Parliamentary Debates
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THIRTY-NINTH PARLIAMENT
FIRST SESSION
2016

LEGISLATIVE COUNCIL

Tuesday, 16 February 2016

Legislative Council

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THE PRESIDENT (Hon Barry House) took the chair at 2.00 pm, and read prayers.

BUSINESS OF THE HOUSE — SITTINGS 2016 — WELCOME

Statement by President

THE PRESIDENT (Hon Barry House): Members, welcome back to Parliament for 2016.

PERTH MARKET (DISPOSAL) BILL 2015

Assent

Message from the Governor received and read notifying assent to the bill.

LEGISLATIVE COUNCIL — SUMMER RECESS PROJECTS — CHAMBER STAFF

Statement by President

THE PRESIDENT (Hon Barry House): Members, I have a couple of chamber-related announcements. During the summer recess a number of building works were completed in and around Parliament. Amongst these was a minor alteration to the President's dais, which has added an additional step and raised the height of the desk. This alteration was completed in order to improve the line of sight between the member presiding and the member on their feet. It has not been such a problem for me in particular, but it has been for others who are more vertically challenged.

In other news, members may note the attractive tie I am wearing. This tie is a new design and is the official tie of the Legislative Council. The tie is now available for purchase at a very reasonable price from the Members' Bar and Reception Services.

I draw members' attention to some minor staffing movements in the chamber. Clair Siva has taken up a 12-month acting position as committee clerk at the Legislative Council Committee Office. Replacing Clair for the next 12 months, please welcome back Lisa Parrella to the chamber staff.

LEGISLATIVE COUNCIL COMMITTEE OFFICE — BROADCAST FACILITIES

Statement by President

THE PRESIDENT (Hon Barry House): I have a statement on broadcasting and videoconferencing facilities. I have an important announcement about improved facilities at the Legislative Council Committee Office. The Legislative Council has recently installed equipment to enable committee hearings to be broadcast on the internet. The system also includes a telephone and videoconferencing capability to improve the capacity for members to conduct meetings electronically and to gather evidence from witnesses in locations remote from Perth. These facilities are available in committee room 1 and may be used by all committees administered by the Legislative Council.

The broadcasting system consists of three Panasonic high definition dome cameras connected to a control board operated by our audiovisual unit. Videoconferencing is achieved using Polycom equipment and a wall-mounted 70-inch television. The videoconferencing system has been incorporated into the broadcasting system so that videoconferences can be broadcast live. This will enable a committee, the attending public and those tuning in to see and hear evidence from multiple witnesses, some of whom may be present in the hearing room and others at a remote location. The system also allows a PowerPoint presentation or similar to be broadcast simultaneously with the audio of members and witnesses questioning and explaining the visual presentation. The broadcast can be viewed on smart phones and tablet devices, as well as desktop and laptop computers. The broadcast system was first used in December last year for the annual report hearings of the Standing Committee on Estimates and Financial Operations.

A result of incorporating the telephone and videoconferencing capability into the system is that it will produce for both parties far superior sound quality to that produced by our previous telephone conference technology. Another advantage of the system is that the telephone and videoconferences can be directly recorded to the Hansard recording system. The live broadcast can be accessed on channel 354 on the internal monitors throughout Parliament House. The live internet feed may be accessed by clicking on the "live broadcast of committee hearings" link on the Legislative Council tab of the Parliament's home page. There will also be a link

on the committee inquiry page. As with proceedings of the house, the recording of committee hearings will be posted to the Parliament's home page and available for viewing at leisure. Members may request a copy of a recording from the AV control room in accordance with current practices. The same conditions that apply to recordings of the proceedings of the house also apply to recordings of committee hearings, in that they may not be used for political party advertising or election campaigns; for satire, ridicule or denigration; or for commercial advertising. Protocols for broadcasting committee proceedings will be provided to all committee members and will be available on the Parliament's website. The ability to broadcast committee hearings and to take evidence from witnesses in remote locations will improve the capacity of our committees to engage with the Western Australian community in a direct, immediate and meaningful way. I encourage all committees to make use of these new facilities.

DEPARTMENT OF FIRE AND EMERGENCY SERVICES — WAROONA–HARVEY BUSHFIRES

Petition

HON RICK MAZZA (Agricultural) [2.08 pm]: I present a petition containing 2 131 signatures couched in the following terms —

> To the President and Members of the Legislative Council of the Parliament of Western Australia in Parliament assembled.
>
> We the undersigned residents of Western Australia, notwithstanding our gratitude and deep appreciation for all operational, ground and support crews, are concerned about the management of the January 2016 Waroona/Harvey bushfires by the Department of Fire & Emergency Services.
>
> Your petitioners therefore respectfully request the Legislative Council to conduct a Parliamentary Enquiry into the operations of the Department of Fire & Emergency Services as they relate to the management of recent bushfire emergencies. In particular communication of imminent danger to the community, the limitations imposed on bushfire personnel and the community to make on the spot judgements for applications such as back burning or the use of appliances to immediately take action to control the threat of fire, coordination between government departments and volunteers and once the emergency threat of fire is over the ability for people to obtain supplies for themselves and stock and return to their properties.
>
> Your petitioners as in duty bound, will ever pray.

[See paper 3763.]

ROE HIGHWAY STAGE 8

Petition

HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition) [2.09 pm]: I have a petition with 27 signatures that reads as follows —

> **To the President and Members of the Legislative Council of the Parliament of Western Australia in Parliament assembled.**
>
> We, the undersigned, say that the Roe Hwy Extension (eastern end of Perth Freight Link) will have a devastating impact on the communities and environments of North Lake, Bibra Lake & Coolbellup including the Beeliar Wetland. As residents we will be severely affected by traffic noise, air pollution, the loss of trees and bushland in our suburbs. The closure of Hope Rd and a section of Forrest Rd that connects us to Stock Rd will restrict access and cause congestion problems for all residents.
>
> We do not believe that the proposed Perth Freight Link is in the best interest of our community as it will be spending scarce government funding on a hugely expensive road with no advantages for our suburbs
>
> **Your petitioners therefore respectfully request the Legislative Council will**
>
> - Reverse the decision to allow the Roe Hwy Extension (eastern end of Perth Freight Link) to go ahead.
> - Support the residents of the City of Cockburn with their requests that this project should not proceed.
> - Allocate the funding awarded to this project to other alternative solutions to the freight transfer issues.
>
> **And your petitioners as in duty bound, will ever pray**.

[See paper 3764.]

CONSTRUCTION INDUSTRY PORTABLE LONG SERVICE LEAVE LEVY

Statement by Minister for Commerce

HON MICHAEL MISCHIN (North Metropolitan — Minister for Commerce) [2.10 pm]: The state government is pleased to announce yet another reduction in the portable long service leave levy payable by Western Australian employers who have employees working in the construction industry. As from 1 January this year, the levy was reduced from 1.5 per cent of employees' ordinary pay to 1.35 per cent.

The portable long service leave scheme is administered by the Construction Industry Long Service Leave Payments Board. Employers in the construction industry pay a levy to the board based on a percentage of their employees' ordinary rate of pay. The board invests the moneys received by employers and then administers payments to employees when they qualify for long service leave. Due to the itinerant nature of the construction industry, employees accrue long service leave based on service in the construction industry rather than with a single employer.

The levy was increased in 2009 following the turmoil of the global financial crisis. However, since then, the government, on the recommendation of the board, has been able to reduce the levy on four occasions as a result of the board's sound financial management of its investment portfolio. A large proportion of businesses in the construction industry are small businesses. The reduction in the levy reflects the state government's commitment to minimising regulatory burdens and red tape for Western Australian businesses wherever possible.

PAPERS TABLED

Papers were tabled and ordered to lie upon the table of the house.

FREMANTLE PORT AUTHORITY — MINISTERIAL DIRECTION

Notice of Motion

Hon Ken Travers gave notice that at the next sitting of the house he would move —

> That consideration of the ministerial direction from the Minister for Transport to the Fremantle Port Authority be made an order of the day for the next sitting of the house.

PRIVATE MEMBERS' BUSINESS SCHEDULE — ADOPTION

Motion

On motion without notice by **Hon Peter Collier (Leader of the House)**, resolved —

> That pursuant to standing order 112(4), the schedule for private members' business tabled by the President be adopted.

NON-GOVERNMENT BUSINESS SCHEDULE — ADOPTION

Motion

On motion without notice by **Hon Peter Collier (Leader of the House)**, resolved —

> That pursuant to standing order 111(4), the schedule for non-government business tabled by the President be adopted.

BUSINESS OF THE HOUSE — WEDNESDAY, 17 FEBRUARY 2016

Standing Orders Suspension — Motion

HON PETER COLLIER (North Metropolitan — Leader of the House) [2.19 pm] — without notice: I move —

> That so much of the standing and temporary orders be suspended so as to enable the following variations to the order of business on Wednesday, 17 February 2016 —
>
> (a) to sit after 6.20 pm on Wednesday night, if required, with the dinner suspension from 6.20 pm to 7.30 pm; and
>
> (b) to continue orders of the day until 9.45 pm when members' statements may be taken until 10.25 pm when the Council stands adjourned.

The point of this motion is to provide more time to debate the Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015. It was agreed at the end of last year that we would go down this path to provide as much time as possible for all members to contribute to the debate and in order for the bill to pass through all stages by close of business Thursday. I may move a similar motion tomorrow; we will just wait and see how the bill progresses today.

HON SUE ELLERY (South Metropolitan — Leader of the Opposition) [2.21 pm]: The motion moved by the Leader of the House does indeed reflect agreements that were reached behind the chair at the end of last year.

HON LYNN MacLAREN (South Metropolitan) [2.22 pm]: I find this very interesting because the Greens were not involved in those discussions behind the chair. Could the Leader of the House please explain to us what the rush is? Is there some reason that the Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015 must be passed this week? Is there some other reason why we have to sit late this week? We have been debating this bill for about a year. We did not receive any advice that something was coming up that required us to really push it out this week. I am just seeking clarification on why we have to pass the bill this week and whether there is some reason that we are unaware of, up to now, why it is imperative that the government do this.

Question put and passed with an absolute majority.

OBSOLETE LEGISLATION REPEAL BILL 2015

Discharge of Order

On motion without notice by **Hon Michael Mischin (Attorney General)**, resolved —

> That order of the day 14, Obsolete Legislation Repeal Bill 2015, be discharged from the notice paper and referred to the Standing Committee on Uniform Legislation and Statutes Review for consideration.

CRIMINAL CODE AMENDMENT (PREVENTION OF LAWFUL ACTIVITY) BILL 2015

Discharge of Order and Referral to Standing Committee on Legislation — Motion

Resumed from 20 October 2015 on the following motion moved by Hon Robin Chapple —

> That the Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015 be discharged and referred to the Standing Committee on Legislation for consideration and report not later than 20 August 2015.

HON LYNN MacLAREN (South Metropolitan) [2.25 pm]: I will be supporting the motion moved so long ago by Hon Robin Chapple to send this bill to a committee. I believe there are many good reasons to send it to a committee, many of which have been articulated in the weeks since the motion was moved and some of which were flagged in the second reading debate. In my contribution today I want to cover a few of those reasons why the committee should look into this bill. At the conclusion of my remarks, I will be moving to amend the reporting date because, as members would probably be aware, that date has passed. The date that I will be proposing, so that members can keep it in mind, is May this year. That is an adequate time frame for a committee to give serious consideration to the issues that have been raised and report back to the chamber with the wisdom of its deliberations.

There has been considerable community backlash to this bill, and that should give the government cause to consider whether this course of action is warranted. A committee could take submissions from the 83 groups that we know of that have raised serious objections to this bill. We are aware that some of those groups have met in private with the Minister for Police and many have written to the Attorney General. Their concerns have not been addressed. They have been continually told that, basically, to put it colloquially, "She'll be right, mate", that this bill is within power, it does not raise any issues of constitutionality, the penalties are not too severe and it will be applied only in the narrow circumstances that were flagged in the second reading speech. Yet that contradicts every submission of the many different legal experts in this field. It is appropriate that the opposition is raising this matter during this debate to bring to the government's attention these very serious criticisms of the bill as it has been drafted and put before us.

In the almost one year since the bill was introduced, none of the concerns thus far have been allayed. Nothing on the supplementary notice paper indicates that there will be amendments to this bill, apart from my own amendments. Nothing in the public domain indicates that the government has heard and responded to the criticisms that have been made. In fact, we have heard nothing but a defence of this bill. This means that a thorough review of the bill in committee remains essential. Such a review is most effectively conducted outside this chamber in the committee rooms where members from across the political spectrum can hear evidence about the bill's shortcomings and consider alternatives. Maybe the government can take a more appropriate course of action; maybe it could draft recommendations for us to consider in this chamber. We know from the various contributions to the second reading debate that very little consultation occurred on this bill. If this bill is referred to a committee, it will have an opportunity to undertake that consultation. In addition to the positions of the 83 groups that either have been cited in the second reading debate or subsequently signed the petition to the government opposing this bill, the committee could review the concerns expressed in the media by the Minister for Environment who, when interviewed on RTR back in December when this bill was last on the notice paper, said that we should allow a certain degree of protest. The committee could also look at the comments of the outgoing chairman of the Environmental Protection Authority, Paul Vogel. In his final argument, he too stated reasons that a certain amount of protest activity should be tolerated by a government, without criminal sanction.

I will put on the record some of those concerns that these people have raised so that the committee, should it get an opportunity to look into the Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015, will have an opportunity to reflect upon and maybe even invite those commentators in to give their view of the role that they see that protest plays in our democracy. A committee might also be informed by the published material from the eminent legal minds who are contributing to the current inquiry by the Australian Law Reform Commission on rights and freedoms. That occurred after this bill was tabled. We have had an interim report from that committee and I want to talk a little bit about the Australian Law Reform Commission's work on proportionality and necessity. Those are two things that the committee could look at in detail, informed by the Australian Law Reform Commission and the report that it has released.

A committee could also look into the effectiveness of similar laws enacted in other states. For example, we know that Victoria passed similar laws but that when the new government came in, it repealed them; it did not even keep them on the statute book. What was the reason that the government repealed what we consider to be draconian laws? In Tasmania, the laws have been in place for almost two years.

Hon Peter Collier interjected.

Hon LYNN MacLAREN: Yes, sir?

Hon Peter Collier: Is this a second reading speech or a referral speech?

Hon LYNN MacLAREN: I am sorry. Did the Leader of the House not hear me say that the committee should take into account and look at the laws that were passed in the other states and why they have been repealed or are ineffective? These are the things that the committee should look at.

Hon Peter Collier interjected.

Hon LYNN MacLAREN: I have not been called on a point of order, and I certainly would take the direction of the President if he felt I was out of order.

The PRESIDENT: Order! I have been following the debate closely and it is within the accepted guidelines at this stage.

Hon LYNN MacLAREN: Thank you, Mr President. As I was saying, it is appropriate that at this time, if the Western Australian government wants to pass a law of this nature, it reflects upon the laws that are in place in Tasmania. They have been in place for almost two years and as far as I know they have not been used at all. In Tasmania there has been no need to charge anyone, except in the last couple of weeks, under the laws that are similar to the legislation the government is proposing. After the Tasmanian government announced a review of the laws, a few protesters were arrested in the Tasmanian forest. You would know, Mr President—I am sure it has been very highly publicised—that former senator and leader of the Australian Greens, Bob Brown, is one of those individuals who has been arrested under the similar laws in Tasmania. If members do not know that, that is the kind of thing the committee could look into. Why has the Tasmanian government not used these laws before? Is there a fault in the laws that were passed in Tasmania and can Western Australia learn something in order to prepare different laws? That is what we are asking for in this motion to send the bill to a committee.

A committee could also examine whether the bill is so loosely drafted as to offend human rights, which many have argued, and whether the government's intention of prohibiting certain specific activities could be achieved by tighter drafting. That is the kind of thing the committee could look at. I do not know whether members are aware, but I believe that the committee and the government should take heed of the United Nations' news release today in which experts urged the state Parliament not to adopt new legislation that would result in criminalising lawful protest and silencing environmentalists and human rights defenders. This evidence from the UN rapporteurs—I believe there are three of them—states that there are serious problems with this bill so as to offend human rights. I would like a committee to look at that and tell us what is so offensive to human rights and to report back to us to inform us. I do not want to labour the point, but in its statement, the UN indicates —

> "If the Bill passes, it would go against Australia's international obligations under international human rights law, including the rights to freedom of opinion and expression as well as peaceful assembly and association," …

That statement was from the UN special rapporteur on freedom of expression, David Kaye, on freedoms of peaceful assembly and association, Maina Kiai, and on human rights defenders, Michel Forst. These are eminent legal minds that should be considered when we pass this legislation. It has taken us almost a year to get to this point of considering whether to send the bill to a committee, and that is potentially what has saved this legislation. The government can now take a moment to pause and reflect upon not only the legal experts in Western Australia and nationally from the Australian Human Rights Centre, but also the UN rapporteurs on human rights. If the government can finally take this evidence on board and look at the drafting and what the bill seeks to achieve and what it does instead achieve, we might get a better bill—if this bill is sent to a committee.

The bill would criminalise a wide range of legitimate conduct —

Hon Peter Katsambanis interjected.

Hon LYNN MacLAREN: I beg your pardon; did the member want to interject?

Hon Peter Katsambanis: I was just listing all those very human rights–focused countries that are members of the UN Human Rights Council: China, Venezuela, Saudi Arabia and the like.

Hon LYNN MacLAREN: Do you think this bill would pass there?

Several members interjected.

Hon LYNN MacLAREN: Do you think this bill would pass in those Parliaments?

The PRESIDENT: Order, members!

Several members interjected.

The PRESIDENT: Order! The motion is about the referral of a particular item to a committee of this house; it is not about arranging the membership of a United Nations committee.

Hon LYNN MacLAREN: The UN goes on to state —

> "The Bill would criminalise a wide range of legitimate conduct by creating criminal offenses for the acts of physically preventing a lawful activity and possessing an object for the purpose of preventing a lawful activity," … "For example, peaceful civil disobedience and any non-violent direct action could be characterized as 'physically preventing a lawful activity.'"

I am aware that these arguments were made in detail by many speakers in the second reading debate thus far. What is new and should be considered by the committee is the fact that the UN has now raised this issue and is sufficiently concerned with the drafting of the legislation. As far as I know, even up to today, the Premier has not acknowledged that this is an accurate assessment of the bill before us. Therefore, it is really important that a committee look at this matter and determine that, because clearly the decision-makers have either not been hearing the criticisms or disagree with the criticisms that have been raised. It is our responsibility to look at those. The best way to look at those is to have a thorough investigation in a committee, when we can carefully, slowly and calmly consider whether the drafting has gone too far and does offend human rights. I would hate to see Western Australia's reputation marred in the eyes of our international trading partners because of the impact of these laws being passed, without a committee thoroughly examining whether they are indeed offensive to human rights.

Some of the other things I believe the committee could review are the concerns raised by the Human Rights Law Centre, the Australian Lawyers for Human Rights, the Criminal Lawyers' Association of WA, the Law Society of Western Australia, the Environmental Defender's Office of Western Australia and the Community Legal Centres Association of Western Australia. Their criticisms have also been raised in the second reading debate and would inform the committee as to whether the bill offends the rights and liberties of the citizens of Western Australia.

Our committee system offers a mechanism to review these concerns, to weigh up their merits and, if necessary, recommend amendments to the bill. Since the bill was first introduced last year, these concerns have been amplified rather than assuaged. If anything, the reasons to support the committee and to support the motion to refer this bill to a committee for examination are multiplying as the months go on.

This bill was tabled in the Legislative Council on 25 February 2015. I am aware that since that time, the Human Rights Law Centre—along with other organisations and groups—has corresponded with every member of the Legislative Council, urging us to refer this bill to a committee. The Human Rights Law Centre supports the motion to refer this bill to a committee.

Since this bill was introduced into the Legislative Council, the High Court of Australia has handed down the decision of McCloy v New South Wales [2015] HCA 34. That is a significant decision on the implied freedom of political communication. A committee of this house should consider whether that decision applies to this bill.

Hon Michael Mischin: How is that relevant?

Hon LYNN MacLAREN: That will be up to the committee to determine.

Hon Michael Mischin: No, no. Tell us how it is relevant to this bill.

Hon LYNN MacLAREN: That is the second reading debate, Mr Attorney General.

Hon Michael Mischin: No. You are saying that is a basis for getting a committee to look at this bill. How on earth is that decision relevant to this bill?

Hon LYNN MacLAREN: Counsel have provided a preliminary view to the Human Rights Law Centre that they have significant doubt about the validity of this bill if enacted in its current form. Mr President, I must say that

I understand why the Attorney General and the Leader of the House, and other members, have sought to interject. It must be extremely uncomfortable for them to hear these criticisms from other eminent legal minds when they are trying to put forward —

Several members interjected.

The PRESIDENT: Order, members! This is a motion that this bill be referred to a committee. It is not a broad-ranging second reading debate. Certainly, members can canvass issues and why it is important that a committee deal with this bill, but we do not want to get back to repeating the second reading debate.

Hon LYNN MacLAREN: Thank you, Mr President. I assure you that I am trying very hard to stay within the tight boundaries of this motion. It is very important that we consider why we need to send this bill to a committee. It has been several months since this house considered this bill, and quite a lot of material has come into the public domain during that time. I believe I am the last speaker on the opposition side on this motion. Therefore, I want to ensure that that information, which might convince members of this house to send this bill to a committee, is put on the record.

In July last year—after this bill had been drafted, and certainly after it had been tabled—the Law Reform Commission released an interim report on its review of commonwealth laws for consistency with traditional rights, freedoms and privileges. That report is relevant to the discussion about whether this bill will impinge in a disproportionate way on the right of freedom of speech and freedom to protest. On 29 September 2015, the Australian Law Reform Commission, in partnership with the Constitutional Law Centre of WA and the Law School at the University of Western Australia, held a symposium to discuss aspects of the ALRC's freedoms inquiry. The symposium was titled "Freedom's Limits: Speech, Association and Movement in the Australian Legal System". I believe I was the only member of the Western Australian Parliament who attended this symposium. The speakers at the symposium were Professor Rosalind Croucher, AM, ALRC president and commissioner for the inquiry; Grant Donaldson, SC, Solicitor-General of Western Australia; Professor Paul Fairall, foundation dean of law, School of Law, Curtin University; Dr Murray Wesson, Law School, University of Western Australia; and Dr Augusto Zimmermann and Lorraine Finlay from School of Law, Murdoch University. We might want to invite these people to talk to the committee should we be successful in getting this motion up.

I want to share with members the thoughts of one of the eminent legal minds who spoke at that symposium by reading from a paper by Dr Murray Wesson. The paper is about the rules of proportionality and necessity. I obviously do not have the years of experience in law to be able to explain exactly how these rules might be used when laws are drafted. The Attorney General might be able to enlighten us on that in his second reading remarks. According to Dr Murray Wesson, the law of proportionality is the key principle for determining whether a limitation upon a right is justified. We are talking here about the right to protest. The paper states —

> In its 'European' formulation, proportionality entails the following steps:
>
> 1. A measure restricting a right must serve a legitimate goal (legitimate goal stage);
> 2. It must be a suitable means of furthering this goal (suitability or rational connection stage);
> 3. There must not be any less restrictive but equally effective alternative (necessity stage); —

We have argued that other laws are already in place to cover these activities. Therefore, it is important that the committee examine whether this bill goes too far and offends the rule of necessity. The final point is —

> 4. The measure must not have a disproportionate impact on the right-holder (strict proportionality).

A committee would be able to give serious consideration to that matter. Many civil society organisations are extremely concerned about the impact of this bill on the freedom of people to voice dissent and engage in peaceful protest. That is not a small point. If the Legislative Council passes this four-clause bill, it will have a serious effect on our civil society. People will fear that if they criticise the laws, policies and actions of the government, they may be fined up to $24 000, or be sent to prison. The necessity rule and the proportionality rule are tenets in our laws, and they must be considered with due seriousness. A committee of this house could report back to this chamber on whether these laws are necessary and proportionate.

To date, we have had only a very short second reading speech to reflect upon the purpose of this bill. That second reading speech does not indicate any driving need for this legislation. It is not the case that a large number of protesters are out there and the government cannot find a law under which it can arrest those protesters. It is not the case that violent protests are being held in this state. No-one has begged for this law to be on the statute book. In fact, this bill has created a lot of backlash from civil society. That includes the WA Council of Social Service, the Anglican Social Responsibilities Commission, and the Uniting Church in Western Australia. I will not list them all, because they were all listed in the second reading contributions from members on this side. Civil society is concerned about this bill. It is, therefore, appropriate that we send this bill to a committee that is able to review whether this bill offends the Australian Law Reform Commission's terms of

necessity and proportionality and the implied freedom of political communication. Today in the media, the United Nations spoke out against the attempt by the government of Western Australia to pass this law. This is not a small point. It is not to be trifled with. This is a matter that can be considered by this Legislative Council, because we are a house of review. The committee should look at the issues that have been raised by many members on this side. Those issues have so far, seemingly, been discounted by the interjections from members on the other side. Many emails have been sent to members of this house—I am approaching 400 emails—from people who are concerned about this bill. The government has had a year to address the concerns that civil society has raised and it has done nothing but defend these laws and, as a result, more and more people are emailing us with their concerns.

Hon Adele Farina: I don't know that they've done too much defending; they've just restated their position.

Hon LYNN MacLAREN: Okay; perhaps the government has simply restated its position. It has not even explained why it thinks we are wrong. It has just said, "This is what we're doing", and that is it. It is a concern because, as we know, there is an overwhelming majority on the other side of the chamber and the government can pass this legislation without any opposition support, so that is why a committee is an appropriate vehicle to examine the clauses in the bill to determine whether they offend this implied freedom of political communication.

We are doing everything we can to raise the concerns of legal minds and to have a better bill. Hopefully, the government will withdraw this bill but, in the absence of withdrawing the bill, we at least want to send the bill to a committee. This is not a game we are playing. These are fundamental rights that people are concerned about losing. The government has a responsibility. I know, Mr President, that, as a former educator and continuing your educative role in the Council, you know it is important that we bring people along with us. I can tell members that I do not know a Western Australian who wants this law. Has any member been contacted by anyone who is advocating for stronger laws to imprison these mythical protesters who are presumably committing violent, radical moves? In fact, the opposite is true. If the committee were to examine the current laws for protesters, it would uncover the truth that the James Price Point demonstration, which we believe is the genesis of this bill, was to stop an unlawful activity. It was completely appropriate that the demonstrators stopped the James Price Point project from ever affecting our environment. Likewise, it was completely appropriate that we stopped logging in much of our old-growth forest and saved that old-growth forest. In fact, it was so appropriate that the government changed in 2001. The protest action was at such a degree and people were so upset about an ongoing policy to log in old-growth forest that it changed the government. It was one of the key factors that changed the government. The protesters have a right and, in fact, play an important role in ensuring that we move down the road in our history in Western Australia with everybody on board and that we look after our environment and the good of all, not just particular commercial interests. I think it is great that we have a system whereby we can speak out, we can stand up for refugees and we can march through the streets and call on seemingly minority issues that turn out in due course —

Point of Order

Hon MICHAEL MISCHIN: I have heard this before in the context of the second reading debate. This is drifting away from the examination by a committee. If Hon Lynn MacLaren has exhausted the reasons, she ought to sit down and let us get on with the debate.

