

CRIMINAL CODE AMENDMENT (PREVENTION OF LAWFUL ACTIVITY) BILL 2015

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

Resumed from an earlier stage of the sitting.

HON SALLY TALBOT (South West) [5.11 pm]: Before question time, I made a couple of points about why I believe very strongly that the Criminal Code Amendment (Prevention of Lawful Activity) Bill should be referred to a committee for further scrutiny, and I want to continue on that theme in the time that remains to me. Often we consider bills in this place that do not attract a great deal of comment from outside this place.

Hon Jim Chown has resorted to throwing things around the chamber!

Hon Stephen Dawson: Attention seeking.

Hon Jim Chown: Exactly.

Hon SALLY TALBOT: Calm down!

However, that is not the case with this bill because it has attracted an explosion of opposition. Of course that, in and of itself, constitutes absolutely no sound reason for referring the bill. We have dealt with other legislation when there has been a great of community interest and we have not referred the bill, and it has not needed referral because we have been able to explain things in sufficient detail in this place, or we have been able to modify and amend bills so that people's concerns generally are addressed. But that is clearly not the case with this bill. I noticed one of things about Hon Simon O'Brien's contribution to the debate was that he finally 'fessed up to the fact that he is able to use the internet, so no doubt he too has received communications from a very, very long list of groups and organisations. I do not have time to go through all of them but when I talk about an explosion of opposition, let us look at who these people are. Of course, we have considered other legislation in this place on which I could name a number of stakeholders who expressed opposition. In some of those cases I guess the government's response would be, "Well, they would say that, wouldn't they?"—in reference to people who generally do not support conservative governments or people who generally do not support certain moves by governments of any persuasion. In this case I do not know that I have ever seen such an eclectic list of people opposed to the bill. I will give honourable members a bit of a flavour of this opposition.

The first group on this list which puts its name to the joint statement of concern is the Western Australian Farmers Federation. The Western Australian Farmers Federation is not known to be a bastion of socialism. I do not think it usually attacks the government on things the government has done, but in this case it most certainly has. It has put its name first on a list of people who have written to the government expressing serious concerns—concerns expressed over five very eloquent paragraphs about exactly what their opposition consists of. The Western Australian Farmers Federation is one of those groups, as are the Community Legal Centres Association (WA)—the minister who has carriage of this bill has a close association with that group as Attorney General—the Western Australian Council of Social Service; the Centre for Human Rights Education, Curtin University; and Oxfam. A number of church groups have also put their names to this expression of opposition: the Uniting Church in Australia, Western Australia; the Church of Christ, Wembley Downs; Baptist Care Support Services; and a number of environmental groups, which is not surprising because environmentalists see themselves as one of the government's chief targets of this legislation. I do not think the government would deny that. There are also groups such as the Deaths in Custody Watch Committee; Our Land Our Water Our Future; and Fremantle Road to Rail. A very diverse collection of people have expressed their serious concerns about this bill.

I recognise that one of the government's priorities is to get legislation through this place in a timely manner, although I am not convinced that we always go about that in a sensible way. In this case it must be respected that the government has a right to carry out its legislative agenda, so if this bill is referred to the Legislation Committee, of which I am deputy chair, I do not propose we call every one of the groups on this list. Nevertheless, as we all know, some peak organisations or groups are prepared to present jointly to standing committees. I am therefore fairly confident that careful scrutiny of this list will lead to a pretty efficient process and allow all these people to feel that their voices have been heard by the Western Australian Parliament. As I say, the expression of vocal opposition to a bill is not a sufficient justification for referral; nevertheless, when we take into account the strength of that opposition I think it becomes a very relevant consideration, one that members of this chamber should not set aside.

I now turn to whether the terms of this legislation are well defined. It is not a long bill; it contains only four clauses. Anyone only half paying attention to this debate will have noticed that the problem raised on this side of the house is not so much that there are problems with the definitions in the bill, but that some of the terms used in the bill are so wide that they almost defy definition. In the bill there are only two definitions, and they are in clause 4 where proposed section 68AA(1) contains the following definition —

circumstances of aggravation, in relation to the commission of an offence, means circumstances in which the offence is committed in a manner that causes injury to, or endangers the safety of, a person (including the offender or another person participating in the offence);

If this were part of a much more comprehensive bill in which there were adequate definitions of other terms in the bill, that might be adequate in and of itself, but in a bill that uses terms such as “thing” without defining them, I put to honourable members that it negates the adequacy of the two definitions provided.

