it will be in the interests of police to take steps to preserve the continuity of evidence in order for that burden to be discharged properly.

Comparisons were made with this scheme and the scheme that operates in relation to terrorist offences. The powers in the current bill are very different from the anti-terrorism powers. The primary significant difference is that the current powers are not pre-emptive in their nature as are those under the Terrorism (Police Powers) Act 2002. Rather, they are more closely aligned with the standard search warrants scheme but with the added benefit of allowing the execution of the warrant to occur without immediately notifying the occupier. Even then, the default position for notification for a covert search warrant is that the occupier must be notified as soon as practicable after it has been executed. The bill merely provides an avenue for the Supreme Court judge who issued the warrant to postpone the notification if there are reasonable grounds to do so, and even then there is an upper limit on how long that warrant may be postponed.

**Ms Sylvia Hale:** Three years!

**The Hon. JOHN HATZISTERGOS:** No, they have to explain the length of time they are seeking to postpone. Under the Terrorism (Police Powers) Act the default position for notification is far less restrictive in requiring the occupier's notice to be prepared within six months following the

execution. It does not contain an upper limit on the postponement. The bill provides limits and accountability—past 18 months that can be granted only in exception circumstances.

**Ms Lee Rhiannon:** It still could be three years. Why can you not acknowledge that?

**The Hon. JOHN HATZISTERGOS:** That matter will be debated during the forthcoming committee stage. It is acknowledged that it can be up to three years; that is the upper limit. In the Terrorism (Police Powers) Act there is no limit. I make this point fairly clearly: every extension that is made is not automatic, it has to be accounted for and it has to be explained. Every time an extension is sought, it has to be explained. Anything past 18 months has to have exceptional reasons. I said earlier that some crimes involve lengthy investigations and may require that to be the case. However, the judge will not grant an extension if it cannot be explained and accounted for. Earlier I also said that the judge has to consider it reasonable. The anti-terrorism powers are pre-emptive in nature, with the search of the premises authorised on the grounds of responding to or preventing a terrorist act. By contrast, the powers in the current bill are the same as the standard search warrants, and are directed at searching and seizing specific things connected with the commission of specific offences. There are differences in the legislative regime. It is wrong to raise the issue of terrorism powers and suggest that there is an analogy simply because of the covert nature of a particular warrant.

**Ms Sylvia Hale:** Bob Debus said there was a connection.

**The Hon. JOHN HATZISTERGOS:** We are talking about two different things and I have accounted for the variances. I accept that the member has entrenched positions.

**Ms Lee Rhiannon:** It's not entrenched.

**The Hon. JOHN HATZISTERGOS:** They are completely entrenched and completely and utterly predictable.

**Ms Lee Rhiannon:** How can you say they are entrenched when we were quoting your former colleague?

**The Hon. JOHN HATZISTERGOS:** They were completely entrenched and completely predictable. The next argument raised was the issue of the Ombudsman's review of the bill. The Government's response to that review is being finalised and it will be tabled in the near future. We do not see the need to await tabling of that review before introducing the bill in the House.

**Ms Sylvia Hale:** Why not?

**The Hon. JOHN HATZISTERGOS:** Because the covert search warrant scheme picks up many of the safeguards and the protections. The schemes have marked differences in key respects. As I have made quite clear, the powers in the current bill are more closely aligned with the standard search warrant scheme but with the added feature of allowing the execution of the warrant to occur without immediate notification to the occupier. Furthermore, the terrorism powers are largely pre-emptive in nature, with the search of premises authorised on the ground of responding to or preventing a terrorist act. By contrast, as I have indicated, the powers in the current bill are directed towards searching for and seizing specific things connected with the commission of specific offences.

Members need to keep certain matters in mind when they vote on this bill. I draw attention specifically to the protections that are available under new section 62 (3) and new section 62 (4) of the bill. A lot of play has been made about the capacity and relevant standards of information that the police have to satisfy in order to be able to make an application for a warrant. Members will not hear about new section 62 (3) and new section 62 (4) from Ms Sylvia Hale—she probably has not read them. As soon as I mentioned the new sections I noticed that she flicked to them in the bill. It is like an apocalypse; it has come down from the zenith. We have only to look at those provisions in the bill. I would have thought that someone who had prepared a speech that went on for an hour would know these provisions off by heart. But, no, as soon as I mentioned them, Ms Sylvia Hale scurried through her papers, obviously thinking, "What is this provision that I am not familiar with?" I will edify her. I inform the House that an eligible issuing officer, who happens to be a Supreme Court judge—and who is not chosen by me—when determining whether there are reasonable grounds to issue a warrant is to consider, but is not limited to considering, the matters as provided in new section 62 (3), which states:

(a) the reliability of the information on which the application is based, including the nature of the source of the information,

(b) if the warrant is required to search for a thing in relation to an alleged offence—whether there is sufficient connection between the thing sought and the offence.

New section 62 (4) states:

In addition, an eligible issuing officer, when determining whether there are reasonable grounds to issue a covert search warrant, is to consider the following matters:

(a) the extent to which it is necessary for the entry and search of those premises to be conducted without the knowledge of any occupier of the premises,

(b) the nature and gravity of the searchable offence in respect of which the application is made,

(c) the extent to which the privacy of a person who is not believed to be knowingly concerned in the commission of the searchable offence is likely to be affected if the warrant is issued,

(d) whether any conditions should be imposed by the eligible issuing officer in relation to the execution of the warrant,

(e) if it is proposed that premises adjoining or providing access to the subject premises be entered for the purposes of entering the subject premises:

(i) whether this is reasonably necessary in order to enable access to the subject premises, or

(ii) whether this is reasonably necessary in order to avoid compromising the investigation of the searchable offence or other offence.