The PRESIDENT: There is a point of order. I was following that section of the member's remarks very closely. Various principles in the bill were being talked about, but then the member moved away to principles in general, which I think is a step too far. The remarks need to relate specifically to how and why it is important to have this matter before a committee.

Debate Resumed

Hon LYNN MacLAREN: Thank you very much, Mr President, for guiding me in that fashion. I am just trying to cover what the committee could look at. Concerns have been raised about the constitutionality of the bill and I think that should be reviewed by the committee. It is a good reason to support this motion. The bill also has very loose drafting and ill-defined terms. We would like the committee to examine whether those terms are ill-defined. One term that has been mentioned is "thing", and I will go into that in a little more detail. I believe that a committee could examine whether existing provisions are adequate, such as move-on laws, trespass laws and civil action, which can all be used to counter the kinds of activities that have been raised as the rationale for the bill. We should also ask the committee to look at whether there is sufficient cause to reverse the onus of proof, which has been raised by people. I know it is a concern of the Criminal Lawyers' Association of Western Australia. In particular, in my second reading contribution—I will not read it now—I quoted Tom Percy as one of the lawyers who is concerned about that matter. The committee could also look into whether the penalties are too severe. Maybe the penalties align with other criminal penalties of that kind, but we need to look at whether the penalties are appropriate and whether they are so severe that they will silence dissent. In a strong democracy, we need an ability to raise our dissenting voices and act in ways that are appropriate to stand up

against certain activities, whether it is logging old-growth forest or putting a road through a wetland, which, by the way, is another illegal activity should this government choose to continue down the road of building Roe 8.

There is also confusion in the community about the bill's intent, and that is possibly due to the lack of consultation before tabling the bill. A committee would have the opportunity to look at that. If what people are saying is true and it is being misinterpreted, certainly a committee could review that and outline what it thinks is an accurate definition in the clauses, but the other advice we have is that those clauses are offending our freedoms.

Finally, I believe that the committee should look at whether the new powers are needed. I made those points in outlining the Law Reform Commission's advice. I think the committee could also consider the interim report, because the commission has recently reviewed the proportionality and necessity of Australian laws. I also want to mention the many prominent Western Australians who have spoken out since the second reading debate. One of them was ex-Environmental Protection Authority chairman Paul Vogel, and this speaks to the necessity. I would like the committee to review this issue and perhaps invite him to talk about his comment in an article in *The West Australian* by Daniel Mercer that states —

> Dr Vogel said the rise of social media sites including Twitter and a "shift" towards using litigation had made it easier than ever for opponents of projects to mobilise against them, pointing to the campaign against the Roe 8 extension as evidence of both strategies.
>
> Despite this, Dr Vogel urged governments not to legislate against such tactics, arguing it would be anti-democratic and push those opposed to industry into more extreme strategies.

Hon Michael Mischin: What does social media have to do with this bill?

Hon LYNN MacLAREN: It could be an easy thing for the committee to decide whether the gamut of the bill as proposed takes in the lists that people use to communicate with each other when they are planning to protest. It certainly should be considered because it came up in a forum that I gave the other week. Someone at the forum asked whether it would mean that if people were preparing a protest action that might conceivably stop a theoretically lawful activity, the tools leading up to that would be able to be confiscated —

Hon Michael Mischin: What did you say?

Hon LYNN MacLAREN: I said that we do not know the answer to that. I do not know the answer to that. The bill is so poorly drafted that we cannot know the answer to that. The terms are ill-defined and it is poorly drafted, and that is why the committee should look at it. That is why questions like that come up. People wonder whether their contact lists will be considered in that context. The committee can examine the evidence of these legal experts who say that the bill criminalises a wide range of activity outside the scope of what has been stated in public and put on the record in the second reading speech, and in briefings put to members of Parliament.

How else do we resolve this contradiction other than by focusing the minds of committee members on asking questions of the experts? Committee members can conduct their own research. Their research officers can provide reports about how other states are doing this and the pitfalls of this legislation elsewhere. The merits of the competing views can be discussed and a report provided to Parliament. As far as I know, it is appropriate business for this house as the house of review. This is what we should be doing. This is why a committee should be charged with doing it. The committee could also examine the concerns raised by civil society. It would be well placed to invite members of the Anglican Social Responsibilities Commission; the Anglican Diocese of Perth; the Justice, Ecology and Development Office within the Catholic Archdiocese of Perth; the Uniting Church in Australia, Western Australia; the Church of Christ, Wembley Downs; and BaptistCare support services, who have all written to us to express concerns. I believe they have also written to the ministers and had no joy in the serious questions that they posed. I believe the committee can do that. Members should support sending the bill to committee.

A couple of other members have mentioned this, but I will also mention it briefly: we can use fundamental legislative principles to measure whether this bill meets those principles. Fundamental principle 4 was given to me while I was doing committee work on a bill. Number 4 asks: does the bill reverse the onus of proof in criminal proceedings without adequate justification? Currently, I would say that most people who have looked at this bill have said yes, it does. A committee could review that. If there is another side to the government's argument, a committee can consider and report it so that this house can look at it. It can also look at: does the bill provide appropriate protection against self-incrimination? It is extraordinary that somebody can guess whether a person will, one day, prevent a lawful activity by whatever it is they are carrying around. A person can be brought in, under suspicion of intent, to explain that they were not going to do that; they were just going to grandma's house to give her a better bike lock. They were not going to padlock a gate and stop exploration on farming land. The person wanted to give a padlock to their grandmother who needed a safer padlock for her bike because she had an old, rusty one. As far as we know, under this bill a person could be arrested for the intention of preventing a lawful activity. Exploration is lawful. People can come on to a farm; it is a completely lawful thing. The owner is not entitled to lock the gate to keep them out. That is a concern. If a person is pulled in for

that, and they have that serious padlock from Bunnings in their backpack, as we have heard, they have to explain they did not have that intention, "No, I'm sorry, I didn't have that intention." It is a he-said, she-said thing. That is the reversal of the onus of proof. It gets rid of the presumption of innocence.

From reading the second reading speech, I understand that the government is trying to stop people from inventing new lock-ons or something, but that is not what this bill does. Wake up! A committee can look at that and say, "If the intention is to capture only people who are constructing this, or only farmers as they are walking up to the gate with the padlock or whatever, let's draft it that way." If it is unreasonable or impossible for that bill to be drafted, let us find another way to do that. This bill reverses the presumption of innocence and the protection against self-incrimination. That is what the committee can look at under these fundamental legislative principles.

Hon Helen Morton: You support the intent then, do you? Do you support the intent of preventing lawful activity?

Hon LYNN MacLAREN: I support this bill being thoroughly scrutinised by a committee to determine what it delivers.

The seventh fundamental legislative principle is: does the bill adversely affect rights and liberties, or impose obligations, retrospectively? Does it? Do we know that? The committee could look at that.

The final legislative principle that the committee should examine, and that we heard plenty about during the second reading debate, is: is the bill unambiguous and drafted in a sufficiently clear and precise way? I have just argued one instance of the "thing" being ill-defined not meeting that principle. It offends principle 11: is the bill unambiguous and drafted in a sufficiently clear and precise way? I would say no, but the committee should look at that because it could hear both sides. Why have the drafters chosen four clauses? These arguments have already been waged. I am not interested in redoing my second reading contribution because I gave it four hours of my intellect. I believe I have put enough in *Hansard* about it.

I want to make a really clear case for sending this bill to the Standing Committee on Legislation. There is new evidence. Eminent legal minds have criticised this bill in the same way that we criticised it in our second reading contributions. Civil society is extremely concerned about this bill. There has been a lack of consultation. Sending this bill off to a committee is an opportunity for that to occur. The United Nations could not have been clearer today—it is very fresh information. The UN finds this bill to be offensive and its drafting too broad, and I believe the onus of proof is unjustified. The committee needs to look at that.

I have mentioned the fundamental legislative principles. I have mentioned every single reason I think this bill should go off to committee. The only thing I have not done yet in my speech is talk about how successful committees are. Why would we send bills to a committee if we did not believe in them? I want to mention the inquiry that the Standing Committee on Legislation did into the Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Bill. I was a member of that committee, which reported to this Parliament on that bill. A lot of work was done on it. We produced a report and came up with recommendations. The government accepted the recommendations. The bill presented to us needed fixing. The committee identified how it could be better. The government accepted that; in fact, the government even accepted the minority recommendations in that report. It shows that committees do play a valuable role in this house. There are times when the government produces bills that are not good enough. There are times when it is appropriate for committees to look at bills and to bring in the experts, and to hear the Attorney General's concerns as well as any other member of Parliament's concerns. Committee inquiries have been successful in the past.

The only thing I want to consider finally is whether the report date is appropriate. Obviously we want to extend the date. When the original motion was put, the date was thought to allow enough time for the Standing Committee on Legislation to consider the bill, but obviously debate on this bill has been pushed out because it is so controversial. Now we are at the pointy end of that. I will move to amend the motion to delete "20 August 2015" and insert "19 May 2016". That date is not too far away. That means the Standing Committee on Legislation would have to be fairly efficient with its time and it would have to dedicate itself to the task. As I have mentioned, even though it is a four-clause bill, there is quite a bit to consider and a lot to do. I believe I have already made the case that we should send it to committee, but we should give that committee a little extra time.

Amendment to Motion

HON LYNN MacLAREN (South Metropolitan) [3.09 pm]: I move —

> To delete "20 August 2015" and insert —
>
> > 19 May 2016, and that the committee has the power to inquire into and report on the policy of the bill.

That is a question that Hon Helen Morton asked me earlier. I believe that the committee should look at that, and that is the amendment to the motion that I am moving at this stage.

HON MICHAEL MISCHIN (North Metropolitan — Attorney General) [3.11 pm]: If it will assist the house, the government will support the amendment.

Amendment put and passed.

Motion, as Amended

HON MICHAEL MISCHIN (North Metropolitan — Attorney General) [3.12 pm]: The government opposes the motion for referral. Ordinarily, referral of a bill of this nature might have some merit if there were a question of whether the bill achieves the policy at which it is aimed or whether the policy is a sound one, and there was some genuine expectation that an objective, non-partisan, dispassionate analysis could be conducted. In this case, as I will demonstrate, there is no point in troubling a parliamentary committee with this issue. There is nothing to be gained from the exercise, and there would be no point to it. It will not add to the knowledge that the house presently has at its disposal to enable it to vote sensibly on this bill or examine it in the Committee of the Whole, and it would be detrimental to the parliamentary process to refer the matter to a parliamentary committee under the circumstances that have been demonstrated over the past year.

The government might have had more sympathy towards the idea if it had been raised at the outset of the debate. That may have displayed some evidence of a genuine desire to examine and address the issues in the bill in a constructive way, but that was not the case. The idea of referral to a committee was raised only after all members of the opposition and the Greens had exhausted the time available to them during the second reading debate. I must say that, after the first speech or two, nothing novel was raised in any of the contributions. They were calculated to occupy all the time available to the house and to extend the debate as much as possible. The opposition is implacably opposed to the bill and the policy that founds it. I know that Hon Darren West has claimed that he has sympathy towards parts of it, for what that opinion is worth, or what those comments are worth. I venture to suggest that he just gets on a roll when he is filling in time with his stream-of-consciousness soliloquies and says stuff that he does not really understand or mean. I think it is plain that members opposite have made up their minds and will not support the bill. Hon Darren West, for example, has disingenuously told us that if the bill went to a committee, he "might" change his mind. Whether or not he changes his mind is beside the point; he will not change his vote. That has already been decided by caucus and, if we are to judge from the comments recently about the requirement for an assertion of loyalty towards the state secretary of the Labor Party to do whatever the state secretary directs, it will have been decided at that level. Whether or not Hon Darren West can be persuaded personally is beside the point; he will vote as his caucus directs, whatever his personal feelings might be.

I should at this stage dispose of some of the observations made by Hon Darren West, and just in case it may be thought that I am picking on him because he is a big target, they are pretty much what has been reflected by everyone else who has spoken on this motion. He is not alone in advancing this stuff. He gave the impression of someone who has been told to use up as much of the 45 minutes available to him as possible, and that he might want to show how much trouble he has in understanding this three-page bill, which consists of fewer than 500 words, to fill up the time.

Hon Ken Travers: Five hundred important and disgusting words.

Hon MICHAEL MISCHIN: I take it the word "thing" is disgusting to Hon Ken Travers. Thank you.

Hon Darren West has done an admirable job of filling in the time. He tells us he cannot understand ordinary English words, and he takes unconnected elements of the bill and joins them together to impress upon us the extent of his ignorance and bafflement. He is reduced to repeating the proposition—get this—that the Criminal Code is an important act of Parliament. Wow; he has learned something in the last few years! This is an amendment to the Criminal Code, he says, and therefore has to be referred to a committee. That is the extent of his reasoning on the subject. Amendments are not referred to committees as a matter of routine; there must be a point to it. Committees provide high-level assistance to Parliament to do its job. They are not some kind of special needs class, or a remedial Thinking 101 substitute, or a course in statutory interpretation for dummies. There are very simple words in this bill that any parliamentarian worth his or her salt ought to be able to understand in context. The use of the word "thing" has been played upon. They all ask: what does "thing" mean? The use of the word "thing" in a statute is a routine use of the word, and its meaning depends on the particular context.

In case anyone is interested, I received advice recently from Parliamentary Services, I think, that a class is going to be held by an academic on how to conduct statutory interpretation. I urge members opposite to go along to that; they might actually learn something. It would be a whole lot cheaper and more effective than convening a parliamentary committee to waste its time and resources to teach them the basics. A parliamentary committee is not a substitute for kindergarten-level English classes. I suggest that Hon Darren West and others get some help from their colleagues, out of session, rather than embarrassing themselves in here. Whether his ignorance, feigned or genuine, and inability to understand basic concepts —

Several members interjected.

The ACTING PRESIDENT (Hon Amber-Jade Sanderson): Order, members!

Hon MICHAEL MISCHIN: If the member has a genuine lack of understanding of how to read a statute, I suggest he take some classes on the subject, or hand over his job to someone who can do it, rather than convene parliamentary committees to help him out. Using up 45 minutes of his time to express his ignorance is not a wise or edifying use of parliamentary time. I do not know which is worse: a member of Parliament who pretends to know everything and does not or one who pretends to know nothing.

I will get back to what caucus has told members opposite to do. Let us have a look at the sequence of events in the debate on this bill. Every member of the opposition has spoken against it. Hon Sue Ellery tells us that if it had been referred to a committee, it could have been reported on by now. The opposition did not seek a referral to a committee; Hon Robin Chapple sought a referral to the committee. That was after the entire opposition had spoken at length and repetitively. When he raised the idea, the opposition took to it like a shark to a drum line and is now repeating the performance.

Hon Ken Travers: Is that your best analogy? The drum lines failed.

Hon MICHAEL MISCHIN: Perhaps it would be a tiger shark taking to a drum line, if that is more accurate, or perhaps a Governor-General to a knighthood.

Now they have repeated the performance with the referral motion. They have all spoken at length, repeating the same arguments over and over again and none of it has been particularly edifying. If they are genuine about examining a bill dispassionately and objectively with an open mind to try to improve upon it, a motion should have been made to refer it to a committee at the beginning rather than at the end of the debate after the filibustering has taken up the time of the house.

We have the opposition's own words to support the fact that the whole purpose has been to delay the passage of the legislation, rather than to assist with its crafting. I refer to Hon Sally Talbot's remarks. Leaving aside the personal abuse that she is so fond of as a substitute for any facts and sound argument, she suggested that I might have penned this bill on the back of an envelope, in my car, which presumably reflects the practices that she was used to under the last Labor government. Anyone who has listened to the second reading debate would know that this is not my bill; I am managing the bill on behalf of the Minister for Police. Hon Sally Talbot is even wrong on that. On 11 March last year, Hon Sally Talbot's remarked —

> We will fight this bill right down to the wire, through to the bitter end. We will keep going right through to Christmas Day if the government requires us to do that. I point out to anyone casually reading *Hansard* that it is now mid-March. We will oppose this bill every step of the way.

She then indicates that no amendment is proposed or likely. So much for any possible benefit from the legislation being referred to a committee for its correction and improvement. As Hon Darren West has reminded us, the deputy chair of that committee is Hon Sally Talbot. Is it seriously being suggested that Hon Sally Talbot, as a member of the caucus that decided on the position to oppose this bill to the bitter end and having regard to her implacable opposition to it, is going to go into committee with an open mind and a constructive attitude towards examining whether the legislation is justified? Seriously!

Several members interjected.

The ACTING PRESIDENT: Order, members! Order! Could members in the public gallery please remain seated. Thank you.

Hon MICHAEL MISCHIN: Even Hon Ken Travers told us that he would talk until he ran out of breath, no matter how much time was allowed for the bill's consideration. Hon Ken Travers said —

> Even if my leader tells me to sit down, I will have an argument with her behind the Chair on these bills. Ultimately, I know who will win that battle.

Seriously, will anything that emerges from that committee change the opposition's position? And then there are the Greens. Hon Robin Chapple moved that the bill be referred to committee. Hon Lynn MacLaren now urges the bill be referred to committee because all sorts of question have been raised—things that she does not understand—that she claims have not been addressed in the second reading debate. I have not had a chance to reply to the second reading debate and deal with those questions in detail because everyone else has been on their feet telling us about how confused they are. Hon Lynn MacLaren now urges us to refer the matter.

Point of Order

Hon LYNN MacLAREN: Is the Attorney General not offending under standing order 45, imputations and personal reflections?

The ACTING PRESIDENT (Hon Amber-Jade Sanderson): Member, he is addressing comments made during the course of the debate. I have not heard anything of a personal nature yet. I am listening closely.

Debate Resumed

Hon MICHAEL MISCHIN: Every argument and hypothetical that Hon Lynn MacLaren has raised has demonstrated why the legislation ought not to be referred to a committee and why that is not necessary. Let us look at what Hon Lynn MacLaren told us on 17 March. She said —

> Madam Deputy President, if you have listened to anything in the second reading debate, you will know that I have serious concerns and I believe the bill should be opposed. I believe it is not salvageable. However, I have, as is my duty as a member of Parliament, taken great pains to look at the complexities of the bill and how it might be possible, if we were to send it to a committee, to improve it or slightly modify it. I am arguing strongly that we not send it to a committee …

Look at what has changed—another opportunity to delay the bill's passage and all of a sudden we have leapt on to it, haven't we? That is the sort of thing that will degrade the purposes of our parliamentary committees. The referral of matters to a committee, the members of which have already stated their positions and made it quite plain that, as a matter of philosophy, they are opposed to it and have closed their minds to it, is not a legitimate use of parliamentary committees, parliamentary resources and parliamentary time. There is a valuable role to ensure that a bill reflects policy or to improve its operation by referring it to a committee. There is no point, except as a political delaying tactic, to refer this bill to a committee. It would waste the committee's and Parliament's time and insult the Parliament's dignity and function.

Point of Order

Hon LYNN MacLAREN: I hear in the Attorney General's comments an imputation and personal reflection upon our professionalism as members of this Parliament that we cannot actually go into a committee and consider something. We have demonstrated time and again that it is our profession to do so without bringing prejudices into it. That is our duty and he is, in my view, reflecting against us and criticising our personal ability to be reasonable members of this Parliament. Madam Acting President, I ask that you again consider whether the Attorney General is offending that standing order.

The ACTING PRESIDENT (Hon Amber-Jade Sanderson): Member, there is no point of order. The Attorney General is addressing comments made in the course of the debate. You may not like the comments that he is making or his responses to points made, but that is what I am hearing.

Debate Resumed

Hon MICHAEL MISCHIN: Thank you, Madam Acting President.

I can understand Hon Lynn MacLaren's sensitivity about having her past comments—presumably delivered genuinely—being used to counter her arguments expeditiously being raised now. I am simply quoting her, and I have quoted other members who have chosen to say certain things, to reveal to the house their particular attitudes and the conclusions drawn from those. If she does not like those conclusions, she needs to be more careful next time she opens her mouth. In any event, the government will not be a party to a political tactic to refer this matter to the committee to further delay its passage. Any of the issues raised about the way the legislation is constructed, what it means and how it is to operate can be dealt with in the course of my response to the second reading debate and in a proper analysis during the Committee of the Whole stage.

Division

Question put and a division taken, the Acting President (Hon Amber-Jade Sanderson) casting her vote with the ayes, with the following result —

Ayes (13)

Hon Robin Chapple	Hon Sue Ellery	Hon Amber-Jade Sanderson	Hon Samantha Rowe *(Teller)*
Hon Alanna Clohesy	Hon Adele Farina	Hon Sally Talbot	
Hon Stephen Dawson	Hon Lynn MacLaren	Hon Ken Travers	
Hon Kate Doust	Hon Martin Pritchard	Hon Darren West	

Noes (22)

Hon Martin Aldridge	Hon Peter Collier	Hon Alyssa Hayden	Hon Michael Mischin
Hon Ken Baston	Hon Brian Ellis	Hon Col Holt	Hon Helen Morton
Hon Liz Behjat	Hon Donna Faragher	Hon Peter Katsambanis	Hon Simon O'Brien
Hon Jacqui Boydell	Hon Nick Goiran	Hon Mark Lewis	Hon Phil Edman *(Teller)*
Hon Paul Brown	Hon Dave Grills	Hon Rick Mazza	
Hon Jim Chown	Hon Nigel Hallett	Hon Robyn McSweeney	

Question thus negatived.

Second Reading

Resumed from 19 March 2015.

HON MARTIN PRITCHARD (North Metropolitan) [3.32 pm]: I was hoping that the Criminal Code Amendment (Prevention of Lawful Activity) Bill would be referred to a committee and then I would not have had to give a speech in the second reading debate.

Hon Simon O'Brien: We've all got mixed feelings.

Hon MARTIN PRITCHARD: It might have been a big hope, but still.

The concern I have with this amendment bill is basically in two parts. The bill was introduced in February last year. I came into this house in May so the bill has more tenure than I do here. Personally, after reading the Attorney General's second reading speech when he introduced the bill, I was a little confused because I thought the amendment bill was introduced to deal with a particular problem that had been identified in a couple of protests about the environment. I note that the Attorney General said in the second reading speech —

> A common tactic used by protesters is to lock themselves onto equipment, trees and other objects in order to block roads, or otherwise obstruct lawful activity.

Like most members here, I have seen much TV vision showing people linking hands across roads or chaining themselves to trees, so I thought that that was not something new. However, the second reading speech states further —

> In recent times … more innovative methods are being used to hinder police attempts to remove the protesters.

A common method is to use devices known as thumb locks or arm locks to secure people to machinery and thus stop lawful activity.

I have to be honest: people who know me know that I am not overly green, but I had a little sympathy for the fact that the ingenuity of the protesters was creating some problems. I thought it was a worthwhile debate to have about whether that was appropriate. I was thinking that the bill was designed to try to stop these new innovations of locks. In my earlier days, people who had chained themselves with just an ordinary chain would require a pair of boltcutters to cut the chain and they would be given a move-on notice and that would pretty much be the end of it. However, these new approaches are creating difficulties and maybe we should discuss whether legislation to address that is appropriate. As I was reading the second reading speech, I thought that was the objective of this new legislation—to try to deal with that specific problem. Then I moved further to the explanatory memorandum, and again I thought that that was what it was trying to deal with because it states —

> This offence will apply to situations such as where protesters are found in the vicinity of a … protest site with devices such as thumb locks, chain locks, arm locks or any article that is adapted for the purpose of creating a physical barrier to a lawful activity …

I thought again that that was obviously what the government wanted to deal with. It has had a couple of incidents that have created some concerns and some resources have been spent trying to deal with this new innovation.

I then turned my mind to the bill itself and I came to proposed section 68AA, which refers to the creation or maintenance of a physical barrier to carrying on the lawful activity. I wondered what it meant by a "physical barrier". People who know my history will know that I come from the union movement. I have been involved in a number of picket lines. Does that constitute a physical barrier? I can describe the sorts of picket lines I have been involved with, when people take a chair and a table and sit near the driveway that goes into a site. They do not actually block the front of the drive. They sit there and indicate to drivers that it would be great if they did not visit that site today, but they do not physically stop them. But is that a physical barrier? It got me thinking about what "physical barrier" means. One of the reasons I was somewhat displeased that the bill was not referred to a committee is that I think those sorts of things would have been able to be dealt with quite well. I have a big respect for the committee process.

As this bill has not been sent to a committee, I have to try to draw on my own mind as to what a physical barrier constitutes. I have noted that pretty much all the contributions to this debate have been from this side of the chamber and so I have not drawn any enlightenment from the government about what it means by a physical barrier. The reason it creates some difficulties in my mind is that when the debate for the referral of the bill was being conducted last year, I had cause to go to one of the committee meetings we have on a Wednesday morning. While I was at that committee meeting, I received a text to say, "Don't worry too much but there is a bit of a problem at Parliament House. There are 20 or 30 taxis out the front of Parliament House and when you come back, you might have difficulty getting in or out." As I walked back to the building, I saw that the taxis had dispersed, so I did not have the problem, but I thought: are those taxis in the driveways creating a physical barrier? I suppose without the government having the ability to explain to me otherwise, I would think that would be the case. Would that also be a case of halting lawful activity? A person who parked out the front of Parliament House and wanted to leave would definitely be hindered in their lawful activity of returning to work

or doing whatever they wanted to do. This created other questions in my mind. If this legislation had been in place, could the taxidrivers be convicted under this legislation? If they could be convicted under this legislation, would they be aware that a person inside the building was asking somebody else inside the building how to get out? I understand that they did not go out to the people. It created some issues in my mind as to how this legislation would work when we start talking about physical barriers.

As I mentioned, I have been involved in a number of pickets. I will mention one that I was not involved in but at least one person in this chamber might remember what I am about to talk about. An issue arose in Paraburdoo. The Shop, Distributive and Allied Employees Association had an organiser in the north west—a man by the name of Damien Clarke—who was trying to resolve this issue. I have to admit that Damien is—sorry, he was; he has passed away since—an extremely big gentleman. To look at him, one would be intimidated. That is just the way he was. It did not matter whether he tried to be intimidating; he was just a big man. The manager had locked himself in the store. He rang his management in Perth and said, "Help; we are being surrounded", which happened to be one organiser walking around the store trying to get in to speak to the manager. The state manager of that particular company rang the union office and asked us to remove the barriers around the store because customers could not get in. The fact is that we had an organiser walking around the store trying to get in to speak to the manager. The manager had locked the doors and there was a barrier. I think it is a physical barrier when we talk about locked doors. Was Damien responsible for that under this legislation? Who knows?