The other definition is “physically”, a term that we would not expect would require definition in legislation. Proposed section 68AA(1) states —

physically, in relation to the prevention of lawful activity, means —

- (a) by physical force; or
- (b) by the threat of immediate physical force, or
- (c) by the creation or maintenance of —
 - (i) a physical barrier to carrying on the lawful activity; or
 - (ii) a risk of injury to a person (including the offender) or of damage to property as a direct consequence of carrying on the lawful activity.

I put to honourable members that those two definitions do not in fact add substantive content to the Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015, and that is exactly the problem, because it is the other parts of clause 4 that are causing such difficulty, as I say, to not only members on the opposition benches, but also a very broad cross-section of the Western Australian community. That problem might be summarised by simply saying that it is unclear what crime is being targeted. I ask whether that can possibly be a satisfactory state for the house to have arrived at, whereby every member sitting on the opposition benches in this place is unclear about what crime the bill will target. If I have read the tea-leaves correctly and if this referral motion is not supported by members of the Liberal and National Parties and is therefore defeated, we will go on to the rest of the second reading debate and hear the Attorney General’s reply to the second reading debate and then move into committee, it may be that we can tease out what crime the bill is supposed to be targeting. It is possible that we might get to the end of the debate, which at the current going I reckon would be around perhaps June next year, and get to a stage at which we are clear about what crime the bill will target. But one of the difficulties we have been presented with is that we have heard few contributions from government members—members of the Liberal Party or National Party. Not one single member has made a contribution, unless I have misremembered that. I do not believe I have heard —

Hon Sue Ellery: Except Hon Simon O’Brien.

Hon SALLY TALBOT: Yes. I have not heard a single comment, other than by way of interjection, made by members of the National Party, even though their constituency is directly affected by the measures in this bill—or potentially affected, because let us be honest —

Hon Lynn MacLaren: They believe they are affected.

Hon SALLY TALBOT: They believe that they are affected, but we have not been able to clarify that point. We have heard absolutely nothing from the National Party, and the only member of the Liberal Party who has contributed is Hon Simon O’Brien. I said in my opening remarks that I found his contribution quite illuminating, and I would like to explain what I meant by that. Hon Simon O’Brien is not somebody who is always, or has a reputation for being, subtle in the messages he delivers. I am sorry that he is not in the chamber at the moment—unfortunately, he is away on urgent parliamentary business—otherwise I am sure that he would perhaps take the opportunity now to make some more comments on the bill by way of some sort of extension of time. However, I noticed that he said that the objects and content of the bill have not been well explained by the government. I appreciate that Hon Simon O’Brien was ostensibly attempting to call this side of the house into some kind of order; he was attempting to provide some kind of illumination. However, he made the point that he was forced to do that because nobody else on the government benches was prepared to stand and provide that illumination. I have to say that he did not succeed on that occasion. I found his remarks very informative and entertaining, but they did not remove any of my anxiety about the content of this bill; I think I probably speak for other members on this side of the chamber when I say that. However, he certainly made the point that the provisions of the bill have not been well articulated by the government, and it is very telling when one of its most senior and experienced members says that. If Hon Simon O’Brien meant something different by that comment, I am sure he will explain that later. Certainly, the way I heard that particular section of his speech in here a few weeks ago was that the contents and objects of the bill have not been well explained by the government.

Hon Nick Goiran: Why don't you actually quote him rather than putting words into his mouth?

Hon SALLY TALBOT: I would love to do that, and I have the reference here, but I have a number of other points I want to get to before my time runs out, so I will leave my comments at that.

Several members interjected.

The ACTING PRESIDENT (Hon Alanna Clohesy): Order! Hon Sally Talbot has the call.

Several members interjected.

Hon SALLY TALBOT: My copy of the bill has fallen. It is okay. It is only a very a light bill so it has fluttered to the ground, not thumped to the ground. I ask honourable members to consider—thank you.

Hon Peter Collier: Say thank you.

Hon SALLY TALBOT: I did say thank you. Did Hon Alyssa Hayden hear me say thank you?

A member interjected.

Hon SALLY TALBOT: I want to ask members on the government benches whether they consider there are any fundamental rights at stake in this bill and whether there are changes being made to any fundamental rights. I want to ask them that question because—I have done this before in referral debates—I want to make it clear that whenever I weigh up whether I think a legitimate argument can be made for the referral of a bill to a committee for consideration, one of the things to which I will always have recourse is the fundamental legislative principles, which, we are taught in our induction to this place, ought to inform the workings of every committee in this place. I recognise that the FLPs, as they are affectionately known, perhaps do not receive as much attention in this Parliament as they do in other Australian Parliaments. I note in particular that the Queensland Parliament has elevated the FLPs to a status that this Parliament would benefit from if it adopted the same approach. There are 16 fundamental legislative scrutiny principles. At number one is the question —

Are rights, freedoms or obligations dependent on administrative power only if sufficiently defined and subject to appropriate review?