Section 62 (5) states:

> The applicant must provide … such further information as the eligible issuing officer requires concerning the grounds on which the warrant is being sought.
>
> That is an extremely broad discretion, which should satisfy most reasonable people that this legislation will not result in search warrants being authorised capriciously or flippantly in a way that tramples on people's rights. This is a balanced approach. This is an approach that ensures that a practice that previously existed, which was not countenanced by the court, is supported by legislation and, moreover, there will be safeguards now like never before to ensure that that practice is conducted with appropriate balance and with detailed scrutiny. For all those reasons we object to the Greens proposal to defer this issue and send it off to another committee.
>
> **Ms Sylvia Hale:** That would allow public scrutiny, wouldn't it?
>
> **The Hon. JOHN HATZISTERGOS:** Oh yes, public scrutiny.
>
> **Ms SYLVIA HALE:** Goodness gracious, we couldn't have that!
>
> **The Hon. JOHN HATZISTERGOS:** I can just imagine the usual crowd—the usual suspects of Justice Action—will be there. Perhaps that new political party that has been formed in South Australia to represent the bikies will come and give a submission as well. Quite frankly, that would be very entertaining, but I do not propose to countenance it.
>
> **Question—That the amendment be agreed to—put.**
>
> **The House divided.**

**Ayes, 4**

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|---|---|---|
| | Mr Cohen<br>Ms Rhiannon<br><br>*Tellers,*<br>Ms Hale<br>Dr Kaye | |

**Noes, 30**

| | | |
|---|---|---|
| Mr Ajaka | Mr Hatzistergos | Mr Smith |
| Mr Brown | Mr Khan | Mr Tsang |
| Mr Catanzariti | Mr Lynn | Mr Veitch |

| | | |
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| Mr Clarke | Mr Mason-Cox | Ms Voltz |
| Mr Colless | Reverend Dr Moyes | Mr West |
| Ms Fazio | Reverend Nile | Ms Westwood |
| Ms Ficarra | Ms Parker | |
| Mr Gallacher | Mrs Pavey | |
| Miss Gardiner | Mr Pearce | *Tellers,* |
| Mr Gay | Ms Robertson | Mr Donnelly |
| Ms Griffin | Ms Sharpe | Mr Harwin |

**Question resolved in the affirmative.**

**Amendment negatived.**

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

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

**The House divided.**

**Ayes, 30**

Mr Ajaka
Mr Brown
Mr Catanzariti
Mr Clarke
Mr Colless
Ms Fazio
Ms Ficarra
Mr Gallacher
Miss Gardiner
Mr Gay
Ms GriffinMr Hatzistergos
Mr Khan
Mr Lynn
Mr Mason-Cox
Reverend Dr Moyes
Reverend Nile
Ms Parker
Mrs Pavey
Mr Pearce
Ms Robertson
Ms SharpeMr Smith
Mr Tsang
Mr Veitch
Ms Voltz
Mr West
Ms Westwood

*Tellers,*
Mr Donnelly
Mr Harwin

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|---|---|---|
| **Noes, 4** | Mr Cohen<br>Ms Rhiannon<br><br>*Tellers,*<br>Ms Hale<br>Dr Kaye | |

**Noes, 4**

| | | |
|---|---|---|
| | Mr Cohen<br>Ms Rhiannon<br><br>*Tellers,*<br>Ms Hale<br>Dr Kaye | |

**Question resolved in the affirmative.**

**Motion agreed to.**

**Bill read a second time.**

**In Committee**

**Clauses 1 and 2 agreed to.**

**Ms SYLVIA HALE** [9.47 p.m.], by leave: I move Greens amendments Nos 1, 2, 3, 4, 5, 6 and 8 in globo on sheet C2009-002C.

No. 1 Page 3, schedule 1 [3], lines 17 and 18. Omit all words on those lines.

No. 2 Page 9, schedule 1 [7], proposed section 47A (2) (b), lines 14-17. Omit all words on those lines.

No. 3 Page 11, schedule 1 [11], lines 24 and 25. Omit all words on those lines.

No. 4 Page 12, schedule 1 [14], proposed section 62 (2) (c), lines 31-36. Omit all words on those lines.

No. 5 Page 13, schedule 1 [14], proposed section 62 (4) (e), lines 26-33. Omit all words on those lines.

No. 6 Page 15, schedule 1 [21], proposed section 66 (2) (a), lines 5-8. Omit all words on those lines.

No. 8 Page 17, schedule 1 [24], proposed section 67B, lines 1-32. Omit all words on those lines.

The Greens amendments, as I have indicated, remove those clauses of the bill that would allow a warrant to be issued for covert entry into premises adjacent to those of a suspected person or the place where evidence of criminal activity is thought to be located. These amendments do not preclude police from seeking a warrant to covertly enter a suspect's premises but they do prohibit covert access via neighbouring premises unless of course the occupant agrees to that occurring.

The bill currently provides that a Supreme Court judge can grant a warrant for covert entry into any adjacent premises to permit police or other officers to gain access to the target premises. Ordinary citizens will thereby become embroiled in covert police operations simply by virtue of living next door to a suspect. The Greens believe that this represents a threat to the privacy of ordinary citizens and our amendments seek to remove those offensive provisions.

The nature of a covert entry means that the police can gather information about the occupants—details such as when they are normally home and when they are usually at work. The whole point of a covert operation is that it is covert. Totally innocent people, including children and other relatives, will be placed under police surveillance to determine when it is unlikely that they will be home. The police will determine the best time to secretly enter their premises, work out how to break in, perhaps even disable any alarm systems and go through the premises for the purposes of accessing the suspect premises.