Without having had the opportunity for the government to explain it to me, I also think about barriers. In my experience, barriers are mostly involved in protests of some kind or another. Often these protests, which occurred in my previous life, were about wage increases or conditions or problems on a work site. One tactic that I have heard used within clerical work sites is a sit-in. If people come into the office and decide to sit down, that creates a barrier. Is that the sort of barrier we are talking about?

My concern with this legislation is that it is not necessarily targeting what I believed it would target—that is, maybe three or four protesters who decided to use some innovative way to lock themselves to machinery and such things. Again, I have some sympathy for the fact that that could cause some physical damage to the machinery; there is the chance of injury to the person locking themselves to the machinery and it may tie up resources. Initially, I had some sympathy for this legislation. But if the legislation goes further and refers to other forms of barriers, I have some real concerns about how it would work. We have farmers asking whether it is appropriate or whether it is an offence under the legislation to protest by locking the gates on their farms. This legislation says no, they cannot do that. Also, it says that they will be convicted of an offence if they do so. Do we need that sort of legislation? Is it not easy enough for the police or the people who want to access a farm to use a pair of boltcutters and cut the gate? If they are obstructed, other parts of the legislation could kick in. If a person stood in front of the trucks going through the gate, other parts of the legislation that currently work quite well could be used. I am concerned about introducing new legislation to deal with a very minuscule problem and then trying to expand the wording within the legislation, through what I believe to be bad drafting, and encompass other forms of protest that have provided great benefits in the past. I do not think anybody in this place, without saying that there are no limits, would have a concern with the concept of protest. It is a very proud part of the history of almost all countries that they are able to protest, particularly in a democracy. They should be able to protest and say, "That is something I don't believe in and I wish to make a point that legislatures can see that I do not agree with that particular change or custom."

I am not necessarily concerned about the issue that was initially raised but the fact that the drafting does not match what the government has indicated it wants to try to tackle. If the drafting were better and it focused on thumb locks—these new types of locking mechanisms—we could have a debate on whether that is appropriate. I could be swayed but I still believe that the ability to protest is more important. I certainly could not be persuaded by this legislation. It is badly drafted and it does not address the concerns that the Attorney General suggested it was meant to address. I do not believe that we should just introduce legislation for legislation's sake; it should be introduced for a particular reason.

I also have some concerns with the reversal of proof. I believe that I heard in some interjections—that is really all that I have heard from this government defending its position—that other parts of this legislation include this reverse onus of proof. I decided to read part of the legislation. I did not read the whole Criminal Code but I did read parts of the legislation that were very close to it. I saw some situations in which there is a reverse onus of proof. The one I took note of was that if a citizen goes into a public place armed, they have a responsibility to demonstrate that they have a reasonable excuse for going into a public place armed. I can understand it in that situation. We are similar to America in this case. On a visit to Washington, I remember having lunch with a government official. The first thing he decided to share with me is that he had a revolver in the glove box of his car and he had National Rifle Association membership. We do not want to get to that point, so I can understand that people who go into public armed have a responsibility to prove that they have a reasonable excuse for doing so. However, I do not think it is reasonable for me, for instance, when I attended a protest with rope in the boot of my car, to be expected to explain that I am not guilty because I had the rope in the back of my car. That leads

me to the next point, which is that if we are talking about items of that nature—again, I think the government really wanted to try to drill down to the fact that it was about thumb locks and things that could be modified in that event—I do not think there should be a reverse onus of proof if I have got a rope in the back of my car. Even if I did use rope to build a physical structure, it would not be a structure that could not be dismantled or moved, and the current legislation would certainly cover that situation. The first concern I have in both instances is the reverse onus of proof and the second is the legislation going much further than what I believe the government members intended when they talked about barriers.

Another part that keeps getting raised is that the legislation contains the word "thing" as a descriptor. I feel that that is unreasonable and unnecessary. If the legislation focused on what the government believes to be the problem, it could have easily removed the word "thing" and put "locking device", "modified locking device", or "personal locking device", and that would have dealt with the issue that the government wishes to deal with. The fact that the government has put the word "thing" in the legislation raises with people who have concerns with the legislation that the word "thing" should not be used because a thing could be a chair, an airplane or it might be anything. That is true, because the word "thing" does not precisely describe anything. If the government had referred this bill to a committee or drafted it better in the first place and focused on the problem that it wanted to address—being the two protests that created a degree of difficulty for the police and such—it could have made the definition and wording much better. It would have dealt with the issue and although there may still have been a debate in this house—there probably would have been—the government would be on much more secure ground as to what it is trying to do and there would not have been so much community angst about the breadth of what the government is trying to cover in this small piece of legislation.

That is all I wanted to raise—people might be surprised that I am not using the full 45 minutes—because I want the government to focus in on what it is doing wrong. We will be moving through the Committee of the Whole debate and hopefully we will get some answers then, because it has been very difficult to get answers to date. If the answers do not better explain why this drafting has been so broad, it may be that more people will be convinced of the merits of the arguments that we have been putting. The National Party might have some concerns as I understand the Western Australian Farmers Federation is one group that believes this legislation goes too far and it has some real concerns about it. I would think that the National Party would believe that farmers are its natural constituency, and it might listen to them and be persuaded that this legislation should not proceed into law.

That is all I wanted to say. I hope that we get some answers through the Committee of the Whole stage. We are yet to see whether that will be the case. I will keep an open mind and listen with open ears to the justification for what I believe to be the very poor drafting of this very small bill. With that, thank you.

HON RICK MAZZA (Agricultural) [3.56 pm]: I rise today to make a contribution to the Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015. I would like to start by saying that I absolutely support freedom of speech and I absolutely support the right to peaceful protest. Like everybody else, I have received a number of emails opposing this bill and a lot of it has surrounded freedom of speech and the fact that we should have the right to freedom of speech. I do not think anybody can disagree with that. The problem that I have, though, is that part of that democratic right comes with responsibilities. There must be a line in the sand when freedom of speech and peaceful protest gets to the point at which it becomes obstructive and is probably a criminal activity. Every year we see people marching on Parliament House with their banners; we see a number of people come and protest about certain things. I have no problem with that, but people overstep the mark as soon as they chain themselves to machinery and endanger their own lives and the lives of other people who try to get them out of being welded into a tin can or cemented into something. My problem with it is that they are saying they want to protect freedom of speech. To me, that sort of activity goes against freedom of speech.

Hon Darren West: Why bring everybody else into it?

Hon RICK MAZZA: Because, if a person locks themself or is welded into a steel box or the inside of a drum, they are trying to bludgeon everybody else into thinking the way that they are thinking and people will not take up the other side of the argument at all. It is anti-freedom of speech. I do not support that sort of behaviour.

I will certainly be supporting the bill. However, I have a major concern with the effect of this, as it can tie up some farmers and primary producers who may be in a very different situation. I am assured that locking a front gate will not cause an issue with this bill. However, if they chain themselves to the tractor because they have been under some financial duress for a number of years, the bank has foreclosed and someone from the bank is actually there, I would not like to see that being considered as conducting illegal activity. I am flagging an amendment during Committee of the Whole to get around that and try to protect landholders on private land from being caught up in this legislation. I do not believe that the intention is for farmers to get caught up in it. In fact, an article in the *Farm Weekly* states —

> Police Minister Liza Harvey said … laws were needed to prevent extreme forms of protest and that "it is not about farmers driving around their properties with padlocks and chains".

However, in the article Dale Park states —

> "Even if farmers are not the direct target of this legislation, as Ms Harvey has indicated, they are still at risk of being punished for exercising their right …

That is the thing I am concerned about. Farmers who are not pests—as far as being recalcitrant protesters who often protest—are forced into a position that may happen only once in their life in which they may want to protest by locking themselves to machinery in desperation. I would like to see some support from the government on that amendment. We will have to wait and see when we get to the Committee of the Whole.

Hon Adele Farina: Are you saying that the minister said that it wouldn't apply to farmers?

Hon RICK MAZZA: No; I did not say that at all. I think from some of the media articles I have read that the intention of this legislation is not to pick up farmers who may lock and chain the gate. However, of course we all know that overzealous enforcers can sometimes go beyond what the intention of the bill is.

Hon Adele Farina: Are you happy to take an interjection?

Hon RICK MAZZA: Yes.

Hon Adele Farina: I have a copy of a story in *The West Australian* of 19 March 2015, and it states that Mr Mischin confirmed that farmers locking a gate to protest about fracking could be charged.

Hon RICK MAZZA: Yes, and I do not want to see that. However, I also understand the other side of the argument. Protesters often overstep the mark, in my belief. It creates a lot of angst for people if protesters have locked themselves onto a machine or inside a drum and they are trying to get them to move on. It was explained to me at the briefing that the purpose of this bill is to apply the same penalties to a person who cannot move on as would apply to any other person who was issued with a move-on notice.

Hon Sally Talbot: You are saying that you do not want to see the law used in that way. However, the Attorney General has said that it could be used in that way.

Hon RICK MAZZA: There are obviously penalties for people who are given a move-on notice but do not move on. However, currently a move-on penalty cannot be imposed if a person is locked on and cannot move on. The penalties in this bill are consistent with the penalties imposed for a failure to comply with a move-on notice.

I will not keep the house any longer, because we have spoken at considerable length on this bill. I will be supporting the bill. However, I flag that I will be moving an amendment when we get to Committee of the Whole.

HON PAUL BROWN (Agricultural) [4.01 pm]: Before I make my comments on the Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015, I must say that it is good to see you back in the chamber again, Madam Acting President (Hon Amber-Jade Sanderson).

The Nationals are on record as supporting the bill. We have had considerable discussion among ourselves and among our constituents. I have also had lengthy discussions with WAFarmers during our monthly meetings. It has been said that WAFarmers initially opposed this legislation. WAFarmers certainly put out a press release stating that it was opposed to the bill. WAFarmers initially had a very narrow interpretation of what this bill would do. It was ill informed. It had not sought a briefing or an opinion at that stage, and it had not spoken to anyone about the potential effect of the bill. I have spoken with both Stephen Brown, the chief executive officer of WAFarmers, and Dale Park, its soon-to-retire president. It is safe to say that in the early stages, that conversation was at times quite fiery. That was the case particularly when I pointed out that I was not happy with WAFarmers' early rush to put out a media release saying that it did not support the bill, when it had not availed itself of the facts. Since that time, WAFarmers has been attributed with having signed a petition, and it has moved away substantially from the position that it started out with. WAFarmers certainly does not want to be associated with the Animal Justice Party, Stop Live Exports and the other parties that are the associates of Hon Lynn MacLaren and are actively campaigning against live exports.

In my pre-parliamentary days, I was at the receiving end of protesters who used thumb locks and barrel locks to lock themselves to livestock export ships and gates at Fremantle. I want to touch on that. This bill is not just about people who prevent other people from going about their lawful activity. It is also about preventing ill-informed people from putting themselves in a position of harm. I want to reflect on a scenario that occurred in Fremantle in early 2012—I might be wrong on the date—when, in the middle of the night, a number of gentlemen, and a lady aged 18 or 19, illegally entered a livestock export vessel in the port of Fremantle. They found a position on the ship that was secluded, so that they could not be seen, and they used a thumb lock to lock the young lady to the railings. I put it to members that she was not terribly worldly-wise. I am not saying that all 18 and 19-year-olds are not worldly-wise, but I think in this case she made what could have been a grave error. The crew who were patrolling the decks that evening came upon them while they were doing this. Not thinking about it, these three or four grown men quickly fastened the young lady to the railings, and then fled and vacated the scene. They ran away like rats deserting a sinking ship. Hansard might not be able to pick up my gesture, but

they left this young lady with her thumbs up in a thumb lock, like this, and tied to the top of the cattle railings. She could not move. They did not choose to sit her on the ground or put her through one of the lower railings so that she could be comfortable and perhaps have some solace. No; they left her in that position. When she was found five or six hours later, she had soiled herself and was in distress. It was not a good picture to paint of these big, strong, strapping men, who were not prepared to face the consequences of their actions and had left this 18 or 19-year-old girl thumb-locked to the cattle boat to meet her fate. Had it not been for the crew who were doing their regular patrol to make sure that the stock that had been loaded that day were well and fit, the outcome for that young lady might have been much worse.

Let us not think that the people who use thumb locks are using any of their mental acumen to effect an outcome. Some of these people are no better than sheep. They just do as they are told and lock themselves to gates, cars or trucks. Another incident occurred shortly after that when some fool locked himself to a cattle truck outside the gates of Fremantle port. That meant that the truck could not be moved to enable the cattle to be offloaded onto the ship. That actually put the livestock at greater risk than what he was campaigning against, because it was the middle of summer, and it left the cattle, particularly those on the top deck, subject to the sun. Luckily, the police were able to cut him free quickly and the cattle were able to be loaded. Had that not happened, those cattle—the very things that he was protesting to protect—would have been in greater distress.

One of the things that have been talked about ad nauseam in this debate is farmers and what would happen to a farmer if he locked himself to a gate. In fact, Hon Darren West said in his contribution —

> I can tell the Attorney General that, thanks to his legislation, I am committing an offence if I lock my gate. If I lock my gate and park a truck or a piece of heavy earthmoving equipment in front of the gate and tell people they are not coming onto my land, to get lost and go and find their gas somewhere else, I will now be a criminal.

That is absolutely not so.

Hon Darren West: Yes, it is. The Attorney General said so himself.

Hon PAUL BROWN: I am not terribly worried about what the Attorney General said, because under the Mining Act, those companies are allowed to effect entry by other means. If the member locks himself to his gate or to a piece of machinery in front of his gate, under section 104 —

Hon Darren West: That's not what I said.

Hon PAUL BROWN: You just take your time and listen. You had plenty of time to warble about nothing; you listen to me now.

The ACTING PRESIDENT (Hon Amber-Jade Sanderson): Order, member! Hon Paul Brown will direct his remarks through the Chair, please.

Hon PAUL BROWN: Apologies, Madam Acting President.

Section 104 of the Mining Act provides the power to enter and re-enter land with such assistance as is necessary and to do all such things that are reasonably necessary for the purpose of marking out the land. Under section 106, it is an offence to wilfully obstruct, hinder or interfere with any person lawfully engaged in marking out or surveying any land. If a farmer locks himself to a gate or to his machinery in front of a gate, there is no need to prosecute him, because under section 104 of the Mining Act, the mining company—it does not matter whether it is a mining company—or anyone who has a lawful right to enter that land may effect admission by other means. All that would then need to happen is for reasonable compensation to be paid for the cost of any damage, such as a fence that was cut, a gate that was taken away or crop damage. That is what is lawfully allowed at the moment.

Hon Darren West: So why are you voting for this bill?

Hon PAUL BROWN: I am not voting for this bill to lock up farmers; I am voting for this bill to stop people who are stopping others from going about their lawful activity. If a farmer wants to lock himself to a gate, there is no need to prosecute him, because there are other lawful means to enter property. Hon Darren West may sit there and shake his head and not understand what is going on, but that is the law that is currently in effect.

Hon Adele Farina: That may be the case, but it doesn't prevent prosecution under this legislation if it is passed.

Hon PAUL BROWN: Let me say at the outset that I trust the police to make a determination. Members opposite might not trust the Western Australian police, but I do. I trust them every day to choose the right outcome. They may not always choose the right outcome, but I trust them every day, whether they are making a determination about my intent to do a thing and what a thing is, what speed I was doing or what I was doing tapping on the window of the house of someone I did not know. I trust them every day to make a determination and to use their cognitive reasoning to make a choice about which facet of the law they will use, whether that is a move-on notice, an order to disperse, the criminal trespass law or this law because someone used a thumb lock, a barrel

lock, an arm lock or one of those chastity cars—or whatever they call those cars in the forest that people lock themselves into by the arms; I cannot remember what they are called —

Several members interjected.

Hon PAUL BROWN: Liberty cars, not chastity cars; sorry. I knew I was saying it wrong.

Hon Stephen Dawson: You made some of the members in front of you blush!

Hon PAUL BROWN: "Chastity" is not a word that is used often in this house.

Liberty cars are frequently used; they have a pole through the middle of them and people lock themselves in. These are the sorts of things that prevent businesses from going about their lawful activity.

One of the suggestions that have been made is that the word "thing" is inappropriate. Section 557A of the Criminal Code also mentions a "thing" and states —

> A person is presumed to have an intention referred to in this Chapter in relation to a thing in the person's possession if —
>
> (a) the person is in possession of the thing in circumstances that give rise to a reasonable suspicion that the person has the intention; and
>
> (b) the contrary is not proved.

We already have that in our Criminal Code, so there is no need for those on the other side of the chamber to get bent out of shape and have this confected sense of moral outrage at the word "thing". Rather than just reading this bill, members opposite should read the Criminal Code and they will see that these words are already used. This already takes place; we are just applying it to these types of incidents in which a thumb lock, a barrel lock or an arm lock is used.

Hon Darren West: I cannot believe you're saying this.

Hon PAUL BROWN: I cannot believe you got elected, but that is another story!

I do not think anyone in this place does not understand that I have supported farmers, the livestock industry and the agricultural industry every single day. I would never stand in this place and support a piece of legislation that would have a deleterious effect on farming or farmers. The Nationals would not do that either. We have had long and lengthy discussions about this issue in our party room. People in our party room had concerns, but we were able to work our way through those concerns. We have not been told by our factional bosses what to do.

Several members interjected.

Hon PAUL BROWN: Not unless I am a factional boss.

I will just speak to the claims made by Hon Lynn MacLaren, who unfortunately is away on very important parliamentary business. She claimed that lawful protest was the reason that the James Price Point development was thwarted. In fact, those claims could not be any further from the truth. The Western Australian legal system, which was put in place by the Western Australian Parliament, caused the demise of the development at James Price Point. However, what I will say is that the protest up there was ugly. The things that were said about the people who were likely to go to James Price Point debased the people up there. The fly in, fly out workers were called rapists and all the other things that the professional agitators came up with. That all came to naught, because our legal system allowed people to oppose that development. Their peaceful protest was upheld in a court of law in Western Australia and that development then failed.

One of the other comments that highlights to me the lack of understanding of some of these issues certainly by Hon Darren West —

Several members interjected.

Hon PAUL BROWN: I know I am speaking quite regularly in this debate about Hon Darren West, but he speaks about the Nationals so frequently that I like to give him a little bit of *Hansard* time. He said in his contribution —

> As members will know, I am a landholder and a farmer in the wheatbelt. Although my farm has not had any interaction with coal seam gas operators, I would not have to drive very far to find ones that have, and I have met several landowners who feel very strongly about the prospect of the coal seam gas industry waltzing onto their farms …

Once again, WA does not have coal seam gas. There is a complete lack of understanding about the issues. Hon Darren West talks about coal seam gas. He may sneer and say ha-ha, but he fundamentally does not understand the issue. Once again, he is doing what he is told to do: "I've got to stand up and make a 45-minute speech, so I'll make a 45-minute speech."

Several members interjected.

The ACTING PRESIDENT: Members! I remind the honourable member to direct his remarks through the chair.

Hon PAUL BROWN: Thank you, Madam Acting President.

This bill, when it eventually becomes law, in no way, shape or form is designed to limit peaceful protest. A person protesting outside a gate, or sitting around playing a guitar and singing *Kumbaya*, can be asked by the constabulary to move on and does so. A range of laws can make people move on. Similarly, introducing this law allows the police force and the public prosecutors to have an effect on those who seek to actively work against people who have a lawful right. I have no problem supporting people who want to go about peaceful protest. I have no problem about people wanting to stand in front of a gate or a fence waving a placard. People can write continual emails. I think we have all received continual emails. We have asked the police to look at a couple of emails that came through. It turns out that the people writing emails from the Do Gooder website were not even aware that its name was being used. We have been receiving all these lovely emails saying, "Please don't introduce this bill. Please don't vote for this." We have engaged the police. One of our members replied to an email and that person said, "I don't know what you're talking about. I have not sent you an email. I have not had any action in regard to this."

Point of Order

Hon SALLY TALBOT: I am very concerned about what I hear from Hon Paul Brown. Is he saying that Western Australian electors who have contacted their member of Parliament expressing a concern are now subject to a police investigation?

The ACTING PRESIDENT (Hon Amber-Jade Sanderson): There is no point of order. The member is making a general comment.

Debate Resumed

Hon PAUL BROWN: Thank you, Madam Acting President.

I will respond to that anyway, even though it was not a point of order. No; we did not seek to have the police investigate people sending emails. We asked the police to investigate the fact that we replied to an email that was sent to a member of Parliament and that person said, "I have not written this email. I don't know what you're talking about"; therefore, we asked the police to investigate it.

Hon Adele Farina: Can you table those emails that you are referring to?

Hon PAUL BROWN: No, I do not need to table those emails because they are confidential. They have people's names and addresses on them. All I am doing is highlighting some of the subterfuge and disingenuousness of some of the people promulgating this argument. We are not here to stop people from conducting lawful, peaceful protests, but we are here to stop people preventing other businesses and organisations from going about their lawful business. I have been on the direct end. I have seen the negative outcomes both on businesses and the perpetrators, such as that young girl who had to be cut free after she had been standing for five or six hours. Those large men—those very courageous men who left an 18 or 19-year-old girl standing in a compromised position—were happy to run away and leave that girl there to soil herself and be arrested. The tactical response group cut that thumb lock from around there, putting her even further at risk of losing her digits, because it is not an exact science—every thumb lock, every barrel lock and every Liberty car is made differently. Every time they put an arm inside something, every time they put a finger or a thumb inside something, it is not a template. It is different every single time and they put themselves at risk. More importantly, they do not only put themselves at risk; they put 18 or 19-year-old naive little girls at risk of losing thumbs.

Hon Simon O'Brien: They become radicalised.

Hon PAUL BROWN: I agree totally with what Hon Simon O'Brien said—they do become radicalised. But unfortunately they may become radicalised without their thumbs!

There is a real risk to people who engage in this activity. This is not just about preventing people from going about their lawful activity; it is also about preventing harm to these people.

HON MICHAEL MISCHIN (North Metropolitan — Attorney General) [4.27 pm] — in reply: Firstly, I thank members for their contributions to the debate on the Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015. I propose to deal with several themes that have been raised over almost a year since this bill was introduced. Regrettably, many of the themes are not particularly novel. They were explored almost entirely in the first couple of speeches that were made about the bill and have simply been repeated ever since, without taking the debate any further. I understand that the announced intention of the opposition is to oppose the bill regardless of its merits and regardless of the extent to which any concerns regarding it may be addressed; likewise with the Greens who are implacably against the bill, despite suggestions that it ought to be referred to committee to improve it in some fashion.

There has been an enormous amount of talk about rights—some inherent rights to protest, to freedom of speech, a right to do this, a right to do that and a right to do all sorts of things. Not much has been said about the right to go about one's lawful business, the right to enjoy one's property or the right to no interference by those who, with no public mandate and no lawful authority, choose to interfere with people going about their daily lives. It seems that the most overriding right is that of a small pressure group of self-righteous people to interfere with everyone else and that somehow overrides all other lawful activity and freedoms. I will address that in a little more detail when we get to the question of the United Nations conventions, which have been cited on numerous occasions but without any specificity as to what they are. They seem to be trotted out at every occasion but without explaining what they say and the limits of it.

By way of introduction, this bill was not created in haste. It stems from discussions as far back as 2012 when protests at James Price Point were underway and were effectively preventing the lawful activities of contractors at that site. It was suggested that somehow this was a great example of how protest activity achieved something, but the end of that project came from an analysis by the courts applying the applicable law at the time. It had nothing to do with the imported rent-a-crowds that found interest in the welfare of Broome at the time and then, immediately after the project came to an end, fled to some other place where they caused misery to the local inhabitants. But that is what was going on there, and that sort of behaviour is not acceptable to any government with responsibility for the rule of law. Not only does it affect the rights of others to go about their lawful business, but the methods that are employed are dangerous to the protester, potentially dangerous to the person conducting the lawful activity and dangerous to the police or the contractors employed to assist in the release of that protester from the equipment they have chosen to affix themselves to or to bar the lawful activity.

Debate interrupted, pursuant to standing orders.

[Continued on page 33.]

QUESTIONS WITHOUT NOTICE

PUBLIC SCHOOLS — FULL-TIME EQUIVALENT POSITIONS

1. Hon SUE ELLERY to the Minister for Education:

For the 2016 school year in all Western Australian public schools, what is the number of full-time equivalents for —

(a) teachers;

(b) education assistants;

(c) registrars;

(d) cleaners;

(e) gardeners; and

(f) any other non-teaching staff?

Hon PETER COLLIER replied:

I thank the member for some notice of this question.

The requested information cannot be provided in the time available. However, I will provide a response on Thursday, 18 February 2016.

MARGARET DODD — NO PAROLE LAWS — ATTORNEY GENERAL'S COMMENTS

2. Hon SUE ELLERY to the Attorney General:

I refer to the Attorney General's response to the calls by Mrs Margaret Dodd, mother of Hayley, to secure laws that ensure no parole for convicted murderers in cases when they do not reveal the location of the body, in which he is quoted as saying —

> It seems to me to be a beat up based on a lady's grief.

(1) Is the Attorney General familiar with the expression "discretion is the better part of valour"?

(2) Does he regret responding so insensitively to Mrs Dodd?

Hon MICHAEL MISCHIN replied:

(1)–(2) I welcome the question, because a lot has been said about this subject since the media conference the other day at which Mrs Dodd presented a petition to the Leader of the Opposition, the shadow Attorney General and a variety of other hangers-on. The comments I made were about the necessity for that particular change to the law. By way of outline, firstly, the sentence to which an offender is subject is imposed by a court, which has the discretion to declare a greater or lesser non-parole period, depending

on the circumstances of the case. One of the factors that the judge would take into account is whether the offender has cooperated with the authorities in order to alleviate the grief of the deceased's family and other secondary victims. That is one factor. Secondly, eligibility for parole is not a release on parole; it is simply an assessment at the appropriate time, to ensure that a person is not lost in the system, of their suitability for parole. That requires a report from the Prisoners Review Board, and one of the factors the board will take into account is whether there has been sufficient reform, contrition and the like, before it would recommend a release on parole under certain conditions. Thirdly, it is the responsibility of the Attorney General of the day to decide whether to accept that recommendation, if it were a recommendation for release, and whether to advise the Governor in Executive Council to allow for the release of that offender.

Hon Sue Ellery: Do you regret causing her further distress?

Hon MICHAEL MISCHIN: The point that I make—I will get to what I said, not the distortions about what I have said—is that I was pointing out that the law currently accommodates this brilliant reform that has been put forward, and current practice is such that no offender would be released on parole unless they cooperated with the authorities in that regard. I am certainly not aware, since our government took office in 2008, of any case in which a murderer has been released on parole without divulging all the necessary information to alleviate the distress of secondary victims. It has certainly not happened under my watch, and it never will.