The second is —

Is the Bill consistent with principles of natural justice?

There are a number of points, 11 in all, that come under the umbrella heading of —

Does the Bill have sufficient regard to the rights and liberties of individuals?

This is a point that I want to put to honourable members for consideration. It must be admitted by even the most intransigent members of the government that there are occasions on which they bring legislation into this place and ask that question of the opposition: does the legislation have sufficient regard to the rights and liberties of individuals? To which the opposition replies yes. It is not a point on which there is a blanket negative response from members on this side of the chamber. We look at every piece of legislation that comes into this house, and I would venture to suggest, without having done a quantification of this point, that for most of the legislation that comes into this house if that question was asked of members on my side of the chamber, they would reply yes. They might not agree with the principles enshrined in the legislation and they might not agree with either the specific measures in the legislation or the way in which the government has gone about bringing those objects to fruition, but if we take, for instance, that long procession of tax bills we have dealt with this in place, there has not been an argument raised on this side of the chamber that the legislation does not have sufficient regard to the rights and liberties of individuals. In this particular case, clearly, we on this side of the chamber have a major problem, and our answer at this stage of the debate is, no, most definitely the legislation does not have sufficient regard to the rights and liberties of individuals. Therefore, the first 11 principles of legislative scrutiny have, in the view of the members of the opposition in this chamber, been contravened. The government may well be able to demonstrate that is not the case, but it has not been able to do so thus far in debate in both chambers of this place. No government member has stood and defended those principles and demonstrated that they are not contravened by the measures in this bill. The other side of that coin is that there have been eloquent arguments on this side of the house demonstrating that they have been contravened. What is more, arguments have been put by a wide range of stakeholders, to whom I have just referred, that those principles of the rights and liberties of individuals have been contravened. I am not pre-empting the conclusion at which the legislation committee or any other committee of this place might arrive at the end of a process of inquiry; all I am saying is that if the government has an argument to mount, it has not mounted it thus far, let alone won it. Going into committee will give the government a chance, which presumably it welcomes, to get on the record all the detailed arguments about why it believes those first 11 fundamental legislative principles have not been contravened by the measures of this bill. I have to say that in this particular case I think the other five FLP should also be considered, because they come under the umbrella heading of whether the bill has sufficient regard to the institution of Parliament. I ask honourable members to consider whether a bill with such ill-defined terms can possibly protect the rights of individuals and the role of Parliament in terms of regulating the behaviour of public

officers—police officers, rangers et cetera. Anybody who might be trying to ensure compliance with the laws of this state will find themselves in a position of not being protected because Parliament has essentially abrogated its rights to be the authority by giving such ill-defined powers to public officers and others. The fundamental legislative principles are too often overlooked when we give consideration to bills of this kind, and I think this bill could clearly be examined against every single one of those principles to see whether it measures up. I return to the basic point I made before I referred to the FLPs; that is, we are simply not clear about what the bill does—what it intends to do and what its effect will be in practice. We are simply not clear about what activity the bill seeks to deem illegal.

There is another reason that this lack of clarity has arisen. I suspect, without wishing to stray too far from the subject of this referral motion, that we are about to encounter the same problem when we come to some legislation to do with graffiti that I believe might be wending its weary way into this chamber before the end of the year. It is the problem we had the last time we considered an anti-graffiti bill and it is exactly the same problem that arises with this bill. Most of the things the bill refers to are not illegal—I am using the term “things” in its technical, legal sense, which I assume is exactly how the bill tries to use the term “things”. We are not talking about knives or weapons, we are not even talking about things that can be used as knives and weapons; at least, presumably it is not the fact that they might be used as a weapon that makes them an illegal thing under the terms of this bill. We just do not know what we are creating if we wave this bill through this chamber and it becomes law. We simply do not know what people might find on the back seat of their car or in the pocket of their jeans that suddenly becomes a thing for the purpose of this bill.

Hon Stephen Dawson: An umbrella.

Hon SALLY TALBOT: An umbrella is a good example.

Hon Michael Mischin interjected.

Hon SALLY TALBOT: I think Hon Michael Mischin was just asking me something. What was the question?

Hon Michael Mischin: What sort of thing is a weapon?

Hon SALLY TALBOT: That is an awfully good question. I assume this becomes a rhetorical question.

Hon Michael Mischin: No, it's not. What makes a thing a weapon?

Hon SALLY TALBOT: Hon Michael Mischin is the Attorney General; that is what we have been asking.