That may involve going over a balcony or a fence, or through roof, floor cavity or wall without being detected. The Greens believe that that is absolutely unacceptable and a gross invasion of privacy.

The other worrying aspect of the bill is that things can go wrong. An occupant may unexpectedly return and think that the home is being burgled. It is not beyond the realms of possibility that the fright caused could provoke a heart attack, extreme fear or even an attack by the occupant on the plain-clothes or disguised officers. There is also the possibility of retribution from the suspected criminal next door if that alleged criminal suspects someone has entered his or her premises via the neighbour's premises.

In response to a question I asked recently in this House about the fingerprinting of minors the Minister for Police said that if people have done nothing wrong they have nothing to worry about. However, this Government is drawing innocent people into covert criminal investigations. If passed in its current form, this legislation will allow innocent people's homes to be entered secretly. In this New South Wales police State we seem to be spending too much time randomly fingerprinting 13-year-olds, using sniffer dog patrols and arresting an individual sitting in Hyde Park drinking coffee

during APEC. We do not put anywhere near that same effort into old-fashioned investigative police work focused on actual criminal activity.

The Government should not enlist innocent neighbours and use their homes as shortcuts in covert operations. If the people of New South Wales were fully aware of these provisions, I think most of them would be totally outraged and angry because of the home invasion that they sanction. I urge members to think very carefully about these provisions and, even if they support the remainder of the bill, to consider and vote for the Greens' amendments.

**The Hon. JOHN AJAKA** [9.53 p.m.]: The Opposition does not support the Greens' amendments.

**The Hon. JOHN HATZISTERGOS** (Attorney General, and Minister for Industrial Relations) [9.54 p.m.]: The Government also does not support the Greens' amendments.

**Question—That Greens amendments Nos 1 to 6 and No. 8 be agreed to—put.**

**The House divided.**

**Ayes, 4**

Ms Hale
Ms Rhiannon

*Tellers,*
Mr Cohen
Dr Kaye

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|---|---|---|
| **Noes, 27** | Mr Lynn | Mr Tsang |
| | Mr Mason-Cox | Mr Veitch |
| **Noes, 27** | Reverend Dr Moyes | Ms Voltz |
| | Reverend Nile | Mr West |
| Mr Ajaka | Mr Obeid | Ms Westwood |
| Mr Brown | Ms Parker | |
| Mr Catanzariti | Mr Primrose | |
| Mr Clarke | Ms Robertson | *Tellers,* |
| Mr Colless | Ms Sharpe | Mr Donnelly |
| Ms Ficarra | Mr Smith | Mr Harwin |
| Mr Gay | | |
| Ms Griffin | | |
| Mr Hatzistergos | | |
| Mr Khan | | |

**Noes, 27**

| | | |
|---|---|---|
| Mr Ajaka | Mr Lynn | Mr Tsang |
| Mr Brown | Mr Mason-Cox | Mr Veitch |
| Mr Catanzariti | Reverend Dr Moyes | Ms Voltz |
| Mr Clarke | Reverend Nile | Mr West |
| Mr Colless | Mr Obeid | Ms Westwood |
| Ms Ficarra | Ms Parker | |
| Mr Gay | Mr Primrose | |
| Ms Griffin | Ms Robertson | *Tellers,* |
| Mr Hatzistergos | Ms Sharpe | Mr Donnelly |
| Mr Khan | Mr Smith | Mr Harwin |

**Question resolved in the negative.**

**Motion negatived.**

**Greens amendments Nos 1 to 6 and No. 8 negatived.**

**CHAIR** : The next amendments are Liberal Party amendment No. 1 on sheet C2009-003E and Christian Democratic Party amendment No. 1 on sheet C2009-010A. As those amendments are identical, the Liberal Party amendment will be moved as it was received first.

**The Hon. JOHN AJAKA** [9.10 p.m.]: I move Liberal Party amendment No. 1 on sheet C2009-003E:

No. 1 Page 6, schedule 1 [5], proposed section 46A (2), line 10. Insert "or 15A (Child

pornography)" after "(Child prostitution)".

Proposed section 46A, which relates to searchable offences, defines "serious offence" as including a specific number of offences. Paragraph (e) of the definition states:

? an offence under division 15 (Child Prostitution) of Part 3 of the Crimes Act 1900.

The Opposition is seeking to add the words "or 15A (Child pornography)". Put simply, the Opposition contends that child pornography is as serious an offence as the other offences listed in the bill. Frankly, to our surprise, it seems to have been omitted.

**The Hon. JOHN HATZISTERGOS** (Attorney General, and Minister for Industrial Relations) [10.01 p.m.]: Generally speaking, I suspect that in cases involving child pornography the police would be using ordinary search warrants rather than covert search warrants. The Government will not oppose the amendment.

**Reverend the Hon. FRED NILE** [10.02 p.m.]: It is important for members to support this amendment because of the many instances of child pornography by people in leading positions — people such as schoolteachers and others. Child prostitution and child pornography should be included under the definition of "serious offences" on pages 5 and 6 of the bill. I inform members that I submitted my amendment at 10.14 a.m.

**Ms SYLVIA HALE** [10.02 p.m.]: The Opposition seeks to include the division dealing with child pornography offences in the list of serious offences. The Greens believe that these covert search powers are not necessary for serious offences. A normal search warrant can be sought to seize a computer or other items from a person or persons suspected of child pornography. The Greens oppose the entire bill because the police already have enough powers to deal with these types of crimes. The listing of crimes that will attract covert search warrants is broad and in some ways arbitrary. The Coalition merely seeks to add to this list of crimes.