Of course, if there is ever a Labor government, I can understand why the Leader of the Opposition might want to pass laws to that effect, because he plainly would not be able to trust a Labor Attorney General to make a sensible decision.

Hon Sue Ellery: Do you regret what you said about Mrs Dodd? Do you regret causing her further distress?

Hon MICHAEL MISCHIN: My recollection of what I said was that it was a beat-up by the opposition, if it is looked at in context, taking advantage of a bereaved mother's grief and anguish. I can assure members that that is entirely the spirit in which the comment was made. Frankly, I maintain that it is disgraceful that the opposition attempts to exploit these sorts of situations by proposing changes in the law that are not necessary, in order to find some kind of law and order policy.

It is interesting that the shadow Attorney General emerges from the shadows from time to time with things like this. If there is ever any doubt about my compassion towards victims, bear in mind that my career has been focused on prosecuting criminals and comforting victims, not the other way around—not persecuting victims and comforting criminals. I maintain that the context in which I made those remarks, to the extent that they have been quoted, is in accordance with that view. It has been exploited once again by the opposition for petty political gain, avoiding the real issue, which is that the policy is unnecessary. I challenge the opposition to name one case in Western Australia in which that has occurred.

HOUSING AUTHORITY TENANTS — INCOME ELIGIBILITY ASSESSMENT

3. Hon KATE DOUST to the Minister for Housing:

I refer to the proposed changes to the income eligibility assessment for Housing Authority tenants. Why does the minister think it is acceptable to include commonwealth allowances and benefits in a tenant's income assessment for the purpose of rent, when these same benefits are not seen as income by the Australian Taxation Office?

Hon COL HOLT replied:

I thank the member for the question. In 2009 the social housing task force suggested that 25 per cent of household income should be spent on rent, in a social housing context. We are moving towards that. Every person who comes into social housing now has that same expectation, and we are moving across the board to deliver the same sort of outcome to the people who live in social housing now. People who live outside social housing get the same allowances from the federal government, or the state government, and have to pay much more than 25 per cent of their income in rent. This is about taking a consistent approach across the public housing and social housing sector to meet the needs of the Housing Authority to deliver more housing into the sector, so that those people outside of the social housing sector get the help that we can provide to them.

Hon Sue Ellery: Will this reduce your waiting list? I look forward to that.

Hon COL HOLT: The government has already proposed a $560 million social housing investment package.

Hon Sue Ellery: What are your waitlists?

Hon COL HOLT: That is what it is about. It is about doing more so that we can help more people in need. The $560 million social housing investment package will halve the waiting list for families and seniors, so that they do not have the rent stress that others outside of the public housing waiting system have.

PORT HEDLAND DUST HEALTH RISK ASSESSMENT

4. Hon STEPHEN DAWSON to the Leader of the House representing the Minister for State Development:

I refer to the Port Hedland dust health risk assessment undertaken by the Department of Health.

(1) When was the report provided to the Department for State Development?

(2) Will the minister table a copy of the report?

(3) If no to (2), when can the Port Hedland community expect the report to be released publicly?

Hon PETER COLLIER replied:

I thank the member for some notice of this question.

(1) The Department of Health provided its report to the Department of State Development in December 2015.

(2) No.

(3) The Department of Health is responsible for the report.

PERTH MARKET AUTHORITY — ASSET SALES PROGRAM

5. Hon KEN TRAVERS to the minister representing the Treasurer:

I refer to the sale of the Perth Market Authority.

(1) What has been the total cost to date of the sale process?

(2) What is the estimated cost to complete the sale?

(3) Can the Treasurer please provide a breakdown of the costs referred to in parts (1) and (2)?

(4) How many staff are expected to transfer their employment to the new owners?

(5) How many staff will remain as public sector employees and what is the estimated cost of the liabilities associated with these staff?

(6) How many staff will receive redundancies and what is their estimated cost?

Hon HELEN MORTON replied:

I thank the member for some notice of the question.

(1) The total project spend as at the end of January 2016 is $1.805 million.

(2) The estimated cost to complete the sale is $4.935 million, including the $1.805 million it has cost to date.

(3) The breakdown of costs to date is $572 000 for employment, $235 000 for the lead financial adviser, $904 000 for consultancies and secondary advisers and $94 000 for other expenses. The breakdown of the estimated costs to complete the sale is $789 000 for employment, $1 485 000 for the lead financial adviser, $2 348 000 for consultancies and secondary advisers and $313 000 for other expenses.

(4) Following the signing of the sale contract on 12 February 2016, Perth Markets Ltd has five working days to make initial offers of employment to Perth Market Authority employees. The employees have 10 working days to consider this offer of employment. This does not preclude further offers of employment being made during the transition process up to the completion date of 31 March 2016. All employees have been provided with information and support to consider their employment options. As such, the Department of Treasury is unable to provide the number at this stage.

(5) Refer to the answer at (4).

(6) Refer to the answer at (4). To ensure business continuity it is unlikely that offers of voluntary severance will be made before the completion date of 31 March 2016.

ROE HIGHWAY STAGE 8 — ROAD RESERVE — KING JARRAH

6. Hon LYNN MacLAREN to the parliamentary secretary representing the Minister for Transport:

I refer to the king jarrah on the Roe 8 road reserve in Coolbellup that was felled by a contractor last month and the vertebrate fauna survey report by Phoenix Environmental Sciences prepared for South Metro Connect in February 2011.

(1) Is the felled jarrah one of the conservation significant trees listed in appendix 5 of the named report?

(2) If yes to (1), what is the waypoint number in the report for that tree?

(3) If no to (1), why not, given its size and the fact that it had hollows?

(4) If yes to (1), given the tree's conservation significance as defined in the report by its potential to provide habitat for Carnaby's and forest red-tailed black cockatoos, why was a fauna scientist not consulted prior to the felling of the tree?

(5) In what circumstances does Main Roads Western Australia usually consult a fauna scientist before destroying trees deemed to be conservation significant?

Hon JIM CHOWN replied:

I thank the member for some notice of the question.

(1) Yes.

(2) It is WP156.

(3) Not applicable.

(4) Appendix 5 of the report states that bees are present in the tree and that due to this it is marginal as a habitat for black cockatoos. Also, the Roe 8 project area is outside of the known breeding area for such cockatoos and, accordingly, a fauna scientist was not consulted.

(5) Main Roads Western Australia obtains relevant environmental approvals prior to clearing native vegetation. When required as a condition of the environmental approval, Main Roads would consult a fauna scientist prior to clearing the vegetation.

FIREARMS ACT 1973 — HANDGUN IMPORTATION

7. Hon RICK MAZZA to the Attorney General representing the Minister for Police:

I refer to a Smith and Wesson handgun posted in accordance with the Firearms Act 1973 to a licensed Western Australian dealer by a licensed Victorian importer. The handgun was reported to WA Police, commonwealth police and Australia Post as missing when it was not delivered to the dealer in August 2015.

(1) Can the minister please explain —

(a) on what grounds the firearm was seized from Australia Post by WA Police;

(b) why neither the importer nor the dealer was informed that it had been seized when it was seized;

(c) why the dealer was not informed that it had been seized when he reported it missing; and

(d) why it took five months for WA Police to inform the dealer that it had been seized?

(2) Can the minister advise how the dealer is being compensated for loss of earnings and the impact on his reputation as a reputable supplier?

(3) On 26 January 2016, WA Police advised the dealer by email that the firearm would be returned to the importer. As of yesterday, 15 February, the importer had not received it. Will the minister advise the current location of the firearm?

Hon MICHAEL MISCHIN replied:

On behalf of the Minister for Police, I thank the honourable member for some notice of the question.

(1) (a) The firearm was seized during an operation to identify illicit items arriving in the state through the mail system and it was mistakenly believed to have been illegally sent through the mail.

(b) Inquiries on this firearm were not completed in a timely manner or appropriately by the inquiry officer and a supervisor identified the oversight and made the necessary inquiries into the firearm.

(c) The firearm was seized during an operation with other illicit commodities and all were listed on a single report. Although the commodities were not related to the firearm or the parties involved in the firearm's movement, the person taking the report for the firearm mistakenly believed it was connected to other offences. This mistaken belief resulted in the non-release of information pertaining to the operation for security reasons.

(d) See the answer at (b).

(2) Should compensation be sought for loss of earnings, the loss would need to be quantified and then communicated to WA Police for its consideration. The purchaser of the firearm has been asked to quantify any costs that he has incurred so this can be properly assessed.

(3) The firearm is being processed for release and return to the original dealer. WA Police will ensure that the firearm is shipped in a secure manner this week.

YARLOOP BUSHFIRES — ALCOA WORKER TRANSPORT

8. Hon SALLY TALBOT to the minister representing the Minister for Mines and Petroleum:

I refer to reports that Alcoa workers were driven by bus from Pinjarra and Bunbury to Wagerup through the firegrounds of the Yarloop bushfires in January.

(1) Can the minister provide details of the escort arrangements used on both the inward and outward journeys between Pinjarra and Wagerup and between Bunbury and Wagerup?

(2) Who authorised these escort arrangements?

(3) Is the minister intending to conduct an inquiry into the circumstances surrounding these reports?

(4) If yes to (3), when will we know the outcome of the inquiry?

(5) If no to (3), why not?

Hon KEN BASTON replied:

I thank the honourable member for some notice of the question. On behalf of the Minister for Mines and Petroleum —

(1) The Department of Mines and Petroleum is carrying out preliminary investigations into these matters to establish jurisdiction and the sequence of events that transpired during the emergency. At this stage, it would appear that the issue raised by the honourable member relating to the journeys undertaken to and from the refinery does not fall under the jurisdiction of the Mines Safety and Inspection Act 1994.

(2) Management of the roads and access during the fire was under the control of emergency services and not the Department of Mines and Petroleum.

(3)–(5) Refer to the response to (1). An investigation is ongoing.

KALAMUNDA HOSPITAL — SURGERY

9. Hon ALANNA CLOHESY to the parliamentary secretary representing the Minister for Health:

I refer to the cancellation and delays of multiple patients' endoscopies and colonoscopies on 14 January 2016 at Kalamunda Hospital.

(1) How many patients in total on this date at Kalamunda Hospital either had their surgery cancelled and/or deferred to later that day?

(2) Can the minister confirm that these cancellations were caused by a rostered specialist being on approved leave and the hospital not being aware of the leave until the actual day?

(3) Were all the endoscopy and colonoscopy patients able to have their procedures undertaken by another specialist later that day?

(4) If no to (3), have all the remaining patients from that day now had their procedures undertaken?

Hon ALYSSA HAYDEN replied:

I thank the honourable member for some notice of the question.

(1) Seven patients.

(2) The issue arose because a specialist submitted his leave notification, but it was sent to Swan District Hospital and when Swan District Hospital closed, the notification, regrettably, was not passed on to Kalamunda Hospital. The specialist is a non-salaried visiting medical practitioner and is not required to have leave approved, only to notify relevant staff.

(3) No. Three colonoscopy procedures were conducted later that day, on 14 January 2016. A further three endoscopy procedures were done the following Monday, 18 January 2016, and one patient was referred to the patient's general practitioner as they were deemed unsuitable for Kalamunda Hospital.

(4) Yes; refer to the answer at (3).

PRACTICAL DRIVING TESTS — PRIVATISATION

10. Hon DARREN WEST to the parliamentary secretary representing the Minister for Transport:

I refer to the privatisation of practical driving tests for ancillary heavy rigid and heavy combination vehicles.

(1) How many contractors were testing drivers in the following financial years —

(a) 2013–14;

(b) 2014–15; and

(c) to date, 2015–16?

(2) How many tests did each contractor undertake in each of the financial years listed in (1)?

(3) Where were each of the contractors located?

(4) How many drivers were tested in each of (1)(a) to (c)?

Hon JIM CHOWN replied:

I thank the honourable member for some notice of the question.

It is not possible to provide the information requested in the time available and I ask the member to put it on notice.

BREARLEY AVENUE, REDCLIFFE — CLOSURE

11. Hon SAMANTHA ROWE to the parliamentary secretary representing the Minister for Transport:

I refer to the answer to question without notice 1298, within which it is noted that the minister considered the option of retaining access to Brearley Avenue, Redcliffe, between Great Eastern Highway and First Avenue.

(1) When was this option considered?

(2) When was it decided that access would not be retained?

(3) Why was it decided that the road would be closed in its entirety?

Hon JIM CHOWN replied:

I thank the honourable member for some notice of the question.

(1)–(3) This option was considered after concerns were raised by the member for Belmont, Glenys Godfrey, and local residents that the existing configuration of the intersection of Great Eastern Highway and Coolgardie Avenue could not safely accommodate the additional right-turning traffic that would be generated by the closure of Brearley Avenue. Main Roads Western Australia developed a new design for the intersection of Great Eastern Highway and Coolgardie Avenue, which included right-turning pockets and modified traffic signals. This upgrade will improve safety at the intersection by providing protected right-turn movements from the highway into Coolgardie Avenue and will be in place before Brearley Avenue is closed in December 2016. The minister has announced that the closure of Brearley Avenue will not occur until the upgrade of Coolgardie Avenue is complete. The closure of Brearley Avenue is part of longer term plans to improve regional traffic flow around the major Great Eastern Highway–Tonkin Highway interchange to address the traffic congestion generated by Perth Airport.

BURRUP PENINSULA — ALLEGED VANDALISM

12. Hon ROBIN CHAPPLE to the minister representing the Minister for Environment:

I refer to the photographic evidence of spray painting vandalism on the Burrup.

(1) When did the department become aware of this?

(2) Has the department visited the site; and, if so, on what date?

(3) Is any action being taken to track down and prosecute the vandals?

(4) Was the vandalism in the National Heritage-listed area, the Burrup non–industrial-land Indigenous land use agreement area or the national park?

(5) Was the department informed; and, if so, on what date?

Hon HELEN MORTON replied:

I thank the member for some notice of the question.

(1)–(2) A Department of Parks and Wildlife staff member became aware of the vandalism while on a routine patrol with Murujuga Aboriginal Corporation rangers at 11.00 am on Saturday, 23 January 2016. A further visit by Parks and Wildlife staff occurred on Wednesday, 27 January 2016.

(3) A formal investigation into the incident is underway, with enquiries continuing to identify offenders.

(4) There were two identified areas of vandalism, both of which fall within the National Heritage listed area: one within the boundary of the Murujuga National Park in an area known as Cowrie Cove and a second identified site vandalised at Hearson's Cove, which is vested under the tenure and management of the City of Karratha.

(5) See answers to (l) and (2).

The PRESIDENT: Hon Amber-Jade Sanderson, congratulations on the arrival of your son and welcome back.

PREMIER'S OFFICE — HALE HOUSE

13. Hon AMBER-JADE SANDERSON to the Leader of the House representing the Premier:

Thank you, Mr President.

I refer to functions held at the Premier's office and cabinet rooms.

(1) Have any functions been held at the office of the Premier and cabinet since 1 February 2016?

(2) If yes to (1), for each function —

(a) on what date was the function held;

(b) what was the nature of the function;

(c) who attended the function;

(d) what was the actual or estimated cost of the function;

(e) who has paid or will pay for the function; and

(f) are there any functions that the Premier will personally pay for; and, if so, which function or functions?

Hon PETER COLLIER replied:

I thank the honourable member for some notice of the question.

(1) Yes.

(2) (a)–(f) On Monday, 1 February 2016, the Premier's science roundtable was held. The roundtable brought together key individuals across the science sector to discuss how the state government can assist in delivering science outcomes. Attendees included stakeholders from each of the five priority areas in the science statement, including the deputy vice chancellors in research from Western Australian universities. The cost was $84 for coffee, tea and pastries, and was paid for by the office of the Premier.

On Friday, 5 February 2016, there was a meeting with the Premier's office staff and ministerial chiefs of staff, which was followed by refreshments. Costs were covered personally by the Premier's chief of staff.

On Monday, 15 February 2016, there was an informal event with government members of Parliament to mark the start of the 2016 parliamentary year, the costs of which were covered personally by the Premier.

BIGPIC360 PROMOTIONAL BUS

14. Hon MARTIN PRITCHARD to the Leader of the House representing the Premier:

I refer to the BigPic360 promotional bus.

(1) Since and including Friday, 16 October 2015, what has been the cost for —

(a) bus hire costs;

(b) driver costs;

(c) other staff costs;

(d) marketing campaign material;

(e) video trailer costs; and

(f) other associated costs?

(2) Since and including Friday, 16 October 2015, at which venues and on what dates has the bus been positioned for promotional purposes?

(3) What are the venues and dates for all future bus locations?

Hon PETER COLLIER replied:

I thank the honourable member for some notice of the question.

(1) (a)–(c) Nil.

(d) An amount of $4 054.45.

(e) Nil.

(f) An amount of $20 292.00 for a bus wrap and $7 810 for a bus interior wrap.

(2) On 17 and 18 October 2015, it was at the Perth Convention and Exhibition Centre for Telethon. On 11 December 2015 it was at Barrack Street jetty. On 3 to 9 January 2016 it was at the Hopman Cup at Perth Arena. On 12 January 2016, it was at the One Day International cricket at the Western Australian Cricket Association ground.

(3) Future venues and dates are not confirmed.

YARLOOP RESIDENTS — FINANCIAL ASSISTANCE

15. Hon ADELE FARINA to the Leader of the House representing the Premier:

I refer to a recent community meeting of Yarloop residents held in Harvey and advice by government representatives at the meeting that it will be some weeks before clean-up works at Yarloop can commence and between six to nine months to complete the clean-up works, and that until such time as the clean-up works are complete, power cannot be restored to Yarloop.

(1) In view of the fact that residents living at Yarloop have had to buy generators that cost an average $2 000 to $3 000 and that will incur ongoing and significant costs for fuel to power the generators for about nine months, and that many are struggling to meet this additional financial cost, what further funding assistance will the government immediately make available to Yarloop residents to meet these costs?

(2) Is funding assistance available from Western Power to assist Yarloop residents with these costs; and, if yes, how much funding is available and how do impacted residents access the funding assistance?

Hon PETER COLLIER replied:

I thank the honourable member for some notice of the question.

(1)–(2) Western Power reconnected the power to those houses and businesses that are intact. For houses that have been destroyed by the fire, there is a risk of asbestos and other contaminants and residents have been advised not to disturb the site. There is no specific allowance to address the cost of generators for those not connected to Western Power, but funds to be disseminated through the Lord Mayor's Distress Relief Fund and other sources can be used to meet such costs. The Department of Child Protection and Family Support can provide assistance with sourcing temporary accommodation for those assessed in need of such accommodation.

FIONA STANLEY HOSPITAL — SPECIALIST ANAESTHESIA POSITIONS

16. Hon SUE ELLERY to the parliamentary secretary representing the Minister for Health:

I refer to ABC media reports that the minister had signed off on four positions in the specialist anaesthesia area of Fiona Stanley Hospital to address the current shortage.

(1) Did the minister seek exemptions for these appointments from the Treasurer?

(2) If yes to (l) —

(a) on what date were the exemptions sought;

(b) on what date were the exemptions granted; and,

(c) did the minister apply to the Treasurer in writing for the exemptions?

(3) If yes to (2)(c), will the minister table the applications; and, if he will not table them, why not?

Hon ALYSSA HAYDEN replied:

I thank the honourable member for some notice of the question.

(1) Yes.

(2) (a)–(b) On 15 February 2016.

(c) Yes.

(3) No. The documentation contains information related to current budget deliberations.

ASYLUM SEEKER CHILDREN — EDUCATION

17. Hon LYNN MacLAREN to the Minister for Education:

I refer to the government's recent offer to accommodate asylum seekers currently awaiting deportation to Nauru.

(1) In light of the significant number of children amongst those waiting deportation, as well as those already on bridging visas in WA, will the government, as a matter of urgency, re-enter negotiations with the commonwealth to enable asylum seeker children access to public education as occurs in every other state?

(2) If no to (1), why not?

Hon PETER COLLIER replied:

I thank the honourable member for some notice of the question.

(1) The current agreement between the state and commonwealth governments is that Catholic Education of Western Australia provides educational programs to asylum seeker children in Western Australia.

(2) Not applicable.

DEPARTMENT OF HOUSING — MAINTENANCE CONTRACT — SPOTLESS

18. Hon KATE DOUST to the Minister for Housing:

I refer to the maintenance contract entered into by the Department of Housing and Spotless.

(1) What is the average turnover rate to fully complete maintenance jobs issued by the department since Spotless was issued the contract?

(2) Can the minister assure the Parliament that Spotless is quoting all maintenance jobs issued by the department at fair value?

Hon COL HOLT replied:

I thank the honourable member for some notice of the question.

(1) The average time to complete maintenance jobs is as follows: emergency, 11 hours; urgent, two days; priority, three days; vacant properties, 14 days; and routine maintenance, 24 days.

(2) Spotless won the competitive tender for maintenance works through the provision of a detailed schedule of rates. Spotless is also required to obtain between one to four written quotes from subcontractors based on the scope of works provided by the Housing Authority. Quotes provided by Spotless are reviewed by the relevant Housing Authority regional office to ensure value for money is achieved.

PUBLIC HOUSING — RENT CALCULATION

19. Hon STEPHEN DAWSON to the Minister for Housing:

I refer to the public housing rent calculation changes in 2016.

(1) What is the total number of public housing tenants and what is the estimated number of tenants that the calculation changes are expected to affect?

(2) What is the estimated revenue expected to be derived from the calculation changes?

(3) What modelling and investigation was undertaken, and by whom, to develop the calculation changes?

(4) Based on current calculations, how many tenants will have their rent increased by 25 per cent, 50 per cent, 75 per cent, and 100 per cent?

(5) Which specific Australian states treat the same list of allowances to be assessed by the state Housing Authority as assessable income?

Hon COL HOLT replied:

I thank the member for some notice of the question.

(1) Of the current 36 470 public housing tenancies, the rent calculation changes will affect approximately 28 000 tenancies currently receiving government-subsidised rental housing.

(2) Expected additional revenue is $58.8 million to 2018–19.

(3) The Housing Authority conducted internal modelling on the impact of the change on households and additional revenue expected to be received.

(4) Nil. Due to the public housing rent calculation change, the maximum increase in rent is $12 per week per household.

(5) It is widely accepted that 25 per cent of income is a fair and affordable threshold for public housing tenants' rent across Australia. Each state and territory adopts an independent approach to determining assessable income.

FREMANTLE PORTS — OUTER HARBOUR

20. Hon KEN TRAVERS to the minister representing the Treasurer:

I refer to an article in *The West Australian* on 13 February 2016 that said the Treasurer did not believe an outer harbour container facility would be required for 25 years.

(1) Did the Treasurer make this claim?

(2) If yes to (1) —

(a) on what basis did the Treasurer make this claim; and

(b) how many containers of twenty-foot equivalent units does the Treasurer expect will be passing through the inner harbour annually in 25 years' time?

(3) If no to (1), what did the Treasurer say?

Hon HELEN MORTON replied:

I thank the member for some notice of the question.

(1) Yes.

(2) (a) on the basis of advice from Treasury; and

(b) further announcements on the projected demand and capacity of the inner harbour will be made as part of the divestment process, following consideration by cabinet.

(3) Not applicable.

FOREST PRODUCTS COMMISSION — COLLIE OFFICE

21. Hon SALLY TALBOT to the minister representing the Minister for Forestry:

I refer to the Forest Products Commission regional office in Collie.

(1) How many employees were there in the Collie office —

(a) in 2013; and

(b) currently?

(2) How many of these positions in each of these years are —

(a) full time;

(b) part time; and

(c) seasonal?

(3) What is the job title of each position?

(4) How many of these positions have/had fire management as a primary responsibility —

(a) currently; and

(b) in 2013?

Hon KEN BASTON replied:

I thank the honourable member for some notice of the question. On behalf of the Minister for Forestry, I provide the following answer.

(1) (a) five; and

(b) three.

(2) In 2013 —

(a) four;

(b) one; and

(c) nil.

In 2016 —

(a) two;

(b) one; and

(c) nil.

(3) In 2013, the job titles are operations officer, senior conveyancing officer, administration assistant, operations officer and operations officer.

In 2016, the job titles are operations officer, senior forester and administration assistant.

(4) (a)–(b) Nil.

COMMERCIAL FISH TRAP LICENCES — CARNARVON

22. Hon RICK MAZZA to the Minister for Fisheries:

(1) Can the minister confirm whether there is a proposal to issue commercial fish trap licences in the Carnarvon region?

(2) If yes to (1), is the proposal subject to a period of public consultation; and, if not, why not?

(3) Has the minister made any commitment to issuing the licences?

Hon KEN BASTON replied:

I thank the honourable member for some notice of the question.

(1)–(2) In late 2015, commercial operators in the Gascoyne demersal scalefish managed fishery formally approached the Department of Fisheries with a proposal to trial the use of fish traps in the fishery. On 25 January 2016, the department released details of the proposed trial to Recfishwest and the Western Australian Fishing Industry Council as the peak bodies representing the recreational and commercial fishing sectors respectively for a 28-day consultation period as per agreed consultation protocols.

(3) The Gascoyne demersal scalefish managed fishery is an existing quota-based fishery and there is no proposal to issue any additional licences, increase catch levels or expand the area of the fishery. Consideration is currently being given to allow existing licence holders to trial the use of fish traps as an alternative to existing line fishing methods. A decision on the use of fish traps in the fishery will be made following the consideration of issues raised during the consultation period.

ROE HIGHWAY STAGE 8 — ENVIRONMENTAL APPROVALS — SUPREME COURT DECISION

23. Hon ROBIN CHAPPLE to the minister representing the Minister for Environment:

I refer to the Supreme Court decision that ruled environmental approvals for the Roe 8 project were invalid.

(1) How many other projects approved or under assessment by the same process are currently being evaluated by proponents or the department for compliance?

(2) Will the minister please table a list of all projects being reviewed?

(3) If no to (2), why not?

Hon HELEN MORTON replied:

I thank the member for some notice of the question.

(1) All existing environmental approvals remain valid unless found to be invalid by a court.

(2)–(3) Not applicable.

QUESTIONS ON NOTICE 3749 AND 3764

Papers Tabled

Papers relating to answers to questions on notice were tabled by **Hon Peter Collier (Leader of the House)** and **Hon Helen Morton (Minister for Mental Health)**.

PERTH MARKET AUTHORITY — SALES PROCESS ADVICE

Question without Notice 1464 — Supplementary Information

HON KEN BASTON (Mining and Pastoral — Minister for Fisheries) [5.09 pm]: As undertaken in my answer to Hon Martin Pritchard's question without notice 1464 asked on 3 December 2015, I hereby table the member's requested information.

[See paper 3767.]