Hon Michael Mischin interjected.

The ACTING PRESIDENT (Hon Alanna Clohesy): Order! I think it is fine for a certain amount of interjection, but when it becomes circular we will move on.

Hon Michael Mischin interjected.

Hon SALLY TALBOT: I think it will only obfuscate the issue further if I allow Hon Michael Mischin to interject, so I think it is best if we leave him his time. Does Hon Michael Mischin have unrestricted time to respond to the second reading debate?

Hon Michael Mischin interjected.

The ACTING PRESIDENT: Order! Thank you; we have Hon Sally Talbot on her feet.

Hon SALLY TALBOT: Thank you; I will address you, Madam Acting President.

Hon Michael Mischin has unlimited time to respond to the second reading debate and I am not sure whether he is indicating to me that he has a difficulty answering his own question or whether he is just having a little rehearsal of what he might say later in these proceedings. I had returned to my basic point, which is that we are unclear what the bill does—we are unclear about what activity will be deemed to be illegal when this bill is proclaimed and we are unclear about what things will be proclaimed to be illegal things, even though it is legal to carry them in some circumstances. All those things constitute very good and sound reasons for referral to a committee.

As I say, the second reading debate has not helped. I know that it is not over in the sense that we have not heard from Hon Michael Mischin, but the second reading debate has not helped. This is not despite the fact that the bill only contains four clauses. It is not a simple bill and, as I have already mentioned, I believe that although we are quite good at dealing with complex things in debate in this chamber, some complexities are best thrashed out in a committee in which expert advice can be called on and members can give due consideration to perhaps differing views about aspects of that complexity. In the few minutes that remain to me I point out to the government that the two standard objections to referrals do not apply in the case of this bill. There are two standard objections I have been able to find in previous debates over several years. The first is that there must be a timely outcome and delays will somehow result in some catastrophic outcome, and we ought to be responsible and prevent it from happening. I cannot see that is the case in relation to this bill, although I note that some of my colleagues have referred to the fact that the Roe 8 extension will presumably happen sometime soon. Perhaps there is a degree of urgency about this and if the government is looking for a mechanism it believes it will need

in relation to a specific project such as the extension of the Roe Highway, it ought to be honest enough to tell this place that is the case so we can consider the bill in the specific context of the Beeliar wetlands. Nobody on the government benches has suggested that is the case, and in the absence of that advice I form the conclusion that there is no timeliness essential to the passing of this bill. The other objection sometimes raised by governments is that the delay of a bill will result in some kind of legal liability accruing to the government. I recall that was specifically raised in a bill relating to Barrow Island, when financial penalties were accruing for the government in the order of millions of dollars a day in relation to an agreement that had been entered into about 10 years ago. On this side of house we took that into account and I believe we dealt with things in a way that expedited matters because of that consideration. We are reasonable people; we are open to arguments along those lines, but that is clearly not the case in this situation.

Some of the other issues with the bill are very appropriately addressed in committee rather than in this place. There has not been time to go into a real consideration of the implications of the aspect of this bill that reverses the onus of proof.

Hon Michael Mischin interjected.

Hon SALLY TALBOT: I am now getting to the stage at which I am genuinely looking forward to Hon Michael Mischin replying to the second reading debate, because he obviously has a huge amount to say and it would be good for him to be able to stand and say it without interruptions from this side of the house, rather than by interjection. Perhaps there is no reversal of the onus of proof. If the government is of that belief, it has yet to convince a whole series of stakeholders in Western Australia that that is the case. The reversal of the onus of proof lies at the foundation of most of the objections I referred to earlier. If the onus of proof is reversed, that is a very, very serious thing and the opposition will do everything it can to stop the bill passing. It is a shame that there are no yellow bulldozers in here because if there were, we could chain ourselves to them! That is how strongly this side of the house feels about legislation of this kind. Although I talk about that in a metaphorical sense, the opposition will take whatever steps it can to prevent this bill going through in its current form. But of course that does not close the door, because the point I am making about referring this bill to a committee is if the government could mount a decent argument, if it could provide compelling evidence that a law of this kind is needed, of course the opposition would support it. But the government has not done that to this point, and it shows no signs of being able to do it in the rest of this debate. If this bill is referred to committee, at least we can mount a decent argument.

HON STEPHEN DAWSON (Mining and Pastoral) [5.40 pm]: It is my pleasure to speak to Hon Robin Chapple's motion 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 no later than 20 August 2015. Hon Ken Travers pointed out earlier that the date in this motion is 20 August 2015. Obviously, the house cannot pass a motion in this form, given that date. I hope another member takes the opportunity to change that date.