The police can investigate serious offences listed in the Crimes Act, and currently they can execute search warrants. They also have ample recourse to other warrants allowing telephone and other communication interception and surveillance, and arrests are regularly made in relation to child pornography offences. The Greens agree that such offences are indeed serious, which is why offenders receive the types of sentences that are listed in the Crimes Act. We believe that the extension of the covert warrant powers is unnecessary, but we will oppose the amendment because it will make little difference to the ultimate outcome of the bill if another category of serious crime is added.

**Amendment agreed to.**

**The Hon. JOHN AJAKA** [10.04 p.m.]: I move Liberal Party amendment No. 2 on sheet C2009-003E:

No. 2 Page 13, schedule 1 [14], proposed section 62 (4) (a), line 15. Omit "the extent to which it is necessary". Insert instead "whether it is reasonably necessary".

The Opposition seeks to amend proposed section 62 (4) (a) by deleting the words "the extent to which it is necessary" and inserting in lieu thereof the words "whether it is reasonably necessary". It should not be a case of the issuing officer simply believing that it is necessary; it should be a case of what is reasonable or what is reasonably necessary having regard to a particular case. The Bar Association submits that the eligible judicial officer should be satisfied of the need for a covert warrant; not simply that the applicant considers it to be necessary. I quote a passage from the contribution of Mr Greg Smith, shadow Attorney General in the other House:

I suggest that the expression "the extent to which it is necessary" is vague because, unlike proposed section 62 (4) (e), it does not define how satisfied a judge has to be. If someone uses a next-door neighbour's premises to get into the subject premises the judge has to consider:

(i) whether this is reasonably necessary in order to enable access to the subject premises, or

(ii) whether this is reasonably necessary in order to avoid compromising the investigation of the searchable offence or other offence.

Opposition members in the upper House will seek to amend section 62 (4) (a) to substitute the

expression "the extent to which it is necessary" with the expression "whether it is reasonably necessary" for entry and search. We think that would help to appease the Bar Association on some of its quite proper concerns.

Put simply, this will ensure that the Supreme Court judge has the discretion to deal with the matter on what is reasonable in these circumstances. As indicated earlier by the Attorney General, the Supreme Court judge should have an extremely broad discretion. It is our submission that because of the way in which the proposed section currently reads it limits that broad discretion of a Supreme Court judge.

**Ms SYLVIA HALE** [10.06 p.m.]: The Greens believe that this amendment raises the bar by requiring the member of the judiciary from whom the warrant is being sought to take into account whether it is reasonably necessary that the search be of a covert nature. The Greens believe that this amendment is superior to the wording of the bill in which the wording is not so stringent. "Reasonableness" has a specific meaning in law. This amendment is consistent with the advice of the Bar Association and it would improve the bill. The current wording "the extent to which it is necessary" is vague. The eligible judicial officer needs to be convinced that it is reasonable to enter covertly, given the nature of the investigation, bribery considerations, and so forth. This amendment will ensure a more objective test is applied to any decision to issue a covert search warrant. The Greens therefore support the amendment.

**The Hon. JOHN HATZISTERGOS** (Attorney General, and Minister for Industrial Relations) [10.08 p.m.]: People should always be wary when members of the Opposition and the Greens come into coalition on matters of this nature. That is why I treat amendments such as this with suspicion. To deal with the substance of the amendment rather than the rhetoric, the suggested amendment would add nothing of any substance to the bill. As part of determining whether there are reasonable grounds to issue a warrant, proposed section 62 (4) (a) requires the judge specifically to consider "the extent to which it is necessary" for the entry and search of those premises to be conducted without the knowledge of the occupier of the premises. The necessity for the warrant to be executed covertly will, therefore, already be put to a test of reasonableness by the Supreme Court judge determining the application. To put it simply, if the circumstances of the case are such that the judge does not consider covert execution to be reasonably necessary, the warrant will not be issued.

**The Hon. JOHN AJAKA** [10.09 p.m.]: The section uses words "the extent to which it is necessary". It does not use the word "reasonably", which the Attorney General continues to use when he states that the judge will look at what is reasonable before he makes a determination. Earlier, Reverend the Hon. Fred Nile stated that he was concerned that Sydney Lebanese would cause problems. What we do not want is an officer of the rank of superintendent or higher going before a Supreme Court judge and saying that, simply because of someone's religion or sexual beliefs, or whatever, this action is considered necessary, and puts the proposal that judge. A Supreme Court judge should have a wide discretion of what is reasonably necessary in the circumstances, and this is why the Opposition moves the amendment.

**The Hon. JOHN HATZISTERGOS** (Attorney General, and Minister for Industrial Relations) [10.10 p.m.]: Again, to make the point clear, subsection (4) makes it quite clear that:

? an eligible issuing officer, when determining whether there are reasonable grounds to issue a covert search warrant, is to consider the following matters:

And included in that is "the extent to which it is necessary". The reasonableness derives from the paragraph that leads into the subsection.

**Question—That the amendment be agreed to—put.**

**The Committee divided.**

**Ayes, 17**

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|---|---|---|
| Mr Ajaka | Mr Gay | Mrs Pavey |
| Mr Clarke | Ms Hale | Mr Pearce |
| Mr Cohen | Dr Kaye | Ms Rhiannon |
| Ms Ficarra | Mr Khan | *Tellers,* |
| Mr Gallacher | Mr Lynn | Mr Colless |
| Miss Gardiner | Reverend Dr Moyes | Mr Harwin |

**Noes, 18**

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|---|---|---|
| Mr Brown | Mr Primrose | Mr West |
| Mr Catanzariti | Mr Robertson | Ms Westwood |

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| Ms Griffin | Ms Robertson | |
| Mr Hatzistergos | Ms Sharpe | |
| Mr Kelly | Mr Smith | *Tellers,* |
| Reverend Nile | Mr Tsang | Mr Donnelly |
| Mr Obeid | Ms Voltz | Mr Veitch |

**Pairs**

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|---|---|
| Ms Cusack | Mr Della Bosca |
| Mr Mason-Cox | Mr Macdonald |
| Ms Parker | Mr Roozendaal |

**Question resolved in the negative.**

**Amendment negatived.**

**Ms SYLVIA HALE** [10.18 p.m.]: I move Greens amendment No. 7 on sheet 2009-002C:

No. 7 Page 16, schedule 1 [24], proposed section 67A (2) and (3), lines 31– 37. Omit all words on those lines.