STANDING COMMITTEE ON PUBLIC ADMINISTRATION — MEMBERSHIP CHANGE

Statement by President

THE PRESIDENT (Hon Barry House): I have a letter that I would like to read to the house. It states —

> Dear Mr President
>
> As you know, I was appointed some months ago to fill a vacancy on the Standing Committee on Public Administration.
>
> It is now my intention to resign from this committee.
>
> I would appreciate it if you would accept my resignation and put in place the necessary processes to appoint my replacement.
>
> Yours sincerely
>
> Sally Talbot

Motion

On motion without notice by **Hon Peter Collier (Leader of the House)**, resolved —

That Hon Amber-Jade Sanderson be appointed as a member of the Standing Committee on Public Administration.

CRIMINAL CODE AMENDMENT (PREVENTION OF LAWFUL ACTIVITY) BILL 2015

Second Reading

Resumed from an earlier stage of the sitting.

HON MICHAEL MISCHIN (North Metropolitan — Attorney General) [5.11 pm] — in reply: I have outlined some of the mischief that the Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015 is aimed at correcting. I should say that the bill does not outlaw free speech or peaceful protest either in its terms or by its implications. It fills a gap that has been identified in the law and that gap has come about because of the extreme methods used by protesters to effectively prevent lawful activities for an unreasonable length of time. The offence of preventing lawful activity is not new to this state. The offence appeared in section 82(3)(b) of the Police Act 1892, which provided that a person shall not, without lawful authority, prevent, obstruct or hinder any lawful activity which is being, or is about to be, carried on upon any premises.

That offence was repealed in 2004 as part of a considerable law reform exercise around the Police Act and simple offences that were contained within that act. Several preparatory offences such as loitering, evil designs and obstruction were also repealed in favour of a move-on order provision that now appears in section 27 of the Criminal Investigation Act 2006. The move-on order provision is an excellent tool for police to use in addressing unlawful protest action. A move-on order can be issued in many cases of low-level offending or suspected offending. It provides a mechanism that gives a person a fair opportunity to desist from their unlawful activities, without criminal sanction. However, if the person chooses to ignore the move-on order or continues to commit an offence, police will act to remove the person from the situation via arrest. The difficulty with move-on orders is that they are incapable of overcoming physical restraints such as thumb locks and other excessive devices. Move-on orders cannot be immediately enforced because the device to which the protester is attached prevents them from leaving. Considerable delays occur because these devices are designed in such a way that only mechanical or very specialist intervention can free a protester from the device. In the course of her motion to refer the bill to a committee Hon Lynn MacLaren made mention of mythical protesters. She herself was talking about one of those protesters, lauding this woman as a great hero for having locked herself in a car in a way that it could not be moved without causing her significant damage and harm. There is nothing mythical about it. To give an idea to the house of the sorts of items we are talking about and the sorts of activities that the bill is aimed at addressing, I table the following several photographs. This one shows a thumb lock or a thumb cuff. Its purpose is to lock onto machinery or another stationary object by locking a thumb in each side after wrapping one's arms around the object. The thumbs are inserted into holes and a ratchet mechanism inside tightens around the thumb. Once tightened, it is unable to be released without cutting open the device. There is nothing mythical about it, Hon Lynn MacLaren; this was used at James Price Point in 2012.

The DEPUTY PRESIDENT: Is the minister tabling that?

Hon MICHAEL MISCHIN: I will deal with them each in turn and then I will table them as a bundle, thank you. JPP 1 is the reference number on the back of this particular photograph. JPP 2 shows a thumb lock or thumb cuff, once again. Its use is to lock onto machinery or another stationary object by locking a thumb in each side after wrapping one's arms around the object.

Hon Darren West interjected.

The DEPUTY PRESIDENT: Order, members!

Hon MICHAEL MISCHIN: The thumbs are inserted into holes and a ratchet mechanism inside tightens around the thumb and once it is tightened, it is unable to be released without cutting open the device. Once again, it was used at James Price Point in 2012. JPP 3 shows what is known as a barrel lock.

Hon Helen Morton: Can I have a look, please?

Hon MICHAEL MISCHIN: The idea is to lock two people together in the one location. I would not mind so much if it helps get rid of some of the people concerned and concentrates them in one area. The trouble is getting them out of it. The police consider that they have a duty of care to these irresponsible characters. It consists of a barrel full of concrete and random steel objects with a steel tube running through the middle. Protesters place an arm in each side of the tube, locking themselves onto an object within the tube. Once again, it was used at James Price Point in 2012 to block a road and stop trucks getting to the site. In this case, the protesters were able to unlock themselves but they created the belief that they were unable to unlock themselves. Police worked for about eight hours trying to release the protesters before deciding on the following day to drag them off the road still attached to the device.

Hon Helen Morton interjected.

Hon MICHAEL MISCHIN: The protesters subsequently released themselves about 28 hours after —

Several members interjected.

The DEPUTY PRESIDENT: Order, members! I am sure the Attorney General does not need assistance from his colleagues by way of interjections in his reply to the second reading debate or from other members.

Hon MICHAEL MISCHIN: Thank you, Madam Deputy President. In this case protesters subsequently released themselves about 28 hours after the police had located the device, but they led the authorities to believe that they could not. JPP 4 shows a typical steel tube lock. It is used with barrel locks or on its own to lock people together in one location. It consists of a steel tube with an anchor point inside. Protesters lock onto it via a snap shackle or a thumb cuff inside. Once again it was used at James Price Point in 2012 to block roads. JPP 5 is a beauty; it is a suspension apparatus. Its purpose is to block entry into buildings and it consists of a mast and rigging. The rigging is connected to entry points to the building. If the entry points are accessed, the protester falls. What they hope to achieve, of course, is to get everyone else to be responsible for their safety. This was used in Broome in October 2012 to block entry to a building. Members will see that guy ropes run on either side of the building and are attached to doors that block anyone from entering and the rope is manned by protesters and one of them climbs up the pole. Of course, everyone else has to take responsibility for this.

Several members interjected

The DEPUTY PRESIDENT: Order, members! The Attorney General has the call.

Hon MICHAEL MISCHIN: Thank you, Madam Deputy President. Of course, police resources that could be better used on other matters are tied up helping someone get access to their own property. We hear much about the right to protest, but nothing about the right of people to enter and use their own property. Mowen Forest 1 is the next photo, which shows a thumb lock or cuff. Its purpose is to lock onto machinery or another stationary object, locking the thumb on each side after wrapping one's arms around the object. Again it works on a ratchet system. It was used at Mowen Forest in Margaret River on 3 March 2015 and it took seven hours to release the protester by dismantling the machinery involved. I table all of those.

[See paper 3768.]

The DEPUTY PRESIDENT: Order, members! The Attorney General has tabled those documents. I might take this opportunity to comment that if ministers are to use diagrams in future, it might be a good idea if they are not laminated because the lights reflect off the photos, so it is very hard to see them. Perhaps make the photos slightly larger because I had difficulty seeing what was shown in those photos.

Hon MICHAEL MISCHIN: Thank you, Madam Deputy President.

So much for the mythical protesters and the sorts of tactics they adopt. This cannot be dealt with under existing legislation. A move-on order is of no point or effect because the people concerned are immobilised within a particular device, so other avenues are unavailable.

The purpose of this legislation is to deal with and deter that type of protest, not lawful protest in other ways and not legitimate protest by legitimate means, but ones that may not only endanger the protester but also prevent lawful activity—not just hinder it. As I say, the current legislation is inadequate. In the absence of a possession offence, a protester can bring one of these devices to a site and implement an obstruction that prevents lawful activity without committing a substantive offence. I know that might achieve the support of the Greens and those who run with them, but that is not acceptable to the government and it creates the sort of problem that was encountered at those sites. The bill appropriately creates an offence that can apply in cases in which a person is prevented from carrying out their lawful activities. I stress the word "prevented"—not simply hinder or obstruct, as used to be the law, but prevent. It will not apply in cases of minor hindrance or obstruction. It will not apply in cases of lawful public assembly.

I turn now to the Lock the Gate Alliance and WAFarmers. Hon Darren West—it has been taken up by other speakers as well—raised the Lock the Gate Alliance and suggested that under this law, farmers will become criminals. Interestingly, he claims that he does not understand the legislation and it is baffling to him; but whenever other speakers comment on what the legislation will and will not do, he becomes an expert on the subject and contradicts them. Leaving that aside, under the law as it currently stands, and under the new law, it will be lawful for a farmer to lock their gate. It is a well-known and well-established concept that, generally, the state retains ownership of natural resources whether on private land or public land. Nothing about that will change. The Mining Act 1978 and the Petroleum and Geothermal Energy Resources Act 1967, among other legislation, provide compensation schemes for landowners who are affected by mining operations. The Lock the Gate Alliance is a grassroots organisation with goals allegedly associated with the protection of agricultural, environmental and cultural resources from what it deems to be inappropriate mining activity. One of the activities of the Lock the Gate Alliance is to encourage owners and leaseholders of pastoral and agricultural land

to erect a sign showing that they are part of the Lock the Gate Alliance and then lock the gate on their property as a sign of nonviolent defiance or resistance, as it were, to mining companies who may have rights to enter such properties under government-issued mining permits.

This bill proposes to amend the Criminal Code to insert two new offences. Under proposed section 68AA, it will be an offence for a person to physically prevent lawful activity with intent. Under proposed section 68AB, it will also be an offence to possess any thing with the intention of using it to prevent a lawful activity. Under the law as it currently stands, and under the new law when it is passed, it will be lawful for a farmer to lock their gate. A farmer who simply locks the gate of their farm will not breach either of the new proposed sections or commit an offence. Farmers have the right to secure their land as a security measure, or to prevent livestock from roaming. The relevant mining legislation already contains measures to deal with people who try to obstruct, hinder or interfere with mining operations on private land. Those measures can be applied without the necessity for this legislation. Therefore, why it is thought that the passage of this legislation will change the current situation in a radical way is a mystery to the government. For example, under section 30 of the Mining Act 1978, a permit may be issued for entry to private land to mark out a tenement or search for a mineral. Nothing about that will change; that is currently the situation. It is worth noting that the Mining Act specifically exempts private land of a certain kind from having a permit issued unless the owner consents. That includes land which is in bona fide and regular use as a yard, stockyard, garden, orchard, vineyard, plant nursery or plantation or is land under cultivation; or land which is the site of a cemetery or burial ground; or land which is the site of a dam, bore, well or spring; or land on which there is erected a substantial improvement; or land which is situated within 100 meters of any of the private land that has been referred to in the circumstances I have already mentioned; or land which is a separate parcel of land and has an area of 2 000 square metres or less.

Section 104 of the Mining Act provides power for a permit holder to enter and re-enter land, with such assistance as is necessary, and to do all such things as are reasonably necessary for the purposes of marking out the land or posting notices about the tenement. Under section 106 of the Mining Act, it is currently an offence to wilfully obstruct, hinder or interfere with any person lawfully engaged in marking out or surveying any land. The penalty for that offence is provided by section 154 of the Mining Act and is $20 000 and $2 000 for every day that the offence continues. That is the sort of legislation that can currently be used against the Lock the Gate Alliance. We do not need this legislation to do that, nor would we contemplate a time when this legislation would need to be used for that purpose.

Accordingly, if a farmer locks a gate, the exploration company would simply ask for the gate to be opened, or force entry to the land, and the exploration activity would not be prevented. Under sections 30 and 123 of the Mining Act, the exploration company would be liable to pay compensation for the damage caused by that entry. That compensation would generally be extremely minor compared with the compensation that the exploration company would be liable to pay the owner for any damage to the land, social disruption, loss of earnings et cetera, as provided for in section 123(4) of the Mining Act.

Proposed section 68AA of the bill will apply only if the gate is secured in a manner that causes more than a minor obstruction or hindrance and will actually prevent the exploration activity from occurring unless it is remedied. Not only would the gate need to be locked in circumstances that would effectively prevent a lawful activity from occurring, the action would need to be taken in circumstances that give rise to a suspicion that an intent to prevent that activity exists—not simply the fact that it prevents it, but that the intent that underlies it is to commit the offence under the act.

Preventing a lawful activity in these circumstances will generally not be possible without using tactics such as locking people to the contractor's machinery, or some other innovative method that risks injury or is of the type that this legislation is aimed at. This is because barriers that do not involve the physical actions of persons will generally be easily defeated by the exploration company and would not warrant police involvement. It will be a matter of compensation down the track in a civil manner rather than through criminal prosecution.

As I have mentioned, as the law currently stands, if a farmer causes a hindrance or interference with the lawful activity of entering private land under a mining permit, the farmer may be liable to a fine of $20 000 and $2 000 for every day that the offence continues. That will not change under the new provisions, and the Mining Act provisions would be more applicable to that kind of action. A farmer will risk offending only if he uses tactics similar to those described in the second reading speech of the bill, which I have just illustrated through the photographs that I have tabled, and effectively prevents the activity from occurring. The bill is focused on preventing those sorts of incidents from occurring and protecting the safety of the people involved. Both those who inflict these circumstances upon themselves, and those who are bound by duty to assist in the arrest and/or release of the person, will be affected, and hopefully protected, by this legislation.

During the debate, there was lot of discussion about the lack of clarity in the bill, in that it does not mention with any specificity the actual types of devices that the government is trying to address. Assertions have also been made that the bill will somehow outlaw free speech and the right to public assembly. That is not only misleading but unsubstantiated by the terms of the bill and any realistic application to which the bill can be put. As we have

seen, the devices that people can use to lock themselves onto themselves, or around machinery, or to prevent access, are so diverse that it is impractical to list them specifically in the bill. The bill also makes no mention of curtailing people's right to free speech or public assembly. It is, therefore, inconceivable how that interpretation could be arrived at. The bill applies specifically to situations in which a person prevents another person from carrying out a lawful activity—namely, one that they are entitled by law to carry out.

Currently, if there is an unlawful protest that behaviour is dealt with via the issuance of move-on orders under section 27 of the Criminal Investigation Act, and it does not need this bill. Move-on orders are generally considered a very good tool for the police to use in such circumstances and will remain the preferred method of dealing with these types of nonviolent direct action. However, a move-on notice is useless if people are unable to release themselves from a situation. It is also debateable whether a refusal to move on because of an incapacity caused by the person's own actions can be considered a "reasonable excuse" within the meaning of section 153 of the Criminal Investigation Act, which deals with the offence of failing to obey a move-on order. In light of this, the offence of "prevention of lawful activity" is intended to be used as an alternative to failing to obey a move-on order.

Mention has been made of draconian and extreme penalties that are out of kilter with what the public might expect and the like. Preventing a lawful activity carries the same standard penalty—namely, 12 months' imprisonment and/or a $12 000 fine—as does disobeying a move-on order. There is nothing extreme about it; it is the same penalty. It carries a higher penalty in circumstances of aggravation to reflect the seriousness and unacceptability of behaviour that results in injury and/or the endangerment of the safety of any person. That is where the higher penalty of two years' imprisonment is provided for, and the government will say that there is nothing unreasonable about that. I know that it may be counter to the Greens' idea of peaceful protest and that endangering other people ought not to be a problem if it is dressed up as some kind of protest or exercise of some right to free speech. The government differs on the subject. If a person endangers the safety of others or causes injury to others, a sanction is necessary.

During the debate, a number of views were read out, including those of the Western Australian Farmers Federation. I have to say that Hon Paul Brown is correct; the Western Australian Farmers Federation has changed its position on the bill, having listened to what the bill is about rather than accepting the mantras that have been propagated through standard-form emails and the like and the fearmongering from certain interest groups that of course defend the very same protesters who are putting themselves in harm's way and preventing the lawful activity that the government is proposing to deal with. It is understandable that these groups are now concerned that this particular loophole is being plugged and they do not like it. Of course, they try to wheel in absurd arguments that somehow this is aimed at freedom of speech, freedom of protest and the like in order to bolster their case. WAFarmers has changed its mind about it.

Hon Kate Doust: Where have they said that, Attorney General?

Hon MICHAEL MISCHIN: WAFarmers has written to the member for South West, I think.

Hon Kate Doust: It's not out there in the public arena, is it?

Hon MICHAEL MISCHIN: Does it have to be? I take it that Hon Kate Doust thinks that the only worthwhile opinion that can be offered is one that is splashed in a standard-form email or in the newspaper rather than rational argument and submissions.

Several members interjected.

The DEPUTY PRESIDENT: Order, members! You are making it impossible for Hansard to record the proceedings of Parliament. The Attorney General has the call.

Hon MICHAEL MISCHIN: In any event, one of the suggestions floated was that a farmer holding up a banner could be captured under this legislation, as the banner could somehow be used to prevent lawful activity. That demonstrates either a serious misunderstanding of the legislation or deliberate misinformation regarding it. It is clear that a banner displaying issue-motivated slogans will not meet the test of an object possessed for the purpose of preventing a lawful activity. For an article to meet that test, to satisfy that criteria, a court would have to be satisfied, firstly, that the person made, adapted or knowingly possessed the thing in question; and, secondly, that the person was found in circumstances that gave rise to a reasonable suspicion that the person intended to use the thing to prevent a lawful activity or to trespass—and I stress the use of the word "prevent". Inherent within the second limb is that the thing in question must be of such a nature as to be reasonably capable of being used for the purpose that the police allege was the purpose. Clearly, banners with slogans cannot be used to physically prevent lawful activity, and in the unlikely event that someone is charged it is a defence for the person to establish that the particular thing was in fact possessed for a contrary purpose. That purpose, in most cases, is to exercise their right to free expression or speech and would not offend against this legislation.

The types of things that might be capable of preventing lawful activity are the things that I mentioned in the second reading speech and the things that are illustrated in the photographs that have been tabled, such as

specially designed thumb locks, thumb cuffs, arm locks and large barrels containing concrete and anchor points that can be used to successfully lock people to moving equipment or to erect a physical barrier. As I have indicated, the scope of things that could be adapted for that purpose is so broad as to make it impractical to list them in the legislation.

It should also be noted that the concept of things being possessed for a purpose is nothing remarkable. Just about all the speakers on the other side of the chamber have been baffled by the use of the word "thing" as part of a criminal offence. It is commonplace to use it in Western Australian law for various purposes. Of course, it has to be read in its context.

Hon Darren West interjected.

Hon MICHAEL MISCHIN: Hon Darren West plainly has no mastery of basic language.

Several members interjected.

The DEPUTY PRESIDENT: Order, members! The Attorney General has the call.

Hon MICHAEL MISCHIN: If he cannot contemplate the idea of understanding words in their context, he has some serious problems with his day-to-day life. For example, section 8 of the Weapons Act 1999 contains an offence of possessing articles carried or possessed as weapons. Hon Darren West will ask, "What is an article?" and he will flap his arms around and say, "It's so vague. An article—is that something in a magazine or is that a thing?" Look at the context in which the word is used. The provision makes it an offence to carry or possess an article, not being a firearm, a prohibited weapon or a controlled weapon, with the intention of using it, whether or not for defence, to injure or disable any person or to cause any person to fear that someone will be injured or disabled by that use. That is one word that, in its context, is quite plain, just like the word "thing". I do not intend to get into sterile debates about taking words out of their context and asking for them to be defined. A thing is a thing and its prescription in certain circumstances depends on the context in which it is used.

Section 8(2) provides a similar presumption, incidentally, to that in proposed sections 68AA and 68AB. There is nothing remarkable about that. If Hon Darren West and others were to look at legislation that has been in place and is very easily and well understood, they might get some guidance on the application of this legislation, instead of fantasising and having night sweats about what might happen, because they have trouble understanding the English language. As I mentioned, a class is being proposed on statutory interpretation and I urge them to go along to that.

Chapter LVIIA of the Criminal Code also has a number of similar offences for which the possession of any thing with intention is outlawed. Hon Darren West has some urgent parliamentary business, but he might want to look up section 557E of the Criminal Code; possessing a thing to assist in unlawful entry to a place is an offence and has been for a very long time. In section 557F, "Possessing thing to assist unlawful use of conveyance", a common word is used in a context, just as it is in this legislation. No-one seems to have trouble with section 557G, "Possessing thing for applying graffiti". Section 557H deals with possessing a disguise. The presumption for these offences is contained in section 557A, and it is those offences that proposed section 68AB is modelled upon. It is a question of using the word in its context. If there is any doubt about it, it would not have found a prosecution, because a court would not be able to be satisfied beyond reasonable doubt, which is one of its requirements, that it is being used for that particular purpose or that it falls within the scope of the legislation.

Turning now to the onus of proof, I think Hon Kate Doust referred to an email from one of her constituents, which is reflective of much of the misinformation that has been put about to fearmonger on this legislation; namely, the legislation will reverse the onus of proof and accused people will have to prove they are innocent rather than prosecutors having to prove they have a case, which of course is a nonsense in terms of the legislation itself. Similar sentiments have been expressed by other members since that remark and have been reflected in myriad standard-form emails that have been sent to me expressing concerns about this. But rather than seeking instruction, they have said it as a proposition. These people are beyond persuasion.

The suggestion that under proposed sections 68AA or 68AB a person is guilty unless proven innocent is not only simplistic but also misleading. Both sections will require that the prosecution prove its case beyond reasonable doubt. That does not change.

In the case of proposed sections 68AA and 68AB, for a court to decide that there is a presumption of an intent to physically prevent or an intent to use a thing for the purposes of physically preventing an activity, the prosecution will have the burden of proving beyond reasonable doubt that circumstances existed that gave rise to a reasonable suspicion that the person had that intent. That is not uncommon in a number of provisions in our criminal law. If these circumstances are not proved, the presumption does not arise and therefore the accused does not have to prove a contrary intent. The reverse onus in these sections is framed in a way that requires the prosecution to prove its case. It is not the same as without lawful excuse. Contrary to Hon Sue Ellery's comments, which appeared on 19 March last year during Hon Simon O'Brien's contribution, a presumption of intent based on circumstances that give rise to a suspicion is a less burdensome way to reverse the onus than

providing that a person must have a lawful excuse. This is because without-lawful-excuse provisions do not require the prosecution to prove intent in any particular way or in any particular form.

In the case of without lawful excuse, a person is deemed to have committed an offence by actions alone and then must prove they had a lawful case. An example that was raised during debate is the offence of trespass. Section 70A of the Criminal Code states, in part —

> ***trespass*** on a place, means —
>
> (a) to enter or be in the place without the consent or licence of the owner, occupier or person having control or management of the place; or
>
> (b) to remain in the place after being requested by a person in authority to leave the place; or
>
> (c) to remain in a part of the place after being requested by a person in authority to leave that part of the place.

If they do any of those things, they are deemed, under section 70A, to have committed the offence of trespass unless they are able to prove they had a lawful excuse.

The DEPUTY PRESIDENT: Order, members! There are too many audible private conversations taking place, making it very difficult to hear the Attorney General.

Hon MICHAEL MISCHIN: Hon Sally Talbot made some comment that this is the sort of terrible draconian legislation one would expect from a Liberal–National government. I point out that Hon Jim McGinty introduced section 70A when he was Attorney General. I think that he was from the Labor Party at that time and in government! This so-called politically motivated drafting is one that is well accepted and used in appropriately measured circumstances by responsible governments.

The government agrees this type of onus would have the potential to be unfairly applied in the case of proposed offences in sections 68AA and 68AB. Accordingly, it has chosen to apply an element of intent to these provisions and, as previously mentioned, the circumstances that give rise to such an intent have to be proved by the prosecution, unlike the trespass provision, which could be used in appropriate circumstances quite independently of what is proposed in this bill and is there for use if the police so thought fit. But to the extent that that is supposed to be an infringement of rights of protest, it is there now and has been for quite some time. The authorities do not use it inappropriately.

The circumstances that give rise to a suspicion of intended purpose are not everyday circumstances in which a person may possess a thing, contrary to many of the propositions that have been put by speakers on the other side of the house. There are unusual or suspicious and specific circumstances. There are circumstances in which a person is in the act of constructing a physical barrier or trespassing with the thing in question. They would have to be circumstances in which the person is in possession of a thing and the design of the thing can only have one explicable use. There are circumstances in which a person in possession of a thing has no other explanation that could be reasonably adduced. That is not just carrying a rope in the back of a car—seriously!—or a bike lock, for heaven's sake. If, on the other hand, a person is found with some thumb locks heading off to James Price Point, a sensible inference could be drawn that they will be used for a particular purpose. Yes, it is quite legitimate for someone to explain the legitimate purpose of having a barrel lock made of concrete with chains cemented around it, including one inside it, with anchor points. There would have to be circumstances in which the police have intelligence and evidence that a person is manufacturing things specifically for an unlawful purpose.

The presumption of intent, incidentally, is not a new thing in Western Australian law. Section 8 of the Weapons Act 1999 contains a very similar reversal, and section 557A of the Criminal Code is a general provision that applies to various possession offences in which the possession of a thing is outlawed on the basis of its intended purpose. Again, the use of a simple word in a particular context.

Hon Darren West interjected.

Hon MICHAEL MISCHIN: Hon Darren West again says, "Why not say that?" It does say that! Have a look at it and compare the two provisions, Hon Darren West, instead of sitting there and saying, "I do not understand; it's all confusing"!

Section 557 is accompanying offences such as possessing things to assist unlawful entry, possessing things for applying graffiti and possessing things to assist unlawful use of conveyances. They were inserted into the Criminal Code in 2004 by section 33 of the Criminal Law Amendment (Simple Offences) Act 2004 and were consistent with recommendations in the Law Reform Commission's report on Police Act offences, which was project 85 of the Law Reform Commission of Western Australia. As I recall, there was a Labor government in 2004. I did not hear too many protests about that being passed and the reversal of the onus of proof and presumptions as to intent, although it can no doubt be pointed out to me by those members who were around at the time whether they took a stand as a matter of principle against these matters.

As mentioned earlier, the trespass provision that appears in section 70A of the Criminal Code comprehensively reverses the onus of proof and turns it onto the accused. That was brought in by the same act. The provisions in this bill have been modelled on sections 557A and 70A of the Criminal Code.

Constitutional issues were raised in some vague fashion. Hon Lynn MacLaren raised the International Covenant on Civil and Political Rights. No-one actually seems to want to read these other than the headings, but article 19 states —

> 1. Everyone shall have the right to hold opinions without interference.

Nothing in this bill, by its terms or implications, suggests otherwise. It is related to physical actions; not people's opinions. It goes on —

> 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Nothing in this bill restricts the use of art, writing, signs or speech. Continuing —

> 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities.

This is the United Nations covenant —

> It may therefore be subject to certain restrictions, but these shall only be such as are provided by law —

That is what this will be —

> and are necessary: —

It might be worth listening to this bit —

> (a) For respect of the rights or reputations of others;

Even the United Nations, in expounding freedom of speech and expression, takes into account the rights of others, something that is a foreign consideration to some on the other side of this chamber. Article 19 continues —

> (b) For the protection of national security or of public order … or of public health or morals.