This amendment seeks to reduce the time that service of a notice to the occupant that a warrant has been issued and executed can be postponed. I note the Opposition has a similar amendment but it seeks to reduce the time to 18 months. The Greens' amendment would amend section 67A, "Postponement of service of occupier's notice — covert search warrant", by omitting subsections (2) and (3), which allow postponement of service on more than one occasion for periods up to 18 months. The whole process could drag on for three years in total.
The Greens amendment would allow service of an occupier's notice relating to a covert search warrant to be postponed for a period up to six months if the eligible issuing officer, that is, the Supreme Court judge, is satisfied that there are reasonable grounds for postponement. We believe that six months is a major improvement on the three years maximum that the Government seeks.

**The Hon. JOHN HATZISTERGOS** (Attorney General, and Minister for Industrial Relations) [10.19 p.m.]: The Government opposes the amendment. In comparison with other jurisdictions that have covert search warrant schemes, we are the only jurisdiction that is proposing a strict upper limit. The Terrorism (Police Powers) Act and the proposed Commonwealth covert warrant schemes do not have an upper limit. All they require is that notification may not be delayed beyond 18 months unless there are exceptional circumstances. Our bill provides a similar provision but takes the further step by actually capping the upper limit at three years, providing significantly more certainty for occupiers than other State schemes whilst affording law enforcement the time necessary to conduct investigations.

Police have informed us that major crime investigations in New South Wales often last for longer periods for a variety of reasons: the need to let investigations run so that evidence can be gathered against central players rather than more readily identifiable subordinates; delays where large quantities of raw material must be assessed or processed, such as telephone intercepts or computer files; and delays when translation services or overseas liaison may be required. These matters are complex and fluid and require time to be investigated adequately. I make the point also that time limits need to be justified before the courts before an extension can be granted. If the Greens amendment is agreed to in that there is an ultimate cap of six months, that could jeopardise or even shut down prematurely a large number of investigations as the occupier would then become aware of police investigations and be likely to dispose of evidence or otherwise attempt to cover up their illegal activities.

**The Hon. JOHN AJAKA** [10.21 p.m.]: The Opposition does not support Greens amendment No. 7.

**Question— That Greens amendment No. 7 be agreed to—put and resolved in the negative.**

**Amendment negatived.**

**The Hon. JOHN AJAKA** [10.22 p.m.]: I move Opposition amendment No. 3 on sheet C2009-003E LP:

No. 3 Page 16, schedule 1 [24], proposed section 67A (2), line 33. Omit "3 years". Insert instead "2 years".

We seek to amend proposed section 67A (2) by removing "3 years" and replacing it with "2 years". In other words, we seek a maximum period to postpone the six-month period on more than one occasion to a maximum period of two years. The Opposition does not consider that three years is required in the circumstances. It would be hard to envisage any situation or any police investigation of the types of matters referred to in the schedule going before a Supreme Court judge where police officers and police investigations would require a period in excess of two years.

**The Hon. JOHN HATZISTERGOS** (Attorney General, and Minister for Industrial Relations) [10.22 p.m.]: I do not want to restate the arguments put forward in relation to Ms Hale's amendments. However, I reiterate that we are the only jurisdiction that has actually put in place a limit; other jurisdictions that have these sorts of warrants do not place any limit on them. However, I take this opportunity to quote from a letter received from Peter Remfrey, Secretary of the Police Association, if only because the Leader of the Opposition spoke about him in such high terms. Mr Remfrey said:

We are advised by Senior Officers responsible for managing complex investigations into serious organized crime that [it] is not uncommon for matters of the sort contemplated by the legislation to be protracted and extend beyond 12 months. Consequently the 18 month time frame is reasonable in our view with an extension to 3 years in exceptional circumstances.

**Question—That Opposition amendment No. 3 be agreed to—put.**

**The Committee divided.**

**Ayes, 16**

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|---|---|---|
| Mr Ajaka | Mr Gay | Mr Pearce |
| Mr Clarke | Ms Hale | Ms Rhiannon |
| Mr Cohen | Dr Kaye | |
| Ms Cusack | Mr Khan | *Tellers,* |
| Ms Ficarra | Mr Lynn | Mr Colless |
| Mr Gallacher | Ms Parker | Mr Harwin |

**Noes, 19**

| | | |
|---|---|---|
| Mr Brown | Mr Obeid | Ms Voltz |
| Mr Catanzariti | Mr Primrose | Mr West |
| Ms Griffin | Mr Robertson | Ms Westwood |
| Mr Hatzistergos | Ms Robertson | |
| Mr Kelly | Ms Sharpe | *Tellers,* |
| Reverend Dr Moyes | Mr Smith | Mr Donnelly |
| Reverend Nile | Mr Tsang | Mr Veitch |

**Pairs**

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| Miss Gardiner | Mr Della Bosca |
| Mr Mason-Cox | Mr Macdonald |
| Mrs Pavey | Mr Roozendaal |

**Question resolved in the negative.**

**Amendment negatived.**

**The Hon. JOHN AJAKA** [10.31 p.m.]: I move Opposition amendment No. 4 on sheet LP 2009-003E:

No. 4 Page 16, schedule 1 [24], proposed section 67A (3), line 35. Omit "18 months". Insert instead "12 months".

The Opposition seeks a postponement to provide a maximum period of 12 months for the occupier's notice. It is hard to accept that police would require at least 18 months postponement before an occupier becomes aware. It makes the provision in the Act more reasonable.

**The Hon. JOHN HATZISTERGOS** (Attorney General, and Minister for Industrial Relations) [10.32 p.m.]: For the same reasons that I indicated in relation to the previous amendment the Government cannot accept this amendment. I reiterate what the expert, Peter Remfrey, Secretary of the Police Association, says. He is a person who is held in high regard by the Leader of the Opposition. He states:

We are advised by Senior Officers responsible for managing complex investigations into serious

organized crime that it is not uncommon for matters of the sort contemplated by the legislation to be protracted and to extend beyond 12 months. Consequently the 18 month time frame is reasonable in our view with an extension to 3 years in exceptional circumstances.

**Question—That the Opposition amendment No. 4 be agreed to—put.**

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

**The Committee divided.**

**Ayes, 16**

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|---|---|---|
| Mr Ajaka | Mr Gay | Mr Pearce |
| Mr Clarke | Ms Hale | Ms Rhiannon |
| Mr Cohen | Dr Kaye | |
| Ms Cusack | Mr Khan | *Tellers,* |
| Ms Ficarra | Mr Lynn | Mr Colless |
| Mr Gallacher | Ms Parker | Mr Harwin |

**Noes, 19**

| | | |
|---|---|---|
| Mr Brown | Mr Obeid | Ms Voltz |
| Mr Catanzariti | Mr Primrose | Mr West |
| Ms Griffin | Mr Robertson | Ms Westwood |
| Mr Hatzistergos | Ms Robertson | |
| Mr Kelly | Ms Sharpe | *Tellers,* |
| Reverend Dr Moyes | Mr Smith | Mr Donnelly |
| Reverend Nile | Mr Tsang | Mr Veitch |

**Pairs**

| | |
|---|---|
| Miss Gardiner | Mr Della Bosca |
| Mr Mason-Cox | Mr Macdonald |
| Mrs Pavey | Mr Roozendaal |
| | |

**Question resolved in the negative.**

**Amendment negatived.**

**Ms SYLVIA HALE** [10.36 p.m.]: I move Greens amendment No. 9 on sheet C2009-002C:

No. 9 Page 17, schedule 1 [24], proposed section 67B (4), lines 25 and 26. Omit "unless the eligible issuing officer directs that service of the notice may be dispensed with".

This is a simple amendment, which provides that where people's adjacent premises are covertly entered because a warrant was issued to allow police or other agencies to use their premises to gain access to a suspect's premises next-door, they must eventually be told via a notice being served. The amendment omits from proposed section 67B (4) the words "unless the eligible issuing officer directs that service of the notice may be dispensed with". Proposed section 67B (4) clearly states:

The adjoining occupier's notice must be served on the person who was the occupier of the adjoining premises at the time the covert search warrant was executed, on (or as soon as practicable after) service of the occupier's notice on the occupier of the subject premises under section 67—

and this is the bit we have problems with—

unless the eligible issuing officer directs that service of the notice may be dispensed with.

Our reading of those words is that a person may be told that his or her home was used as a conduit by the police any time up to three years after the act, but it is quite possible that the person may never be told if the Supreme Court judge suggests that service of the notice may be dispensed with. If occupants never know that police have entered their premises then they may never be able to seek damages should they need to do so, nor will they ever be able to lodge a complaint. The inability to lodge a complaint will obviously make it very difficult for the Ombudsman to monitor how the Act is working. I urge members to support Greens amendment No. 9.

**The Hon. JOHN AJAKA** [10.38 p.m.]: The Opposition does not support Greens amendment No.

**The Hon. JOHN HATZISTERGOS** (Attorney General, and Minister for Industrial Relations) [10.38 p.m.]: The Government also does not support this amendment. I indicate for the record that the provision, as it stands, enables the court to be given the power to dispense with services of adjoining occupier's notice in appropriate circumstances. It is acknowledged that the power to dispense with notification is not intended for routine use but, rather, reserved for atypical cases where the entry to an adjoining property may only be technical in nature. The momentary crossing of a rural property boundary in order to access a drug plantation is but one example of where the power to dispense with notification might be invoked.
**Question—That Greens amendment No. 9 be agreed to—put and resolved in the negative.**

**Greens amendment No. 9 negatived.**

**The Hon. JOHN AJAKA** [10.39 p.m.]: I move Opposition amendment No. 5 on sheet LP 2009-003E:

No. 5 Page 25. Insert after line 37:

[48] Section 242 (3A)–(4). Omit section 242 (4). Insert instead:

(3A) The Ombudsman is to review the provisions of this Act as amended by the Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Act 2009 to determine whether the policy objectives of that Act remain valid and whether the terms of this Act as so amended remain appropriate for achieving those objectives.

(3B) The review is to be undertaken as soon as possible after the period of 3 years from the date of assent to the Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Act 2009.

(3C) The Ombudsman is to prepare a report of the outcome of the review and is to furnish a copy of it to the Attorney General within 12 months after the end of the period of 3 years referred to in subsection (3B).

(4) The Attorney General is to lay (or cause to be laid) before both Houses of Parliament a copy of a report under subsection (3) or (3A) as soon as practicable after the Attorney General receives the report.

Put simply and shortly, the amendment will require review by the Ombudsman of the provisions and workings of the bill within the period specified, which is three years. Put simply, it is a safety measure to ensure that there is no abuse. It eliminates all of the fears that have been mentioned by many members. It is a practical solution and a good safety measure.