The blocking of access by means that prevent lawful activity is specifically catered for by the United Nations' conventions. It recognises that there are legitimate reasons for doing so in legitimate circumstances by law, and to preserve others' rights.

Article 21 states —

> The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order … the protection of public health or morals or the protection of the rights and freedoms of others.

When talking about freedom of assembly, we never hear from the Greens about the protection of the rights and freedoms of others because their constituency—their interest group—thrives on interfering with the rights of others; hence their passion for trying to preserve that and elevate it over every other consideration. The bill does not criminalise free speech or peaceful public assembly. The bill deals with physical prevention with intent. It will not apply to situations when the mere presence of a public assembly hinders or dissuades an activity, but when it prevents it. It will not apply when a person is inconvenienced or delayed by having to take a different route to get to their place of business. It will not apply when protestors' or groups' anti-activity message successfully deters the public from frequenting a business or buying a particular product, or engaging in a particular activity. Both articles 19 and 21 acknowledge that restrictions may be imposed that are necessary in a democratic society in the interests of national security, public safety, public order, the protection of public health or morals—morals, of course, can be pretty broad, different and more extreme in many United Nations countries, compared with ours—or the protections of the rights and freedoms of others. The bill creates offences that specifically seek to address public order and safety and, above all, protect the rights of other people not to be prevented from going about their lawful business. This clearly does not offend the article.

As to the McCloy and Ors v New South Wales case and the suggestion that the Standing Committee on Legislation might somehow draw inspiration from it, that case had to do with the question of whether it was legitimate to restrict political donations. The High Court found that it was. It could be said, for example, as it was in that case, that property developers in New South Wales were not able to make donations to political parties. I thought that would be something that the Greens would be applauding; nevertheless, they seem to think that that is somehow relevant to a bill that prevents lawful activity.

Hon Lynn MacLaren interjected.

Hon MICHAEL MISCHIN: The Human Rights Law Centre? Perhaps the member needs to go and look at these things rather than accept the mantras of the Human Rights Law Centre.

Hon Lynn MacLaren: You might wish to reply to some of their correspondence instead of completely ignoring them.

Hon MICHAEL MISCHIN: That particular case has absolutely nothing to do with either the purpose or operation of this legislation. I invited an interjection from Hon Lynn MacLaren to explain its relevance, and she could not do so.

Hon Lynn MacLaren: I will do so now, Madam Deputy President.

Hon MICHAEL MISCHIN: She has the opportunity sometime in the future to do it, if she wants to, but, frankly, it is now my turn.

The DEPUTY PRESIDENT: Order, members! Hon Lynn MacLaren sought the call. Are you still seeking the call?

Hon Lynn MacLaren: I thought I was being invited to interject by the Attorney General, but it appears that he was just reflecting on the past.

The DEPUTY PRESIDENT: The member does not need to stand in her place in order to interject, and it would be preferable if members did not interject so that we could get through this more quickly. Attorney General, if you could direct your comments through the Chair, and not invite interjections, that would be appreciated.

Hon MICHAEL MISCHIN: Thank you, Madam Deputy President. I had not invited interjections; I was simply referring back, but I take your point and I shall do that.

Hon Sally Talbot raised issues about pursuing costs, saying that it was somehow anathema to our legal system and the like. She suggested it was very unusual to do this, and it was not the way our justice system has ever worked. That was back on 12 March 2015, and it reflects her level of research on the subject. The basis for charging costs following the effective prevention of lawful activity is that it is often necessary to engage especially skilled officers or contractors to extract protesters from a device in a way that will not do harm to them, or as much as possible not do harm to them. It may also be necessary to engage the use of heavy lifting equipment such as cranes or earthmoving equipment to remove a barrier. Furthermore, it often takes many hours to effect a release, particularly in those incidents that involve people who have been locked onto items. In some cases, it is in excess of six or seven hours. In regional areas it represents a significant drain on local resources, and while officers are dealing with these matters, police services to the rest of the community are reduced. It is the government's position that it is not proper that the taxpayer foot the bill to remove people from protest devices. It is also the government's position that self-inflicted activities that significantly drain police resources for extended periods should be discouraged.

In the south west region between 8 December 2014 and 10 March 2015, local police have dealt with seven significant protest events involving lock–on type devices. On average, 35 policing hours were needed to resolve each event. In most cases, upwards of four officers were involved, with each officer spending around four or five hours at the scene. Accordingly, the bill puts in place measures that will enable a court to order costs when the court deems it appropriate. The court can order costs associated only with the removal of the physical barrier. Opportunity costs of those whose activity has been prevented cannot be obtained via this legislation.

The concept of charging for this type of police intervention is not without precedent. Examples of such provisions that provide a court with the ability to order costs include section 75B(5) of the Criminal Code, dealing with organising an out-of-control gathering, under which a court can order the payment of reasonable expenses of or incidental to any action that was reasonably taken by police officers in responding to the out-of-control gathering—the sort of riotous parties that the police have to intervene in in some suburbs in order to preserve their peace and order. I have not heard the argument raised that it is somehow freedom of expression to hold a riotous party. That is a novel one, but certainly the idea of claiming the costs of any investigation and dealing with that sort of menace is not unknown, and seems entirely reasonable. Section 171(4) deals with creating a false belief. A court can order the payment of reasonable expenses of or incidental to any action that was reasonably taken as a result of that offence. That is when someone, say, claims that there is an emergency situation, such as a boat sinking or something like that, and police and other rescue resources are occupied on a wild-goose chase. That, again, is not unreasonable, and not unknown to the law.

The DEPUTY PRESIDENT: Order, members! Again, the private conversations are becoming a little too audible and are creating problems with the recording by Hansard.

Hon MICHAEL MISCHIN: Section 338C(4) deals with creating a false apprehension as to the existence of threats or danger—for example, bomb hoaxes. A court can order the offender to pay any amount of wages

attributed to or expenses reasonably incurred with respect to any investigation, inquiry or search made in response to the perceived threats. Again, that is not unreasonable, and a provision that is not unknown to the criminal law. There is nothing unique about this provision, although it may surprise some of the speakers on the other side of the house.

I turn now to the definitions of "physical barriers" and "prevention". Several members have raised the issue of what is meant by a physical barrier. It is not defined in the bill or in any other relevant legislation, and therefore it takes its everyday meaning. The *Macquarie Dictionary*, third edition, defines "physical" as "relating to the body; bodily: *physical exercise*". The secondary definition is "of or relating to material nature; material …other than those that are chemical or peculiar to living matter; relating to physics". The same dictionary defines a barrier to include, firstly, "anything built or serving to bar passage, as a stockade or fortress, or a railing"; secondly, "any natural bar or obstacle"; and, thirdly, "anything that restrains or obstructs progress, access, etc." In a legal sense, the terms can be defined in the context that is used within the legislation in which it appears. In the case of the bill, the barriers we are talking about are those that prevent lawful activity, not simply hinder it. I have already touched on what "prevention" means in the context of this bill. It means an effective prevention of a lawful activity for an unreasonable length of time, and it is more than a mere hindrance or obstruction. Accordingly, in the context of the bill, a barrier is anything that effectively prevents a lawful activity from occurring. While a slogan, or some issue-motivated group message may dissuade a person from conducting an activity, it is certainly not a physical barrier, and not a prevention in its own right. A physical barrier is something that is material, can be touched and physically prevents an activity.

A number of other issues were raised of a more peripheral nature, but those seem to be the substantial ones. The idea that has been floated that somehow certain groups in society are affected by this legislation in some unreasonable fashion is just a nonsense. To take, for example, the Lock the Gate Alliance movement that Hon Darren West seems to be obsessed with, there are currently laws in place that allow union officers to go onto private land, including farms, to inspect employment records and to see whether the law is being complied with. I take it that Hon Darren West thinks that farmers should be entitled to lock the gate against them, or does he not? Is he selective about his social purposes? If it protests against something that this government put forward, is that okay?

Sitting suspended from 6.00 to 7.30 pm

HON MICHAEL MISCHIN: I think I was just dealing with the question of incorporeal substances being somehow a physical barrier, and dismissing that particular worry on the part of those who are opponents of the bill. On that note I conclude my response to the second reading debate and commend the bill to the house.

Question put and a division taken with the following result —

Ayes (20)

Hon Martin Aldridge	Hon Brian Ellis	Hon Alyssa Hayden	Hon Robyn McSweeney
Hon Liz Behjat	Hon Donna Faragher	Hon Col Holt	Hon Michael Mischin
Hon Paul Brown	Hon Nick Goiran	Hon Peter Katsambanis	Hon Helen Morton
Hon Jim Chown	Hon Dave Grills	Hon Mark Lewis	Hon Simon O'Brien
Hon Peter Collier	Hon Nigel Hallett	Hon Rick Mazza	Hon Phil Edman *(Teller)*

Noes (11)

Hon Robin Chapple	Hon Kate Doust	Hon Lynn MacLaren	Hon Darren West
Hon Alanna Clohesy	Hon Sue Ellery	Hon Martin Pritchard	Hon Samantha Rowe *(Teller)*
Hon Stephen Dawson	Hon Adele Farina	Hon Sally Talbot	

Pairs

Hon Ken Baston	Hon Amber-Jade Sanderson
Hon Jacqui Boydell	Hon Ken Travers

Question thus passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Simon O'Brien) in the chair; Hon Michael Mischin (Attorney General) in charge of the bill.

Clause 1: Short title —

Hon ADELE FARINA: During consideration of the second reading speech and the policy of the bill, which we have now settled, it was stated by the Attorney General that the purpose of this bill is to deal with innovative methods that have been used to hinder police attempts to remove protesters. My question to the Attorney General is: where in the bill does it actually refer to "innovative methods"?

Hon MICHAEL MISCHIN: It does not, in specific terms. The scope of the Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015 is broad enough to accommodate any changes in behaviour and the innovative methods that might be exploited by the imaginations of those who are causing the mischief at which the bill is aimed.

Hon ADELE FARINA: The purpose of the bill is to actually bring about the implementation of the policy of the bill. If the policy of the bill refers to innovative methods and the government chose to use that terminology—because it could have used any terminology it wanted, including "thing", but it chose to express the policy of the bill in terms of "innovative methods"—members would think that if it was directed to a particular type of protest using innovative methods, that the clauses of the bill would somehow reflect that was the policy of the bill. Clearly they do not. It is fine for the Attorney General to say that the terminology in the bill is broad enough to incorporate innovative methods, but we know that the law needs to be clear to the person who is picking up the law and reading it, and that people need to know what they will fall foul of if they undertake certain activities. It is clear with this very broad definition that is provided under the bill and the lack of definition of "thing", that as a result there is a lack of clarity when there could have been much greater clarity by simply using the terminology, "innovative methods", which we used in the second reading debate. If the Attorney General is able to use it in the second reading speech to articulate the policy of the bill, it is lost on me why the Attorney General feels that the use of those words would be too restrictive in the body of the bill.

Hon KATE DOUST: It has been quite interesting that the Attorney General has provided his response tonight and really honed in on those two significant protests that he has referred to that occurred in 2012 and 2015. When I had my briefing more than 12 months ago, they were the two that the police referred to as well. It seems that out of anything else that could possibly have happened, those issues have really been the only things that the government has focused on for the reason that we have this legislation in front of us, because the government has not articulated any other opportunities or examples that have occurred or might occur in the future. I can think of a number of things that might happen in the future that this legislation will impact on in a very negative way by dissuading people from taking any action at all. One of my concerns is that when the government puts in such significant penalties—the minister may not think they are significant—Joe Bloggs out in the street who has a concern about an issue might think that being fined $12 000 or $24 000 or spending a period in jail is indeed a significant issue and may decide not to raise their voice at all. Today we saw in the media this letter that has been put out from the United Nations expressing its concerns; it is simply adding to the voices. I do not know whether the Attorney General made any response or any reference at all to the commentary made today by the UN about the issue of penalties outlined in this bill. The UN explains how the construction of the legislation is too broad and that its powers are disproportionate to the actual activity that is occurring. The UN has provided quite a level of detail in its correspondence to the government about its concerns about this bill. I do not know whether the Attorney General has actually seen the correspondence from the UN about this legislation. If he has not seen it, I am sure somebody would be able to provide him with a copy. In the first instance, I would appreciate a response by the Attorney General about the UN's commentary, because I think the UN has given it due consideration.

Given the number of activities that have happened over the last 12 to 18 months there seems to be a growing number of people around the world speaking up on a range of issues and sometimes things have gone beyond being a peaceful approach to an issue. I was fortunate enough to be away on private leave overseas a couple of weeks ago. I think sometimes when we make it difficult for people to apply their voice by removing the peaceful option to protest , they say, "We won't worry about that; we will just take the more hardline approach", and that could lead to immediate damage being caused or an immediate threat, if you like. That is one of my concerns about where this legislation may lead some people. As I was saying, I was away on leave and we were in Paris, which was very lovely. We all know that the French are very skilled at protesting; they have got it down to a fine art. When I was in Paris, the taxidrivers decided to protest against Uber. There were a number of similar protests in various cities around the world. They planned their protest to coincide with the start of a large international conference in Paris. They knew the dates it was on and had planned it. They staged a blockade around the ring-roads of Paris and blockaded the airport. They stretched cars across the roads and set tyres on fire. There was no negotiation. It was not calm and quiet; they just ramped it right up. Tyres were set on fire, cars were stopped and damaged, and drivers were pulled out and beaten up. This went on for four days. The farmers joined them by day two. The farmers had turned their trucks over and set fire to the product on the truck. They were being interviewed and were all happy to be a part of the process. I am sure some of you saw it on TV. I must say that it was a highly visual and violent protest in the end. It lasted for four or five days. The French government took a

very interesting approach. Aside from having the police out, trying to make their way to where the taxidrivers were and give people access to the airport, which was blocked off, there was not a lot of public commentary; it was like the government was just letting them go. It knew that this was going to happen. It had happened about 12 months before. I use that example because that is quite an extreme one. The type of activity and the violence that flowed from it jumped from zero to full bore and they were not going to budge. They were entrenched. From memory, something like 1.2 million taxidrivers were off the roads throughout France during that four to five days participating in that protest. We are not talking about a small protest at all.

I am worried about the types of changes that are being proposed in this legislation. In some circumstances, people are not going to budge and will stand firm. I think of Roe 8, Mangles Bay Marina and other issues that people are passionate about. If they think there is a steep penalty or an imprisonment term, why would they just hold tight and decide to go from being peaceful to taking other options? It is very timely that the UN has commented today about the potential impacts of this legislation and the penalties and powers that will be applied. I am interested in knowing in this instance, what the minister's response is to the UN's concerns about this legislation.

The DEPUTY CHAIR (Hon Simon O'Brien): Order! At this early stage of the debate on clause 1, because I fear it is only an early stage, I want to remind members about the scope of clause 1 debate by reference to the Legislative Council procedural notes, which we all have a copy of.

On 16 October 1996 Hon Barry House, when he was Chairman of Committees said, in part, the following, and this is highlighted in bold in the notes we all have. He said —

> ***The short title debate does no more than give members the opportunity to range over the clauses of the Bill, foreshadow amendments and indicate, consistent with the policy of the Bill, how its formal content may be improved. It is not a vehicle for continuing debate on policy; rather, if members do not wish the Bill to proceed, the action they should follow is to vote to defeat clause 1 of the Bill as it stands.***

The notes then go on to state —

> There is an obvious ongoing tension between permitting a wide-ranging discussion of the practical issues arising from the clauses of a Bill and the risk of policy being debated in effectively a repetition of the second reading debate. On 29 May 2008 during the consideration of the Short Title in the *Children and Community Services Amendment (Reporting Sexual Abuse of Children) Bill 2007,* then Chairman of Committees, Hon George Cash, stated:
>
> > *Members, we are dealing with clause 1, Short title. Hon Barbara Scott recognised the comments that I made, and I appreciate that. The term 'sexual abuse' comes up in clause 5. Given that it deals specifically with sexual abuse, that is the time for members to talk about other elements relating to sexual abuse if they think the definition should be wider or narrower. The reason I am raising this now is that this is a relatively focused bill and for some recent time members have been using the short title of bills to stand and respond to the Minister's second reading response. As Hon Kate Doust just indicated by the frown that she gave me, that is not on. I want things to be handled in a proper manner.*

I was quoting from the Legislative Council procedural notes the wise words of the then Chairman of Committees and our much beloved and respected former colleague Hon George Cash. To remove any ambiguity from the record, what I have just quoted relates to Hon Kate Doust frowning at him, not at me, because I am sure that would not happen! The conclusion drawn in these notes states —

> A Member of the Legislative Council speaking to Clause 1 of a Bill may make points that are pertinent to various other clauses of a Bill so long as the remarks do not effectively amount to a Second Reading debate speech.

There are some other helpful comments in the procedural notes that members may like to avail themselves of. I was listening very closely to Hon Kate Doust just now and I think I gave ample time to allow her to get onto a true clause 1 debate, but with respect, we are apparently running very close to a repetition of the second reading debate, particularly when we introduce new material such as arguments from the UN with a position on the bill, which I have not seen and make no comment about. In introducing those new elements that belong in the second reading debate and asking the Attorney General at the table to respond to that is, in this case, beyond the scope of a clause 1 debate. I offer those remarks from the Chair at length in an attempt to be constructive. I think this is a very good model for us all on the first day back in what may be an interesting year to help us focus on the correct procedure that we need to employ in this chamber. I just wanted to mention that, Hon Kate Doust, but I mention it for the sake of all members. That does not mean that there are not plenty of things that you may wish to subject the minister to in connection with how this bill will be implemented; however, the policy of the bill has been decided. I think I have said enough about the scope of clause 1 to remind members. I am not trying to

truncate the committee process at all, but I am doing what I am sure members want me to do in this position and that is to make sure that debate stays confined to matters that are generally part of a clause 1 debate, so our question remains that clause 1 stand as printed.

Hon KATE DOUST: Thank you, Mr Deputy Chairman, and I do thank you for that very sound advice. You do an admirable job in the chair. I seek your guidance on this, because we may need to ask specific questions in relation to this correspondence. What I would say to you is the difficulty that I suppose we face is that this information from the UN has only become public today, even, if you like, during or close towards the end of the debate that we had earlier today about the referral, so I do not think there was any opportunity for any members to really canvass some of the queries raised in that document. I know there are some specific questions we can relate back to clause 1 that have been canvassed in this correspondence, so I wonder, as we work our way around clause 1, even though this is new and has come after the debates on the second reading and the referral, whether there is still scope for us to ask specific questions that relate back to clause 1 that arise out of this document—to seek the minister's view and how it relates directly to this bill.

The DEPUTY CHAIR: Thank you, member. My immediate response to that is two observations. Firstly, frequent reference to clause 1, if other members were to embark on that process, does not make it relevant to clause 1 per se, but you were asking me a question, which is the second observation I want to make. I want to be careful that I do not exceed my role here, but it is certainly always legitimate to ask questions at this time about the practical application of the legislation, and I am sure you may do that in a way that refers to some opinion, if it has been expressed, about difficulty, for example. I do not go any further in my advice from the Chair on that, but there are ways of involving the sort of questions that you want to ask to a point, so I invite you now, if you wish the call, to address the question that clause 1 stand as printed.

Hon ADELE FARINA: I go back to the point I was making earlier. As lawmakers we need to use very clear language so that the exact kind of conduct we are seeking to prohibit in legislation is understood. The second reading speech, the policy of the bill, is about innovative methods of protest—thumb locks, barrel locks and the like—yet the words used in the legislation currently before us go well beyond the terminology used in explaining the policy of the bill. The government needs to explain to us and justify why the terminology used in the bill goes beyond the terminology used to explain the intent of legislation—the policy of legislation. The government cannot come to the Parliament enunciating a policy for a bill and then include provisions within the bill that go well beyond that policy. If the government wants to do that, it either needs to articulate better the policy of the bill so that we all understand it or explain and justify why using terminology that reflects more accurately the stated policy of the bill cannot be used in the bill, and the government to date has failed to do that. As lawmakers, we need to be very clear about the terminology we use in a bill and we need to ensure that the provisions of the bill actually reflect the stated policy of the bill, and that clearly is not the case in this bill. Again I ask, if the government is able to articulate that it is concerned about innovative methods that are being used to hinder police in the removal of protesters, then it is talking about thumb locks, barrel locks and whatever other sort of lock. If the government is able to enunciate and specify very clearly exactly what it is concerned about in the second reading speech, why are those words not used in the clauses of the bill? Is it the government's intention to go beyond what is stated in the policy of the bill? I think that the government needs to explain that and why it is using terminology and a set of definitions in the bill that go far beyond its stated objectives and policy for the bill.

Hon SALLY TALBOT: I think that we have a problem here, and I ask for Mr Deputy Chair's guidance. The minister cannot be so fatigued on day one of the parliamentary year that he is simply not going to answer any of these questions.

Hon Michael Mischin: There haven't been any questions; that was a statement.

Hon SALLY TALBOT: A very clear question was asked. Mr Deputy Chair, with enormous respect —

Several members interjected.

The DEPUTY CHAIR: Order! Hon Sally Talbot is attempting to address the Chair.

Hon SALLY TALBOT: With enormous respect to Mr Deputy Chair, I personally heard a very clear question in Hon Kate Doust's remarks. I could repeat that question, except that she is well able to do that herself if she wants to pursue it. Hon Adele Farina has now twice articulated a very clear question. In all three cases, clear questions have been asked by members of the opposition, who the minister knows have serious problems with the bill. We have not spared any detail in the second reading debate about what is wrong with this bill. This is our chance to dig down. It is only four clauses, so I would suggest that if the minister had any genuine understanding about the way these debates proceed, he would have anticipated a fairly lengthy clause 1 debate. This is our chance to try to get information on the record. I do not want to repeat Hon Adele Farina's question because she will undoubtedly attempt to reframe it in a way that the minister will perhaps understand. It is clearly escaping him thus far. I ask for the Deputy Chair's advice about how on earth we can proceed with a clause 1 debate if the minister is just going to sit there and refuse to even seek the call after somebody has asked him a question. I will

ask him a specific question because, like Hon Adele Farina, I am very concerned about the use of the concept of innovation or "innovative methods." In the second reading speech, the minister himself stated —

> In recent times … more innovative methods are being used to hinder police attempts to remove the protesters.

Perhaps another way of phrasing that, which goes right to the heart of my question, is: the government's intention is that the bill aims to prevent protesters from locking themselves onto equipment, trees and other objects with "innovative methods". I ask the minister again: how do we define an innovative method? Is it just something that has never been done before, or is it an action that fits into a certain category of other actions? This is the first of many attempts that we are going to make on this side of the chamber to provide clarification around exactly what the government means. I am not sure whether the minister indicated that he was unaware of what the United Nations has stated today, but he certainly clearly indicated that he has not read what the United Nations stated today. Presumably he is unable to take that into consideration at all as he tries to respond to us. The problem is that the minister could have walked into this place with a bill that stated, "Thou shalt not use thumb locks." This would affect anybody who was actively engaged in a protest, contemplating being engaged in a protest, or had been engaged in a protest in the past, or perhaps was in some kind of situation that meant that they had to regularly make assessments of how they were going to behave in certain situations. The obvious example is somebody who is a member of a union who is taking industrial action. Union officials must issue some kind of guidance to their members who are taking legal action or protective action. They must be able to indicate to those people what the parameters are. Look at the forest protesters for instance; there are ordinary mums and dads, grandmothers and grandfathers, as well as children coming along to those protests because they feel so strongly about them. If the bill stated that thumb locks could not be used—to use a thumb lock to fasten oneself to a piece of equipment is, from now on, an offence that will attract this penalty—then all those people from all sorts of walks of life would know that they are not to have thumb locks in the glove boxes of their cars or in their pockets. Another question I want to come to later is: how far away from the action does the thumb lock have to be before it becomes an indictable offence?

The problem is that the bill does not state that. I really appreciated seeing the pictures that the minister brought in this afternoon; I thought that was highly informative. The problem is that it did not advance the discussion at all about whether this bill does what the government thinks it will do. If it is just about innovative methods used to frustrate or delay development then there are a range of things. We have absolutely no idea what the government is getting at. Can I take the minister back to the question: how does the minister classify whether this act will be invoked when somebody does an action that the minister is suggesting will be classified as an innovative action?

The DEPUTY CHAIR: Just before I give the minister the call, did the member want me to provide advice about a matter?

Hon SALLY TALBOT: At least three times in nearly 40 minutes I have seen the Attorney General simply wave a question away. We are not unused to that sort of thing, and ministers do get tired. If it was November and it was four o'clock in the morning, we would probably be feeling quite sorry for him. But at the moment we are not feeling at all sorry for him. I want the Attorney General to stand up and do his job, and I want the Deputy Chair to assist the chamber to undertake those proper processes of debating clause 1 for a highly contentious piece of legislation.

The DEPUTY CHAIR: Very well, and so I shall! Members can rely on that because that is my role in the chair to make sure that we stick to it. In giving the call to the Attorney General, who is obviously keen to respond to these questions, I point out that the question at hand is that clause 1 stand as printed. We are not, however, debating the explanatory memorandum; we are debating the bill. Of course there is interplay between the two, and that is why it is quite proper for members to frame their questions, if they wish, in light of explanatory material that forms a part of the debate as presented by the government. But it is not a debate about the definition of "innovative methods". If members wish to make it as such, they are free to move an amendment of "innovative methods" if they think that this is an element that is lacking from this bill, for example. In terms of what has been requested of me, I will do my best to make sure that this debate is facilitated. The first thing we need to do is to make sure there is goodwill amongst all of us. I remind you, colleagues, that we are all, first and foremost, friends. If you want to put inverted commas around that, so be it, but the demeanour that will be adopted in this chamber while I am in the Chair is one in which all members are treated with respect and courtesy, even though things might get a bit robust. I now give the honourable minister the call to further that ambition.

Hon MICHAEL MISCHIN: Thank you, Mr Deputy Chair. I adopt the way that you have presented the issue at hand. We have already been through the second reading debate. The government has outlined the policy and the mischief that the bill is aimed at addressing and questions ought to be aimed at clarifying the operation of the bill itself. To somehow draft in, as though it ought to be terms used in the bill, illustrations of the sort of conduct that the bill embraces is misconceived, and I do not think I can assist Hon Adele Farina because she has plainly got it all round the wrong way. I do not propose to go into the policy debate, except to say that insofar as what I have

read of the United Nations report, which I mention right now to get rid of this particular point, I do not agree with what it says.

Hon Sally Talbot: So you have read it.