**Ms SYLVIA HALE** [10.40 p.m.]: As I have made clear, the Greens oppose the bill. However, if the bill is passed, the specific provisions of the bill relating to search powers should be subject to review after a three-year period and a report is tabled in Parliament. That will give us and the public some idea of whether the Ombudsman is of the opinion that the bill's covert search powers constitute an invasion of privacy or whether the Ombudsman is of the view that they are simply unnecessary, which the Greens maintain is the case. We note that the Ombudsman's report on the 2005 terrorism law has not yet been tabled by the Government, although the Attorney General indicated that we will see it in the near future—after the event, rather than before. One can only speculate that the Ombudsman has found that those powers had not been used or were extraneous to the very few investigations that did not require their use. The amendment specifies that there must be a review, a report of that review, and that soon as is possible after the report is completed it must be tabled in both Houses of Parliament. The Greens support the amendment.

**Reverend the Hon. FRED NILE** [10.41 p.m.]: The amendment seeks to give the Ombudsman powers to review certain aspects of the legislation, yet by insertion of the new sections set out on page 25 of the bill, the Ombudsman "must inspect the records of the NSW Police Force … in relation to covert search warrants" and examine the legislation's effectiveness each year. In my opinion, it would be better for any review to be conducted by the Minister, who in this case is the Attorney General, which is the normal practice. I foreshadow that I will move an amendment to deal with that matter when the amendment that is before the Committee is dealt with.

**The Hon. JOHN HATZISTERGOS** (Attorney General, and Minister for Industrial Relations)

[10.42 p.m.]: The Opposition's amendment is misguided. While I am sure it is based on good intentions, it misunderstands the role of the Ombudsman and the functions he carries out. A review of whether the policy objectives of the Act remain valid essentially is a political question. Reviews on the validity of policy objectives are properly matters for the appropriate Minister. We cannot outsource that policy-making role in this context to the Ombudsman. The bill already requires the Ombudsman to inspect the records of the Crime Commission and the Police Integrity Commission in relation to covert warrants every 12 months after the legislation commences. That is done to ascertain whether the requirements of the legislation are being complied with.

The Ombudsman also has to prepare a report on his work and activity on the relevant provisions and furnish a report to both the Minister for Police and me. The additional role would involve duplication of effort. In addition to the Ombudsman's existing role relating to the bill, law enforcement agencies also are required to report annually to the Minister for Police and the Attorney General on the exercise of powers in relation to covert search warrants. These reports will be tabled in Parliament by the Attorney General. The Government is of the view that there is already adequate oversight of the proposed scheme. For those reasons, the Government cannot support the amendment.

**The Hon. JOHN AJAKA** [10.44 p.m.]: The provisions referred to by Reverend the Hon. Fred Nile clearly relate to the inspection of records. The Opposition submits that the entire provisions and the workings of the bill as a whole should be monitored by the Ombudsman within the period specified. I find it extraordinary that Reverend the Hon. Fred Nile has foreshadowed that he will move an amendment that is almost identical to the amendment moved by the Opposition, except that it removes "Ombudsman" and inserts instead "Attorney General". I find it extraordinary that one would expect the Attorney General to monitor his own bill.

**The Hon. John Hatzistergos:** It happens all the time.

**The Hon. JOHN AJAKA:** I also find it extraordinary that one would require a specific provision to do that because one would expect the Attorney General to monitor each and every one of his bills that is passed by Parliament.

**Question—That Opposition amendment No. 5 be agreed to—put.**

**The Committee divided.**

**Ayes, 16**

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|---|---|---|
| Mr Ajaka | Mr Gay | Mr Pearce |
| Mr Clarke | Ms Hale | Ms Rhiannon |
| Mr Cohen | Dr Kaye | |
| Ms Cusack | Mr Khan | *Tellers,* |
| Ms Ficarra | Mr Lynn | Mr Colless |
| Mr Gallacher | Ms Parker | Mr Harwin |

**Noes, 19**

| | | |
|---|---|---|
| Mr Brown | Mr Obeid | Ms Voltz |
| Mr Catanzariti | Mr Primrose | Mr West |
| Ms Griffin | Mr Robertson | Ms Westwood |
| Mr Hatzistergos | Ms Robertson | |
| Mr Kelly | Ms Sharpe | *Tellers,* |
| Reverend Dr Moyes | Mr Smith | Mr Donnelly |
| Reverend Nile | Mr Tsang | Mr Veitch |

**Pairs**

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|---|---|
| Miss Gardiner | Mr Della Bosca |
| Mr Mason-Cox | Mr Macdonald |
| Mrs Pavey | Mr Roozendaal |

**Question resolved in the negative.**

**Opposition amendment No. 5 negatived.**

**Reverend the Hon. FRED NILE** [10.52 p.m.]: I move the Christian Democratic Party amendment on sheet C2009-013:

Page 27. Insert after line 9:

[49] Section 243A

Insert after section 243:

243A Review of provisions of Part 5 relating to covert search warrants

(1) The Attorney General is to review the provisions of Part 5 relating to covert search warrants to determine whether the policy objectives of those provisions remain valid and whether the terms of the provisions remain appropriate for securing those objectives.

(2) The review is to be carried out as soon as possible after the period of 3 years from the date of assent to the **Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Act 2009** .

(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.

As honourable members are aware, the normal procedure is that the Minister responsible for a bill reviews that bill. Particularly in this case, as is stated in the amendment, the Minister is always the one who is concerned with the achievement of the policy objectives. As we discussed earlier, the Ombudsman has a different role, which is to ensure that there is no abuse of powers and so on.