Hon MICHAEL MISCHIN: I have now. It seems to be based on premises that are false and assumptions that are incorrect. The idea that somehow the passage of this bill will stifle legitimate protest is simply wrong, because there are already, as I have pointed out, a raft of offences that have been here for at least a decade that can be used by the police to deal with protest action should they choose to do so. They do not, as a rule, until that action gets out of hand. There lies the problem for the United Nations. It is fastening on somehow this legislation affecting conduct. However, if the government of the day, through the police, was proposing to stifle legitimate protest and the legitimate airing of views, it could use a variety of methods that are currently at its disposal. It does not. This bill, however, addresses certain types of conduct that are not covered by the current law. It is upon that that honourable members on the other side of the chamber should be focused. I have mentioned the types of behaviour that the bill is aimed at addressing and I welcome questions, rather than speeches, that focus on that. Some of the concepts being floated are wholly misconceived as to how legislation works and how it ought to be drafted.

Hon SUE ELLERY: Thank you for the opportunity to contribute. The chamber has determined, as the Deputy Chair has pointed out, the policy of the bill, which is essentially in clauses 2 and 3; that is, a person must not physically prevent a lawful activity.

Hon Michael Mischin: That is clause 4, I think. Clauses 2 and 3 are about amendments.

Hon SUE ELLERY: The minister is quite right; it is clause 4. Under proposed section 68AA(2) of the Criminal Code, a person must not physically prevent an activity, and proposed subsection (3) sets out the presumption of intent to physically prevent that activity. That policy has been set and I want to understand, assuming the bill passes—I can count the numbers in the chamber and I know what is going to happen—and this law becomes part of the range of measures that the police can use in their normal police operations, and the police deal regularly, sometimes every day, with protest activity of large or small description, to what extent do we anticipate its being used? The reason I ask that question is that in the second reading speech and in the Attorney's response this afternoon, two protests have been referred to. One was James Price Point back in 2012 and the other one was—forgive me, people of the south west, for my pronunciation—Mowen Forest in March 2015. Over a three-year period, we have been given two examples of when this law could have been applied in the police's operations. Since the bill was read into this place in March last year have the police found themselves in a position in which they would have wanted to exercise the provisions set out in this legislation; and, if they have, what were the circumstances that occurred?

Hon MICHAEL MISCHIN: The Leader of the Opposition asks to what extent we anticipate the legislation being used. We have already canvassed much of that in the course of the second reading debate. As the law currently stands, in the event of an unlawful protest, a raft of provisions are already available to the government, depending on the circumstances. The primary means that police control this sort of activity, if it is getting out of hand, is by way of move-on notices, and if there is a failure to move on there is a charge under the Criminal Investigation Act. If there is a trespass on to private property, then there is the offence of trespass under the section 70A of the Criminal Code, which carries the same penalty as is proposed under the bill: 12 months' imprisonment as a maximum and/or up to a $12 000 fine as a maximum. Otherwise, there are offences such as obstructing vehicles under the Conservation and Land Management Act, which applies to CALM land; creating nuisance under regulation 73 of the Conservation and Land Management Regulations, which applies also if the conduct is on CALM land; obstructing vehicles and pedestrian under regulation 108 of the Road Traffic Code, which applies to carriageways or paths; and regulation 201 of the Road Traffic Code, which applies to paths or carriageways where pedestrians are causing an obstruction. I have mentioned trespass. There is a provision for disorderly conduct under section 74 A of the Criminal Code. A number of provisions can be used to effect by the police. The Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015 would be used only in circumstances when the other provisions available in the police armoury are not available for one reason or another, and in the specific circumstance I have mentioned of people causing a physical barrier that does not merely hinder or obstruct but prevents the lawful activity in a particular way. It is a broad sanction; however, there would be no need to use it unless the criteria specified in the bill are met.

In respect of conduct over the past 12 months, it must be remembered that the James Price Point behaviour was a course of conduct that was intermittent and sporadic over 18 months. It has been quiet over the past 12 months, but it is plain that from time to time when issues do excite certain elements of the community there will be some in those elements who will choose to use extreme behaviour that will not be accommodated by mere trespass charges or move-on notices because they have secured themselves in particular ways that render a move-on notice ineffective, and cannot be dealt with by way of other offences available under the law.

In the context of forest protests, in December 2014 we had lock-on behaviour at Helms forest in Nannup. There was lock-on, at-height behaviour—suspension in a tree—again at Helms forest in Nannup on a different day in December 2014. In January 2015 there was another at-height lock on. In February 2015 there was a lock on in Mowen forest, another on 13 February in Mowen forest, another on 3 March and another on 10 March. Particular issues excite attention, and there are some people who go to extreme measures to make their point and if it interferes with lawful conduct. It is in those circumstances, when no other means are available to the police that this legislation will be effective and is necessary. I hope that it never gets used. I hope that when people protest they do so in a sensible fashion, rather than one that prevents lawful behaviour by the means contemplated or that requires resorting to this legislation. The fact that there has been no such behaviour over a short period does not mean that it is unnecessary into the future.

The DEPUTY CHAIR (Hon Simon O'Brien): The Leader of the House has the call.

Hon SUE ELLERY: If I could just follow this line of questioning —

Hon Peter Collier: No, no, that's me!

The DEPUTY CHAIR: I beg your pardon! The Leader of the Opposition has the call.

Hon SUE ELLERY: That is happening really frequently. Over the last six months something has changed; the vibe has changed!

The DEPUTY CHAIR: I thought I saw some movement out of my right eye and the Leader of the House was seeking the call! The Leader of the Opposition has the call.

Hon SUE ELLERY: It is preselection season and people go a little cray cray, so anything could happen.

I thank the Attorney General for that substantive answer. It is important for us to understand how this legislation fits within the arsenal of tools, if I can use that expression, available to the police. It is useful for us to understand the frequency of it. Having done a quick count, there have been maybe five occasions up until March last year from what the Attorney General said—I did not write them down; let us say five, maybe six—and nothing since then. I think that is interesting information relevant to where this piece of legislation will sit within the operations of the police.

The other question I want to ask flows as a direct result of the previous answer. The Attorney General laid out for us the range of other measures available to the police to deal with circumstances that might arise around interruption to lawful activity. I wonder whether the Attorney General is able to tell us whether prosecutions or charges were laid after the James Price Point activity; and, if so, what was their outcome? If 50 people were charged, I do not need the details of those 50 people; rather, were charges laid and were they successful? Given that happened in 2012, those matters have presumably been dealt with by the courts. There was a series of events in early 2015 in Mowen forest in Margaret River. Were charges laid after those events? I am trying to establish whether the police were able to use existing mechanisms to take the matters through the court and get an outcome that saw those people, in the eyes of the state, justifiably punished. My first question is on the charges laid after the James Price Point activity and the events in Mowen forest in early 2015.

Hon MICHAEL MISCHIN: I thank the Leader of the Opposition for the questions. Charges were laid in the forest protests. Generally, the charges were those under the Conservation and Land Management Act or its regulations for creating a nuisance. If there were elements of resisting the police, there would have been charges of hindering police and the like. So far as James Price Point is concerned, I am informed that some 51 people were arrested and charged over that time mainly for breaching requirements of move-on notices and the like. A few lock-ons were used, as I have indicated. At one point there was a charge of creating a false belief, because although the protesters had pretended that they had been immobilised, they were not in fact immobilised. Nevertheless, it took an enormous amount of resources to act on that misinformation. The point of the legislation is, of course, to discourage taking those steps for people who are engaging in that kind of conduct, rather than having to rely at a preparatory stage as much as anything else. If the police find someone transporting, for example, a drum lock to a protest site, one that is of the character that I have indicated, the law currently does not prevent that from happening, whereas with the passage of this legislation, which is focused on that type of preventive behaviour, the police will be able to stop the transport of those particular implements to sites as much as discouraging by a specific offence the behaviour that utilises those tools. I would hope that the current trend continues and there is no behaviour that can attract this legislation, but what has been exposed over time is that there is a problem with the existing law because it does not allow for this type of immobilisation of a person who is protesting in a way that is amendable to the use of move-on notices and other things and puts the authorities to the trouble of having to remove the protester, both at risk to the protester as well as the potential of some injury occurring to those who are trying to do their job. One argument is to just leave them there until they die, but the police do not take that particular view.

Hon Sue Ellery: And the state doesn't take that view.

Hon MICHAEL MISCHIN: And the state does not take that particular view. The idea is to protect people from their own behaviour as much as anything else. An example is someone going onto a live sheep transport and locking themselves onto that for a journey off to Saudi Arabia. The authorities and the state feel obliged to do something about it. At the moment, there are some who feel that that is a legitimate means of protest, notwithstanding the cost to the state and the responsibilities that are placed on the state to fix it.

Hon SUE ELLERY: I might pursue this line. I will not take much longer; I know there are other people who want to contribute. I want to take two more bites at the cherry. The first one is this: Were there any people who were involved in using the innovative lock-on devices at James Price Point whom the police were not able to charge with anything? Were there any people who were involved in the Mowen Forest protest—up a tree, around a tree, under a tree, attached to a tree—whom the police were not able to charge with anything? I will then come to my second bite of the cherry.

Hon MICHAEL MISCHIN: I am informed that, yes, people were charged. They were charged under the various provisions of the existing law, including with breaches of move-on notices. There were concerns that that offence would not cover the sort of behaviour that involved lock-ons and the like. The law was never tested in that regard, because I am informed that the strategy of protesters was that rather than contest the charge and find that they were out of action for a period of time on bail pending the resolution of that charge, they would much rather cop the fine or whatever it happened to be so that they could get back into the game. However, it is that sort of thing that drew the attention of the police to whether there was a problem with the use of move-on notices and with charges for breaches of move-on notices in circumstances in which a person was incapable of moving on, which gave rise to looking at specific legislation to cover that hiatus, or loophole, if members like.

Hon SUE ELLERY: That is quite interesting because that could have applied only to the people at James Price Point. We can think about the timing of the bill. The bill was introduced into the Parliament in March 2015, so by the time those instances were happening in February and March in the Mowen Forest, this bill was already through the process of consideration by government and was ready to be read into the Parliament. We must be talking only about the circumstances around James Price Point. That takes me to the second bite of the cherry. I will then conclude my remarks, depending on the Attorney General's response. It strikes me that this is an arsenal that the police want in their kit because of the resources that were required to be expended as a direct result of where James Price Point is. It was a resources issue around sending police up to just outside Broome. It was a resources issue about getting whatever the particular equipment or technical expertise was needed from Perth to Broome. It is my contention that the bill is more about police resourcing than about a live problem. The Attorney General has not been able to give me an example of where, since March 2015, the police have felt that they did not have all the tools they needed to deal with a particular protest circumstance, and we are really talking about a response to James Price Point activity back in 2012. The point I make is this: the provisions of this bill are serious. The Attorney General was right when he told the house that the house has previously reversed the onus of proof, which is what is canvassed in the clauses that we are about to get to. The house has reversed the onus of proof for criminal matters in the past, but it has done so in proportion to the offence. I am concerned that the specific provisions in each of these clauses in fact go to giving the police an arsenal to use when they are concerned about financial resources and not so much because they have no capacity to pursue those people who are inconveniencing the owners of the land, the use of equipment or whatever it is they are doing. It is not about the inconvenience to those landowners or property owners or whoever is being protested against; it is about the resources of police. If the clauses in the bill are directed at doing that, those people are not laughing; it is a really serious matter. The government is not able to demonstrate that the police have not been able to send a message to those people who have inconvenienced others by their actions through the courts. The best the Attorney General has been able to say is that the government has not tested whether the court will determine whether or not the government's move-on laws are enough to deal with this. I think the Attorney General has come before the house unprepared to prosecute his argument, because he does not have the evidence that this is in response to anything other than the incident at James Price Point four years ago. He is not able to give me an example of anyone doing anything since March 2015 and he is not able to give me an example in which the court has thrown out the government's charges. Finally, he is not able to give me an example in which the government has not been able to lay charges against those people. The Attorney General's case is not made.

Hon MICHAEL MISCHIN: I do not know whether the Honourable Leader of the Opposition heard all of what I had to say regarding those incidents. I mentioned James Price Point. However, I also mentioned incidents in Nannup on 8 December 2014.

Hon Sue Ellery: I did not hear you say anything after March 2015.

Hon MICHAEL MISCHIN: No, I have not. I do not have that information, but the member was saying that apart from James Price Point and the events of Mowen Forest, there has been no evidence of this and so I must be talking simply about James Price Point. I am just clarifying that I am not. The incidents that I am talking about were on 8 December 2014 at Helms in Nannup; 11 December 2014 at Helms in Nannup; 6 January 2015—

before the bill was introduced—at Helms in Nannup; 9 February 2015 at Mowen in Margaret River; 13 February 2015 at Mowen in Margaret River; 3 March 2015 at Mowen in Margaret River; and 10 March at Helms in Nannup. I have been informed that there have been more incidents since, but I do not have that information at hand. The point that I make is that it is not simply an economic thing about a lack of police resources; it is the time taken by the police in order to deal with an incident.

Hon Sue Ellery: That is money.

Hon MICHAEL MISCHIN: That is true, but when a total of six police officers try to deal with once incident and a total of 42 hours of police time is spent dealing with one protester, that is an unreasonable draw on police resources when they could be doing other things. If it is a matter of simply moving someone on, there would be the issue of a move-on notice, and if that person failed to comply with it in a reasonable time, he or she would be arrested and taken away. Here people are occupied and trying to extract people who have deliberately made themselves immobile and the number of hours used in these particular incidents is a good incentive to deal with it in other ways. No, the law has not been tested, but the whole point of being a responsible government is identifying a potential problem and addressing it in advance of it happening. I am told that there were forest protests even as long ago as in the late 1990s and the early 2000s involving this sort of thing, so it has been around for quite some time. The difficulties that have been identified are some of the prompting for this bill so that it can be used in these circumstances into the future. The alarm being caused that somehow this will be the key piece of legislation that deals with protesters is nonsense. Other laws currently in place could be used if the government of the day and the police were so minded. The threat to civil liberties from this particular piece of legislation dealing with a particular type of conduct is simply minimal.

Hon SUE ELLERY: Because I cannot bear to not have the last word, I will have one more go and then I will sit down.

Hon Michael Mischin: Does that mean that if I answer it, you'll want the next last say or shall I just stay shtum?

Hon SUE ELLERY: No, I am feeling the vibe from my colleagues so I will shut up after this point.

The Attorney General told the house that it is prudent that the government identify a potential gap in the law and legislate to make sure that it is dealt with in a sensible and methodical way. I make this point. The Attorney General is quite right; that is prudent governance, but in this case the extent of the power of the clauses in the bill is an overreach, particularly the reversal of the onus of proof. The government is reaching too far in saying that we must do this because there is such a risk that so much police time and so many police resources are being spent on this. I do not think the case has been made that the extent to which the police will use this legislation warrants the degree to which the particular clauses of the bill extend. Now I will shut up, at least for the time being.

Hon ROBIN CHAPPLE: In one of his responses the Attorney General referred to devices such as a tree lock-on being used. In most cases it is my understanding that a lock-on is not used in a forest protest; rather, it is called tree sitting. Is a tree-sit caught by this legislation, because that is merely somebody climbing up a tree, sitting in it for an extended period and halting lawful activity? Ropes might be used in that process. Are ropes a "thing"? We will come to that later on when we deal with that particular clause. The minister referred specifically to tree lock-ons and I am not aware of people using tree lock-ons.

Hon MICHAEL MISCHIN: No, not as such. Climbing up and sitting in a tree might leave a person open to being issued with a move-on notice. If they fail to move on, the person would be subject to arrest. If a person made themselves so inaccessible in that tree so as to be unable to be removed, they may fall foul of proposed section 68AA if it involves a risk of injury to a person including the offender. I draw the honourable member's attention to the definition of "physically" as it applies under proposed section 68AA(1)(c)(ii) in particular. If a person locks himself into that tree or immobilises himself in some fashion, then yes, plainly so. If a person has a lock-on type device and is carrying it to the tree, this would allow the police to prevent the person from getting that far by charging the offender with the appropriate offence under proposed section 68AB.

Hon ROBIN CHAPPLE: I suppose this is probably more to do with the clause-by-clause stuff. We are actually dealing with something to do with the clauses specifically, so I seek your advice, Deputy Chair, if I can get some clarification on what the minister said in the short title. If a rope is used, is that classified as a lock-on device? As I say, people do not use lock-on devices up trees; it is dangerous.

Hon Adele Farina interjected.

Hon ROBIN CHAPPLE: No.

The DEPUTY CHAIR: Member, I am going to allow some leeway on that question now, but I do not want you to then ask the next question about separate objects one, two, three, four and five and expect answers on that.

Hon ROBIN CHAPPLE: The second question is: is the rope part of the equipment classified as the thing? Also, who determines the risk of injury? Most of the people who climb these trees are actually —

The DEPUTY CHAIR: Member, I think you are going very specifically there now about that sort of thing and I think we will leave that for an appropriate time later on. At the moment we are dealing with clause 1.

Hon SALLY TALBOT: I would like to return to the question of innovation. Can the minister tell us whether it would be a defence in court for an accused person to argue that the method being used was not innovative?

Hon MICHAEL MISCHIN: I do not think that defence is known to the criminal law, no.

Hon SALLY TALBOT: Would it be a defence that the removal of the lock was not—in inverted commas—extremely dangerous?

Hon MICHAEL MISCHIN: I will make a couple of points. Firstly, the prosecution would have to establish the elements of the offence and that would also have regard to not only the common meaning of certain words, but also any specific definition. Secondly, we are talking about a specific clause of the bill, and I think we should get past clause 1 first before we get into the specifics of what may or may not constitute an offence in respect of proposed sections 68AA or 68AB.

The DEPUTY CHAIR: Hon Sally Talbot, you are not going down the same road in relation to specific questions, because I just ruled Hon Robin Chapple out of order and said we would deal with that when we come to it. If this is a general question on clause 1, fine; if not, we are not taking it.

Hon SALLY TALBOT: It is a general question on clause 1 in the sense that the previous Deputy Chair made the point that there are limitations on a clause 1 debate, but I heard him make the point specifically, as an extenuating circumstance in considering whether something was relevant to a clause 1 debate, that the courts may refer to not only every part of the parliamentary debate but also the supporting documents, those documents being the explanatory memorandum and, of course, the second reading speech. I guess I seek your guidance; I know you will very rapidly rule me out of order if you want me to raise this later, and I am happy to do that, but the other question I want to put to the minister is about how he envisages the legislation being used. He has, in his second reading speech, made specific reference to three things: the innovative nature of the method being used to hinder development; the extremely dangerous nature of what is being used; and the third issue, which I want to raise now, about the skilled technician who might be required to remove whatever the thing in question is.

The DEPUTY CHAIR: I am going to rule that out of order, and perhaps we can deal with that later on the basis that clause 1 is to deal with the practical implementation of the bill, not the technical aspects of the bill, which we can get to at further clauses. That is in line with what I think I said to Hon Robin Chapple.

Point of Order

Hon SUE ELLERY: I ask you to either reconsider what you have just ruled, or consider seeking advice from the President on what you have just ruled, because my contention is that it is possible to raise technical matters within the clause 1 debate, and it is the custom and practice of this chamber to do so. If you are making the point that it is your view that we are better off dealing with a particular point that comes up in a particular clause later on, that is one thing, but it is not the custom and practice of this chamber to say that that means one cannot raise technical issues during a clause 1 debate. I have been here for 15 years and that has not been the custom and practice of this chamber.

The DEPUTY CHAIR (Hon Liz Behjat): In line with what I said to Hon Robin Chapple when he was asking specific questions about ropes and different types of locks and was being very specific, yes, you can raise those technical issues is my advice in relation to these matters, but you must range across an entire thing; it cannot be so specific that you are asking about one particular matter, which I understand Hon Sally Talbot was. In order for fairness in this debate, I ruled it out of order with the other member who is going very specifically on implements being used in that same way.

Debate Resumed

Hon SALLY TALBOT: I fear that over the next few minutes I might be trespassing into what might be, for me, uncharted waters. My understanding was that unless there is a clause later in the bill specifically dealing with a technical point, it was entirely appropriate to raise it in the clause 1 debate. Also, lest I continue not to satisfy the requirements the Deputy Chair is laying down, I point out to her that surely one of the reasons that a Chair or a Presiding Officer might make the ruling that a certain part of the debate is not appropriate to clause 1 is that there is some kind of time-wasting technique being adopted by a member; not that any of the members on this side of the house, of course, would ever indulge themselves in that sort of thing! But I am not going to ask this question later if I can get an answer now, so I cannot quite see what the problem is. Perhaps if I pursue the point being raised by the Leader of the Opposition, I will be back into the realm of the Deputy Chair's approval.

We have talked about the number of police resources that might be required to deal with people who are using thumb locks. I am going to stick with thumb locks, because that is the only thing that we have been able to really seek any clarity on. I am quite clear now that, once this bill becomes law, if somebody comes up to me and says,

"Will I be able to use thumb locks at this protest I'm going to at the weekend?", my answer will be, "No, I don't think you should do that, because doing that may render you in contravention of this law."

Hon Michael Mischin: Then it's achieved its purpose.

Hon SALLY TALBOT: That is thumb locks, but the bill does not make any reference to thumb locks. I only know that thumb locks are going to be illegal because we referred to the second reading speech. It is not in the bill.

Hon Michael Mischin: It is under 68AB.

Hon SALLY TALBOT: Proposed section 68AB? This is a funny way to proceed. Madam Deputy Chair, do you want to regain control of the chamber?

The DEPUTY CHAIR: I shall, if you would like to resume your seat. I shall resume control, not that I ever lost control. What I was going to say is that we have in front of us a very short bill. There are only four clauses to the bill. My reading of it, and advice I have also taken in relation to this, is that in clause 4, when we get to proposed sections 68AA and 68AB, there is plenty of scope to be very specific. I see that the Chair of Committees is shaking her head. Does she want me to leave the chair to seek a further ruling?

Hon ADELE FARINA: The concern I have is that the question that Hon Sally Talbot asked was about the qualifiers that the Attorney General has used in explaining the policy of the bill. Those qualifiers do not appear anywhere in the bill. If we do not get an opportunity to explore that in clause 1, we are denied an opportunity of exploring that in any other clause of the bill, because those elements that qualify the application of the bill that have been enunciated by the Attorney General do not appear in any other provision of the bill. Therefore, it is wrong to allow the Attorney General to say, "This bill will not apply to minor obstruction, will not apply to lawful protest, will only apply to circumstances in which it is a dangerous device, it is an innovative device, and you need a skilled technician to remove it." For him to say all of that, that that is how the bill is narrowed, so that when we are talking about padlocks on a farm gate, it does not apply, it is not okay for the Attorney General to argue that there is no clause in the bill that actually refers to those qualifiers and then deny a member of the chamber an opportunity to seek clarification on exactly what that scope is under clause 1; otherwise, we may as well all just go home and the executive can do everything by executive power. We are a house of review and we, as members of this Parliament, are entitled to explore the scope and the application and how the bill will be implemented. That is the whole purpose of consideration in committee.

The DEPUTY CHAIR: Attorney General, I am wondering whether you could deal with these matters now in this clause 1 debate, and we can move it along, or do you think that it should remain at proposed sections 68AA and 68AB and then we will decide from there what your response might be?

Hon MICHAEL MISCHIN: Thank you, Madam Deputy Chair, it does seem more sensible to me to deal with it in the context of the offences that are being created, rather than some bizarre reasoning that there is no specific mention of a particular term in the bill and therefore everyone is confused.

Hon Sally Talbot interjected.

The DEPUTY CHAIR: Order! The Attorney General has the call, Hon Sally Talbot.

Hon MICHAEL MISCHIN: I thought I made it plain that I think it is better focused on the offence-creating provisions in the bill, rather than some kind of debate in a vacuum with hypotheticals. We have already indicated what motivated and sparked the need to look into a change in the law to accommodate particular types of things that were happening, and this bill is the fruit of it. It certainly does not mention innovation and things of that nature because there is no need to. If we were going down the path of that sort of reasoning, we would not have been able to pass, in this day and age, an offence of going armed in public so as to cause fear. I would get a question from Hon Adele Farina along the lines of, "What do you mean by armed? Your second reading speech said perhaps guns and knives, but there is no mention of guns and knives in there"—that sort of ridiculous reasoning. How is it unlawful killing? We have not specified that in the act either.

Hon Adele Farina: How is this relevant?

Hon MICHAEL MISCHIN: How is it relevant? It is exactly the same idiot reasoning that is being proposed here —

Withdrawal of Remark

The DEPUTY CHAIR (Hon Liz Behjat): Order! Attorney General, could I ask you to perhaps withdraw that last statement. It is a little bit unparliamentary.

Hon MICHAEL MISCHIN: Which one?

The DEPUTY CHAIR: I think you mentioned "idiot reasoning"?

Hon MICHAEL MISCHIN: It was a categorisation of a particular sort of thought process, but I do not think it was aimed at any member in particular, but I withdraw it if it has caused a problem.

The DEPUTY CHAIR: No, if I have asked you to withdraw, you do it unconditionally; not if it has caused a problem.

Hon MICHAEL MISCHIN: I did.

Hon ADELE FARINA: No, you didn't.

Hon MICHAEL MISCHIN: Okay, I withdraw it.

The DEPUTY CHAIR: Thank you, Attorney General.

Committee Resumed

Hon MICHAEL MISCHIN: Hon Sally Talbot asked, because she plainly did not understand, do I think —

Hon Sally Talbot interjected.

The DEPUTY CHAIR: Order!

Hon MICHAEL MISCHIN: Hon Sally Talbot put that she did not understand whether I thought that these sorts of questions are better dealt with when talking about specific clauses in the bill that address them, and I do think that that is the case rather than some kind of a general debate in a vacuum.

Point of Order

Hon SALLY TALBOT: Point of order.

The DEPUTY CHAIR: Thank you, Attorney General. Members, just before I take Hon Sally Talbot's point of order, I put that then to the Attorney General to ask: would he at the clause 4 debate on the proposed sections 68AA and 68AB entertain the specifics and all the technicalities and all of those things that have been raised? He tells me that he is able to do that at that point. If members on my left are not satisfied with that, I shall leave the chair for the ringing of the bells to seek further advice.

Hon KATE DOUST: Madam Deputy Chair, we would ask that you do leave the chair and seek further advice and report back to the chamber in due course.

The DEPUTY CHAIR: Thank you, I will leave the chair until the ringing of the bells.

Sitting suspended from 9.08 to 9.30 pm

Ruling by President

The PRESIDENT: Hon Kate Doust has asked for a ruling regarding the scope of the clause 1 debate. In particular, some members have been asking questions of a technical nature regarding specific instruments that may be capable of falling within the offence provisions of the bill. The offence provisions of the bill are contained in clause 4. The Attorney General, who has charge of the bill, has indicated that he will address questions of a technical nature relating to the offence provisions in this clause rather than in the clause 1 debate.