**The Hon. JOHN AJAKA** [10.53 p.m.]: The Opposition opposes the amendment. With due respect to Reverend the Hon. Fred Nile, the amendment is superfluous; there is simply no basis for it whatsoever. Reverend the Hon. Fred Nile did not see fit to vote for the Opposition amendment, on the basis that there would be a problem with having the legislation monitored by an independent person. The Attorney General, by his own admission, has said that he will monitor this legislation, as he must monitor all legislation that comes before him. One accepts that when the Attorney General says he will monitor the legislation, he will do so. I see absolutely no point in having this written into the Act.

**Ms SYLVIA HALE** [10.54 p.m.]: The Greens join the Opposition in not supporting what is a particularly unworthy amendment from the Christian Democratic Party. Often we see that the tactics of the Christian Democratic Party—and particularly those of Reverend the Hon. Fred Nile—are to seem to move an amendment that suggests there will be serious change, so they can say to their audience, "Look what we did!"

**The CHAIR (The Hon. Amanda Fazio):** Order! I remind members that interjections are disorderly at all times.

**Ms SYLVIA HALE:** They usually do this with the connivance of the Government. Everyone gets thoroughly tired of these mickey mouse amendments, which in this case are totally spurious. I am sure that the Attorney General would be delighted to monitor his own bill. I can even tell members the outcome, before the Attorney General commences his response. The Attorney General will say, "What an outstanding piece of legislation! The high point of my career as Attorney General was to see the passage of this legislation, and this report vindicates it entirely. And thank you, Reverend Nile—thank you, thank you, thank you!"

**The Hon. JOHN HATZISTERGOS** (Attorney General, and Minister for Industrial Relations) [10.56 p.m.]: There are lots of highlights in my career, and listening to that speech from Ms Sylvia Hale is probably one of them.

**The Hon. John Ajaka:** You've led a very sad life if that's the case.

**The Hon. JOHN HATZISTERGOS:** A very sad life. The Government will not oppose the amendment. However, I must make the point to those who think that the amendment is superfluous that on a number of occasions with regard to different pieces of legislation members of this House have moved for legislative reviews to be conducted by Ministers. Indeed, I can even recall an occasion when the Opposition supported that occurring. In relation to reviews of legislation, particularly legislation of this nature, routinely the Attorney General will review legislation every five years. The amendment proposes a shorter time frame—that is, three years. The amendment also requires me to table in the Parliament a report on the review, which does not normally occur.

**The Hon. Catherine Cusack:** It does normally occur.

**The Hon. JOHN HATZISTERGOS:** No, it does not. Normally the review is reported to Cabinet and Cabinet makes the decision. The amendment would allow the Parliament to receive a report on the review that has been conducted. So it is not fair to cast the kind of aspersions that have been cast upon Reverend the Hon. Fred Nile by Ms Sylvia Hale.

**Question—That the Christian Democratic Party amendment be agreed to—put.**

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

**The Committee divided.**

**Ayes, 15**

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|---|---|---|
| Mr Brown | Mr Obeid | Ms Westwood |
| Mr Catanzariti | Mr Primrose | |
| Ms Griffin | Mr Robertson | |
| Mr Hatzistergos | Ms Sharpe | *Tellers,* |
| Mr Kelly | Mr Smith | Mr Donnelly |
| Reverend Nile | Mr Tsang | Mr Veitch |

**Noes, 16**

| | | |
|---|---|---|
| Mr Ajaka | Mr Gay | Mr Pearce |
| Mr Clarke | Ms Hale | Ms Rhiannon |
| Mr Cohen | Dr Kaye | |
| Ms Cusack | Mr Khan | *Tellers,* |
| Ms Ficarra | Reverend Dr Moyes | Mr Colless |
| Mr Gallacher | Ms Parker | Mr Harwin |

**Pairs**

| | |
|---|---|
| Mr Della Bosca | Miss Gardiner |
| Mr Macdonald | Mr Mason-Cox |
| Mr Roozendaal | Mrs Pavey |

**Question resolved in the negative.**

**Christian Democratic Party amendment negatived.**

**Schedule 1 as amended agreed to.**

**Schedule 2 agreed to.**

**Title agreed to.**

**Bill reported from Committee with an amendment.**

**Adoption of Report**

Motion by the Hon. John Hatzistergos agreed to:

That the report be adopted.

Report adopted.

**Third Reading**

**The Hon. JOHN HATZISTERGOS** (Attorney General, and Minister for Industrial Relations) [11.05 p.m.]: I move:

That this bill be now read a third time.

**Question put.**

**The House divided.**

**Ayes, 30**

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|---|---|---|
| Mr Ajaka | Mr Khan | Mr Tsang |
| Mr Brown | Mr Lynn | Mr Veitch |
| Mr Catanzariti | Reverend Dr Moyes | Ms Voltz |
| Mr Clarke | Reverend Nile | Mr West |
| Mr Colless | Mr Obeid | Ms Westwood |
| Ms Cusack | Ms Parker | |
| Ms Fazio | Mr Pearce | *Tellers,* |
| Ms Ficarra | Mr Robertson | Mr Donnelly |
| Mr Gay | Ms Robertson | Mr Harwin |
| Ms Griffin | Ms Sharpe | |
| Mr Hatzistergos | Mr Smith | |
| Mr Kelly | | |

**Noes, 4**

| | | |
|---|---|---|
| Mr Cohen | | Ms Rhiannon |
| | | *Tellers,* |

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| | | Ms Hale<br>Dr Kaye |

**Question resolved in the affirmative.**

**Motion agreed to.**

Bill read a third time and returned to the Legislative Assembly with a message requesting its concurrence in the amendment.