Other members have also referred to various definitions and phrases used in the Attorney General's second reading speech and in the explanatory materials associated with the bill. These phrases do not appear in the bill itself but provide some guidance of the government's policy intentions to members. Although it is not appropriate to debate issues of policy at the committee stage of the bill, it has been suggested by Hon Adele Farina that the clause 1 debate is the only opportunity to understand the practical aspects of these definitions and phrases as they relate to the offence provisions. This is not the case in circumstances in which other clauses, such as clause 4 in this case, afford an equivalent opportunity. My ruling in this respect is consistent with prior rulings of the Deputy Chairs of Committees presiding over the Committee of the Whole on this bill. I also remind members that the member in charge of a bill takes responsibility for the answer he or she provides. Some members may not like it or agree with it, but that is the answer. The point of order is not sustained.

Committee Resumed

Hon ROBIN CHAPPLE: I am dealing specifically with clause 1. I really want to clarify something the minister had already said, but I am now advised I cannot do that. I really want to just clarify that this is Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015, and in that regard does this refer to all lawful activity or a specific lawful activity? There is a reason for me asking that question.

The DEPUTY CHAIR (Hon Liz Behjat): Member, before I give the call to the Attorney General and he responds to that, can I just point out to you that regarding the comment you made about not being able to ask those questions now and that you have been told not to, I want the record to reflect that you can do that at the appropriate clause, clause 4. You can seek better further particulars about what was given at that time at clause 4. It is not the case that you will not be allowed to ask those questions, but it will be at the appropriate time.

Hon MICHAEL MISCHIN: Thank you, Madam Deputy Chair. I make the point firstly that we are talking about a short title. There is no term of art involved in that; it could have been simply called the "Criminal Code

Amendment Bill". However, dealing with the question asked, if the member was asking what a lawful activity is within the meaning of the proposed sections in clause 4, I would strictly prefer that they be dealt with in that context, but I am able to assist by saying that a lawful activity is one that is not unlawful—any form of lawful activity. It used to be the case that it would have to be something specifically authorised, justified or excused by law, but I understand that the broader concept is now accepted law.

Hon KATE DOUST: I am going to follow on from that. I thought it was an interesting question around clause 1. The discussion we have had over the last year has been around a couple of incidents that appear to have prompted this legislation. Although the elements of those issues are not specifically referred to in the bill, the narrative that is set down in the second reading speech certainly involves the types of examples that the government seems to be focusing on, which are predominantly around land rights issues or forestry issues in which people are expressing their views via peaceful protest. The question that Hon Robin Chapple posed is very interesting because there are a variety of issues that people will participate in peaceful protests about to put their views. It is not isolated to the types of matters that we have focused on. As the world changes and people change the way that they engage in a peaceful protest, we can ask how the government will deal with that different type of peaceful protest. This legislation focuses on people using implements or a range of other things to tie themselves down or create barriers to prevent a lawful activity from occurring. That is an interesting example, but there are other ways of doing that in the new age; I am going to refer to cyber issues. If somebody really wants to shut down an organisation to put forward a view in modern times, it is not unheard of for individuals —

The DEPUTY CHAIR (Hon Liz Behjat): Order, members! I am sorry, Hon Kate Doust. There is a lot of audible conversation going on around the chamber at the moment. If members find that they need to do that, they can do it outside the chamber. The member is making some quite relevant and very interesting points at the moment and I would like to hear them.

Hon KATE DOUST: Thank you, Madam Deputy Chair.

I was saying that it would not be unusual and I could probably think of a couple of examples in recent times, mainly in Europe, in which people have used—I use the words loosely—a "cyber attack" to create a barricade or barrier either by jamming up email systems or it may be a bank and access to bank details or accounts is blocked. They may shut down, albeit by remote control, a government department's access to the internet or to being able to use those services to do their work, get their message out, and be able to conduct their lawful activity. Coming back to what Hon Robin Chapple asked, is that an area that the government has considered? I cannot see anything in the bill that canvasses other types of peaceful protest whereby we are not talking about traditional ways of creating a barricade or barrier to that activity. I wonder, given the earlier discussions with Hon Sue Ellery about policing resources, whether the government given consideration to how it will deal with this new and different type of barrier to a lawful activity. What sort of resources or capacity does it have to deal with that? I think that is the challenge; if the government has not considered that and it is only focused on this very physical, old-fashioned way of peaceful protest, I think that that narrows this legislation down and leaves a very wide gap.

A cyber attack is one example, but I am sure there are many other things that can be done to provide barriers to a lawful activity. I am sure as we move further into the debate that we will canvass some of those. In debating clause 1, I want to know how broad this legislation will be. What will it pick up? Is it dealing only with the old-fashioned approach or is it broad enough to pick up what is happening now in the way that people engage. We have seen that ourselves. People have demonstrated to us as members of Parliament, through peaceful protest, by bombarding us yet again with a variety of emails, be it on this issue or the safe-sex schools issue—another email campaign started to roll through today. What it does is jam up a server so that people cannot do anything else, which I would think is a barrier to performing an activity; it might totally shut down a system with an absolute crash. I gave members an example of access being denied to data or in some cases to funds as a form of protest. It is a brave new world in the way that people try to get their message through. I wonder whether those types of scenarios were discussed when this bill was contemplated, rather than just the types of matters we have been talking about recently.

Hon MICHAEL MISCHIN: Firstly, we are not dealing with banning peaceful protest. There is no prohibition within the bill either in its terms or by implication with preventing peaceful process. Secondly, the scope of the bill was discussed and the question of whether it ought to extend into other forms of disruption of lawful activity through cyber attack of various types was considered; however, it was beyond the scope of the mischief that was being sought to be addressed, which is entirely physical action involving the potential for physical harm to the protester and to others. As far as the scope is concerned, again, this comes under clause 4, specifically proposed section 68AA(2), which is the offence-creating provision that must be read with the definitions in proposed subsection (1), which involves physically preventing a lawful activity. I have indicated what a lawful activity is that is being protected by the bill, and "physically" is defined in a variety of ways, but it does not contemplate electronic attack, spamming and the like. There are provisions under the Criminal Code regarding the unauthorised use of computer systems. There may very well be relevant legislation at the commonwealth level

regarding misuse of telecommunications systems and the like that may accommodate the honourable member's concerns. Otherwise, there are provisions in the Criminal Code that prohibit certain conduct without being specific as to whether it is done by way of a computer system or otherwise. For example, making threats that could be contemplated by way of a telephone, through cyber means or face to face. The bill does what it does: it prohibits the use of physically preventing lawful activity within the constraints that are specified.

Progress reported and leave granted to sit again, pursuant to standing orders.

House adjourned at 9.45 pm

QUESTIONS ON NOTICE

Questions and answers are as supplied to Hansard.

WATER CORPORATION — HERITAGE SURVEY — BUTTRESS HILL TANK SITE

3501. Hon Robin Chapple to the Minister for Agriculture and Food representing the Minister for Water:

I refer to a February 2014 report received by the Water Corporation with regards to a heritage survey carried out in relation to operations at the Buttress Hill Tank Site, Leonora, and ask:

(a) why did this report not reference a single previous heritage survey of the area in question even though several have been carried out;

(b) why did this report not include consultation with traditional owners who were consulted during previous heritage surveys;

(c) in particular, why was this heritage survey conducted exclusively with women when men had been consulted regarding the same area in the past;

(d) as per the objectives outlined on page 9 of the report, were 'Other Heritage Places' considered;

(e) will the Minister please table a list of all sites considered as a part of the preparation of this report; and

(f) with reference to (c) and (d), was proper consultation undertaken for site ID 20015 given that it is a mythological site connected with the major men's dreaming story for Leonora?

Hon Ken Baston replied:

(a) The consultant's report referenced heritage surveys that had been carried out in the wider Leonora area; however they were not directly referred to in the body of the report because their geographical coverage was not related to the project site in question.

(b) The Aboriginal heritage consultants who undertook the heritage survey are recognised as appropriate people to speak for both Aboriginal Heritage and Native Title interests in the area by the Goldfields Land and Sea Council and the Department of Aboriginal Affairs (DAA).

(c) Only one Registered Heritage site was indicated that may be impacted and that was, as recorded on the DAA Register:

> 'Site 24133 – Women's Place – Gender restrictions – Woman Only Access'. It is appropriate to survey women for a 'Women only access' site.

(d) Yes.

(e) There were two (2) registered sites considered as per the objective of the Survey, as recorded on the DAA Register:

> Site 20014 – WLNO1 Creek – Mythological – no Restrictions – Project not impacting Site area.
>
> Site 24133 – Womens Place – Gender Restrictions Women Only Access – may be impacted.

(f) The project does not impact Site 20015 therefore no consultation occurred.

STATE DEVELOPMENT — MINING REHABILITATION FUND

3746. Hon Robin Chapple to the Leader of the House representing the Minister for State Development:

In relation to the application of the Mining Rehabilitation Fund (MRF), and for all mines or mine infrastructure with State Agreement Acts administered by the Department of State Development, I ask:

(a) what bonds or other securities are held by the State Government for each of the mines, list by relevant State Agreement Act;

(b) what is the estimated rehabilitation cost for each of the mines, list by relevant State Agreement Act;

(c) what conditions or standards for rehabilitation apply to the mines, list by relevant State Agreement Act;

(d) can MRF funds, or interest raised from the investment of the MRF, be used to rehabilitate these sites in the event of abandonment of any of the mines, list by relevant State Agreement Act; and

(e) if no to (d), why not?

Hon Peter Collier replied:

Department of State Development advises:

(a) The Mining Rehabilitation Fund Act 2012 (MRF) may apply to tenure held pursuant to State Agreements if the tenure is prescribed as a mining authorisation. Since 2012 no tenure held pursuant to State Agreements has been prescribed as a mining authorisation as defined under section 4 of the MRF.

(b) Refer to (a).

(c) The various mines are subject to assessment processes under the laws of the land and environmental conditions via those processes.

(d) Section 8 of the MRF specifies the land to which MRF funds may be applied.

(e) See (d) above.

MINES AND PETROLEUM — YEELIRRIE URANIUM MINE

3747. Hon Robin Chapple to the Minister for Agriculture and Food representing the Minister for Mines and Petroleum:

With reference to the proposed Yeelirrie uranium mine and the Yeelirrie State Agreement Act, I ask:

(a) is Cameco's Yeelirrie proposal exempt from the Mining Rehabilitation Fund and requirements to pay a 1 percent levy;

(b) if yes to (a), why;

(c) does the Minister intend or have any initial thoughts on requiring Cameco provide bonds as securities for mine closure of Yeelirrie;

(d) if no to , is this because Cameco's Yeelirrie proposal is exempt from bonds under the State Agreement Act;

(e) what part of the State Agreement Act gives the powers to exempt from future Acts on securities and levies for mine closure;

(f) what is the expected mine closure cost for Yeelirrie;

(g) what is the expected mine closure cost for Kintyre or Wiluna;

(h) does the Government have any indication or estimate on closure costs for any of the four uranium mine proposals in Western Australia;

(i) if no to (h), why not;

(j) is the Government aware of the estimated costs of rehabilitation at the Ranger uranium mine or any other operating mines in Australia;

(k) if no to (j), why not;

(l) has the Government given consideration to the exceptional costs and liability of uranium mining rehabilitation and closure;

(m) if no to (l), why not; and

(n) if yes to (l), in what form and will the Minister table all relevant documents?

Hon Ken Baston replied:

In preparing this response, the Department of Mines and Petroleum has consulted with the Department of State Development which is responsible for the administration of the *Uranium (Yeelirrie) Agreement Act 1978*, and provides the following advice:

(a) The *Uranium (Yeelirrie) Agreement Act 1978* (State Agreement) is the controlling legislation for the proposed Yeelirrie project. It is not automatically subject to the *Mining Rehabilitation Fund Act 2012*, however, the project proponents could opt in and pay the one per cent levy.

(b) See (a) above.

(c) The Yeelirrie project is at an early stage of assessment and an investment decision has not yet been made. As a result, the matter has not yet been considered.

(d) The matter of bonding is not covered by the State Agreement.

(e) See (a) above.

(f) Yeelirrie mine closure costs will be determined when the feasibility assessments have been finalised.

(g) Mine closure cost estimates are usually identified as part of the requirements of *Mining Act 1978* Mine Closure Plan (MCP) requirements. An approved MCP is required prior to the commencement of mining. The Department of Mines and Petroleum (DMP) has yet to receive a MCP submission for the Kintyre and Wiluna uranium projects.

(h) See (g) above. DMP is also yet to receive a MCP for the Mulga Rock uranium project.

(i) See (g) above.

(j) The Northern Territory Ranger uranium mine is expected to complete the processing of existing ore stockpiles by 2021 and finalise site rehabilitation by 2026. A Commonwealth Trust Fund has been established specifically for the rehabilitation and mine closure of the Ranger mine.

(k) Not applicable

(l) The mine closure costs for uranium mines in Western Australia are not expected to be substantially different from other mining rehabilitation and closure costs in the areas where they occur, particularly with current requirements for mine closure plans to include progressive rehabilitation throughout the mine life.

(m) See (l) above.

(n) Documents relevant to the regulation of uranium mining and mine rehabilitation and closure requirements are available on the DMP website.

MINES AND PETROLEUM — MINING REHABILITATION FUND

3748. Hon Robin Chapple to the Minister for Agriculture and Food representing the Minister for Mines and Petroleum:

(1) What is the total expected liability of rehabilitating all of Western Australia's existing mine sites, either in operation, care and maintenance or other various stages?

(2) What is the total expected liability of rehabilitating all of Western Australia's abandoned mines?

(3) How much in environmental bonds has been relinquished since the introduction of the Mining Rehabilitation Fund (MRF)?

(4) How much in unconditional performance bonds or environmental bonds are still held by the Department for Mines and Petroleum or other agencies?

(5) How much has been collected through the MRF levy system?

(6) Is the levy currently being invested?

(7) Where are those funds being invested?

(8) How have those investment decisions been made?

(9) What are the expected returns on those investments?

(10) What is the target for the MRF levy amount to be raised?

(11) What is this target based on?

(12) What is the target for the returns of investment from the levy?

(13) What is this target based on?

Hon Ken Baston replied:

The Department of Mines and Petroleum (DMP) advises:

(1) The total rehabilitation liability estimate (RLE) for tenements under the *Mining Act 1978* (the Mining Act) is reported annually in the Mining Rehabilitation Fund (MRF). The RLE for 2014–15 was $2 621 194 200.

(2) A rehabilitation liability estimate has not been calculated for all abandoned mines in Western Australia, as this is not a regulatory requirement under either the *Mining Rehabilitation Fund (MRF) Act 2012* (MRF Act) or the Mining Act.

(3) Bonds to the value of $1 056 510 275 have been retired to eligible tenement holders since the commencement of the voluntary reporting period that commenced on 1 July 2013.

(4) DMP has retained bonds to the value of $198 741 892. These bonds have been retained as the tenement holder was not able to meet the published eligibility criteria.

(5) As of the end January 2016, the balance of the MRF is $57 054 950.

(6) Yes.

(7) The Department of Treasury is responsible for the MRF funds.

(8) The Department of Treasury manage investment decisions.

(9) Entirely dependent on the interest rates from the Department of Treasury. 2.17 per cent was the interest rate from 1 October 2015 to 31 December 2015.

(10) There is no prescribed target for the MRF.

(11) There is no prescribed target for the MRF.

(12) The returns of investment in the form of interest will be invested into positive environmental and safety outcomes from historic abandoned mines.

(13) This is set out in section 8 of the MRF Act.

STATE TRAINING PROVIDERS — COURSEWORK — SIMULATED WORK ENVIRONMENTS

3749. Hon Sally Talbot to the Leader of the House representing the Minister for Training and Workforce Development:

(1) Are any students at the following providers completing the work requirements of their course in a simulated work environment at the college:

(a) Central Institute of Technology;

(b) Challenger Institute of Technology;

(c) C.Y. O'Connor Institute;

(d) Durack Institute of Technology;

(e) Great Southern Institute of Technology;

(f) Kimberley Training Institute;

(g) Pilbara Institute;

(h) Polytechnic West;

(i) South West Institute of Technology;

(j) Goldfields Institute of Technology; and

(k) West Coast Institute of Training?

(2) If yes to (1), how many students and in which courses?

(3) Are any students waiting for a work placement or simulated work environment to complete their course?

Hon Peter Collier replied:

(1)–(2) [See tabled paper no 3765.]

(3) Reliable and comparable data are not collected on students waiting for a work placement or simulated work environment to complete their course.

FISHERIES — ROCK LOBSTER INDUSTRY — IMPORTED BAIT

3750. Hon Adele Farina to the Minister for Fisheries:

(1) Does the rock lobster industry, or some within the industry, use imported bait over local bait?

(2) Will the Minister confirm that all imported bait used by the rock lobster industry is sourced from Marine Stewardship Council's (MSC) certified and ecologically sustainable fisheries?

(3) Will the Minister make it a condition of any monies paid to the rock lobster industry that they use local bait or imported bait sourced from MSC certified and ecologically sustainable fisheries only?

Hon Ken Baston replied:

(1) There is insufficient bait produced in WA to meet the needs of the West Coast Rock Lobster Managed Fishery. Most of the bait used in the fishery comes from New Zealand and consists of blue mackerel, hoki heads and orange roughy heads.

(2) The New Zealand Hoki Fishery is certified by the Marine Stewardship Council (MSC). The other major bait sources are formally managed under New Zealand's fisheries management arrangements and are considered to be sustainable.

(3) The Government does not provide funds directly to the West Coast Rock Lobster industry. Government provides funding to the Western Australian Fishing Industry Council (WAFIC) to represent the commercial fishing industry in WA. WAFIC directs some of this funding to the Western Rock Lobster Council so it can provide representation on behalf of licensees in the West Coast Rock Lobster Managed Fishery on issues specific to that fishery.

MINES AND PETROLEUM — YEELIRRIE URANIUM MINE

3752. Hon Robin Chapple to the Minister for Agriculture and Food representing the Minister for Mines and Petroleum:

I refer to Toro Energy Ltd's proposed Yeelirrie uranium mine, and I ask:

(a) will the Minister please table the end-of-mine plan for Yeelirrie;

(b) what is Toro Energy's obligation to the Mining Rehabilitation Fund; and

(c) are there, or will there be, any environmental bonds held over the tenement?

Hon Ken Baston replied:

The Department of Mines and Petroleum advises:

(a)–(c) The Minister for State Development is the responsible Minister for decisions regarding the Yeelirrie (State Agreement) Project. Note that Toro Energy Limited is not the proponent for the Yeelirrie Project.

ENVIRONMENT — WEDGE ISLAND SHACKS — ASBESTOS

3753. Hon Martin Pritchard to the Minister for Mental Health representing the Minister for Environment:

How many shacks are there at Wedge Island and how many of those have asbestos?

Hon Helen Morton replied:

There are 290 licensed shacks at Wedge and six shacks in the possession of the Department of Parks and Wildlife. Three hundred and fifty-five structures were inspected (externally) at Wedge with 168 structures identified as containing or suspected of containing asbestos. Twelve shacks were inspected internally at Wedge with seven identified as containing or suspected of containing asbestos.

SOUTH WEST INTERCONNECTED SYSTEM — ELECTRICITY — AVERAGE WHOLESALE PRICE

3755. Hon Robin Chapple to the Leader of the House representing the Minister for Energy:

What was the average wholesale price for electricity in the South West Interconnected System in 2014?

Hon Peter Collier replied:

There is no single trading mechanism for wholesale electricity in the South West Interconnected System. As such an "average wholesale price" for electricity cannot be determined.

COMMERCE — BUILDING DISPUTES TRIBUNAL — WHITE SET PLASTER WORKING PARTY

3758. Hon Kate Doust to the Minister for Commerce:

I refer to the September 2002 Building Disputes Tribunal decision in the Massie and Peter Stannard homes case (WABDT 8, March 2002) that found that the white set plaster was too soft, and I ask how many consumer complaints were received in relation to white set plaster:

(a) prior to the establishment of the White Set Plaster Working Party in May 2014; and

(b) since establishing the White Set Plaster Working Party?

Hon Michael Mischin replied:

Records kept by the former Building Disputes Tribunal, or currently by the Department of Commerce (Building Commission Division), do not identify the nature of complaints so precisely as to provide the data requested relating to complaints about soft white set plaster.

From March 2015 the CALS database used by the Department of Commerce included new fields which better describe the nature of complaints, including a field titled, 'Plastering internal/Hard wall set plaster'. This field was intended to capture complaints about the white set plaster that covers the float. Since March 2015, 12 complaints have been captured under the 'Plastering internal/Hard wall set plaster' field, of which two relate to soft plaster.

Issues with the white set plaster usually only become apparent after the application of paint and often several years later. Such complaints are invariably lodged under the 'painting work' field. Where a subsequent investigation finds the likely underpinning cause to be the white set plaster, it is not departmental practice to retrospectively update CALS records.

FOREST PRODUCTS COMMISSION — PLANTATIONS SALE

3764. Hon Lynn MacLaren to the Minister for Mental Health representing the Treasurer:

Regarding the proposed sale of the Forest Products Commission plantations:

(a) which plantations are proposed to be sold:
  (i) softwood;
  (ii) hardwood; and
  (iii) sandalwood;

(b) does it involve:
  (i) only the trees; and
  (ii) trees and land;

(c) how many hectares of plantations are vested in:
  (i) the Executive Director;
  (ii) the Conservation Commission; and
  (iii) other;

(d) will the Minister please table a map showing softwood and hardwood plantations:
  (i) by species;
  (ii) vesting; and
  (iii) proposed for sale;

(e) since its inception in 2000, has the Forest Products Commission made a profit or a loss on its plantations of:
  (i) softwood;
  (ii) hardwood; and
  (iii) sandalwood;

(f) how much was the profit or loss for:
  (i) softwood;
  (ii) hardwood; and
  (iii) sandalwood;

(g) will the contracts with share farmers be assigned; and

(h) will the contracts of sale with log buyers for plantation products be assigned?

Hon Helen Morton replied:

(a) The State Government has announced its intention to investigate divestment of the softwood plantations.

(b) Divestment options involving both trees and related land holdings will be investigated.

(c) Area information as provided by the Forest Products Commission (FPC) is as follows:
  (i) vested in Executive Director – 12,565 hectares;
  (ii) vested in Conservation Commission – 58,758 hectares; and
  (iii) other – 42,278 hectares.

(d) In respect of the requested map showing softwood and hardwood plantations:
  (i) [See tabled paper no 3766.] provided by the FPC;
  (ii) [See tabled paper no 3766.] provided by the FPC; and
  (iii) analysis is ongoing and details are not yet available.

(e) The Forest Products Commission does not report profit and loss on its plantation operations by species type.

(f) The Forest Products Commission does not report profit and loss on its plantation operations by species type.

(g)–(h) These options will be considered as part of the divestment investigation process.

TRAINING AND WORKFORCE DEVELOPMENT — FUTURE SKILLS WA — GENDER ENROLMENT STATISTICS

3766. Hon Lynn MacLaren to the Leader of the House representing the Minister for Training and Workforce Development:

Will the Minister provide the available key gender enrolment statistics for 2014 and 2015, relating to training funded by the Department of Training and Workforce Development under Future Skills WA, specifically:

(a) the course enrolment numbers for female students;

(b) the course enrolment numbers for male students;

(c) the course enrolment number for students not stating gender;

(d) the percentage of the total course enrolments for (a), (b) and ;

(e) the student curriculum hours for female students;

(f) the student curriculum hours for male students;

(g) the student curriculum hours for students not stating gender;

(h) the percentage of the total student curriculum hours for (e), (f) and (g);

(i) the actual number of female students;

(j) the actual number of male students;

(k) the actual number of students not stating gender; and

(l) the percentage of the total actual number of student for (i), (j) and (k)?

Hon Peter Collier replied:

See Legislative Assembly question on notice no.4850.

TRAINING AND WORKFORCE DEVELOPMENT — DELIVERY PERFORMANCE AGREEMENTS

3767. Hon Lynn MacLaren to the Leader of the House representing the Minister for Training and Workforce Development:

Will the Minister provide a copy of the Delivery Performance Agreement between the Department of Training and Workforce Development and the following public training providers (TAFE institutes for the 2015 operational year):

(a) Central Institute of Technology;

(b) Challenger Institute of Technology;

(c) Polytechnic West;

(d) Durack Institute of Technology;

(e) CY O'Connor Institute;

(f) Goldfields Institute of Technology;

(g) Great Southern Institute of Technology;

(h) Kimberley Training Institute;

(i) Pilbara Institute; and

(j) South West Institute of Technology?

Hon Peter Collier replied:

See Legislative Assembly question on notice no.4852.

MINES AND PETROLEUM — KEY PETROLEUM CANNING BASIN EXPLORATION STRATEGY ASX

3773. Hon Robin Chapple to the Minister for Agriculture and Food representing the Minister for Mines and Petroleum:

I refer to the Key Petroleum Canning Basin Exploration Strategy ASX announcement of 10 September 2015, and question on notice No. 5123 answered on 1 May 2012 referencing three photos dated 1 April 2012, and ask:

(a) have the proposals referred to in the Key Petroleum Canning Basin Exploration Strategy ASX announcement been referred to the Environmental Protection Authority;

(b) if no to (a), why not;

(c) were any conditions attached to the causeways (identified in the photos) that passed through mangal systems;

(d) was there any requirement for the proponent to remove the original causeway, drill pad or drill mud pond and rehabilitate the area;

(e) if no to or (d), why not;

(f) if yes to or (d), will the Minister table any conditions or requirements;

(g) if no to (f), why not;

(h) what were the types of drilling fluids used at this site;

(i) were the drilling fluids removed and where were they removed to;

(j) as the pond no longer exists and if the fluids were not removed, does the Minister consider that release of these drill muds into the mangal and marine ecosystem acceptable;

(k) who was the proponent responsible for the environmental management of this causeway, drill pad and drill mud pond;

(l) will the proponent be prosecuted for environmental contamination, breach of conditions or breach of licence; and

(m) if no to (l), why not?

Hon Ken Baston replied:

The Department of Mines and Petroleum (DMP) advises:

(a) DMP has not received any proposals from Key Petroleum regarding Canning Basin Exploration, and therefore has not referred these proposals to the Environmental Protection Authority.

(b) See (a) above.

(c) Refer to answer (4) in Parliamentary Question 5753, August 2012.

(d) Refer to answer (5) in Parliamentary Question 5753, August 2012.

(e) Refer to answer (6) in Parliamentary Question 5753, August 2012.

(f) Refer to answer (7) in Parliamentary Question 5753, August 2012.

(g) Refer to answer (8) in Parliamentary Question 5753, August 2012.

(h) Refer to answer (9) in Parliamentary Question 5753, August 2012.

(i) Refer to answer (10) in Parliamentary Question 5753, August 2012.

(j) Refer to answer (11) in Parliamentary Question 5753, August 2012.

(k) Refer to answer (12) in Parliamentary Question 5753, August 2012.

(l) Refer to answer (13) in Parliamentary Question 5753, August 2012.

(m) Refer to answer (15) in Parliamentary Question 5753, August 2012.

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