Hon Michael Mischin: Why don't you?

Hon STEPHEN DAWSON: I am not doing it at this stage, Attorney General. I am limited to a 20-minute contribution this evening, so I am not taking interjections. I, too, look forward to the Attorney General's contribution.

Several members interjected.

The ACTING PRESIDENT (Hon Alanna Clohesy): Order!

Hon STEPHEN DAWSON: I think some members opposite are talking about me reading a speech. For the record, I am actually holding up today's notice paper—Tuesday, 20 October 2015—particularly the Orders of the Day part. Please do not reflect on me in such a way.

Although I support Hon Robin Chapple's motion, the date needs to be changed. It is worth pointing out that had this motion been agreed to a long time ago, we would have already had for consideration a report from the Standing Committee on Legislation. That is what we will debate tonight. I have no doubt that it would have been a fine report. I am pleased that during this debate most members of the Standing Committee on Legislation have been sitting and listening in the chamber: Hon Robyn McSweeney, who is a wonderful chair of that committee; Hon Sally Talbot, who has just spoken; Hon Lynn MacLaren, who is yet to speak; and Hon Dave Grills. I note that Hon Donna Faragher has had to leave the chamber on urgent parliamentary business but she, too, has been in here listening to this debate. There is no doubt in my mind that that committee is diligent and that it cares. That committee could make a really important contribution to this debate. That committee could actually make important changes to this bill.

There are a number of concerns about this bill. There are a number of reasons that I think the bill should go to that committee, not least the fact that I have received a fair amount of contact from constituents in my electorate who are concerned about the bill's breadth and about its penalties. These people, and the organisation they potentially are a part of, have a great number of concerns. I will talk about those later.

Hon Robyn McSweeney interjected.

Hon STEPHEN DAWSON: I did not hear Hon Robyn McSweeney's interjection.

Hon Robyn McSweeney: If they abide by the law, they have nothing to worry about.

Hon STEPHEN DAWSON: There you go! Except the law in this case, honourable member, is a very strange law and a very concerning law. It is only a small bill. Hon Sally Talbot held up the bill during her contribution and it was so light that it blew away! There is not a lot of paper but there is certainly a lot in what the bill says. There are certainly a lot of risks attached to the bill.

This is a concern of mine, and this is one of the reasons it should go to the committee: this bill criminalises peaceful protests. The penalties contained in the bill are fairly substantial. Proposed section 68AA(2) states —

A person must not, with the intention of preventing a lawful activity that is being, or is about to be, carried on by another person, physically prevent that activity.

If the offence is committed in circumstances of aggravation, the penalty is imprisonment for 24 months and a fine of \$24 000. I am a pacifist; I do not like fights, but I will park that aside. The fact that somebody could be imprisoned for 24 months and receive a fine of \$24 000 —

Hon Darren West: That is more than Oscar Pistorius got!

Hon STEPHEN DAWSON: I am not going to get on to South Africa, honourable member.

I just read out the penalty at paragraph (a). It is stated at (b) —

in any other case, imprisonment for 12 months and a fine of \$12 000.

I am very concerned about those penalties. They seem very severe. As I was sitting here this afternoon I looked at the Mental Health Act 2014 that we passed in this place not too long ago; in fact, we will amend it in a few weeks' time, but I will leave that point aside. There are a range of penalties in the Mental Health Act but I will refer to the one that relates to seclusion. If someone is kept in seclusion without proper authorisation—that is, a seclusion order—the penalty is a fine of \$6 000.

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

Hon STEPHEN DAWSON: I am telling the honourable Leader of the Government this afternoon why I think this bill should go to a committee.

Hon Peter Collier: Why is that?

Hon STEPHEN DAWSON: If the honourable member listens, he will hear! He is trying to lead me astray.

Hon Peter Collier: I would never do that!

Hon STEPHEN DAWSON: Madam Acting President, I will make my contribution through you this evening so that I am not led astray and so that Hon Peter Katsambanis cannot interrupt me.

The ACTING PRESIDENT: Hon Stephen Dawson, that is a very good idea. Please continue.

Hon STEPHEN DAWSON: What I was saying, before I was so rudely interrupted —

Hon Michael Mischin: Can you get to the point as well?

Hon Peter Katsambanis: He has no point!

Hon STEPHEN DAWSON: I have 38 minutes and 42 seconds to get to the point. Actually, I am making the point as I go along because I keep reminding —

Hon Michael Mischin interjected.

The ACTING PRESIDENT: Order! I know we are all looking forward to the dinner break; however, I would like a little more order in this chamber.

Hon STEPHEN DAWSON: I will certainly try to do what I can to ensure that there are no disorderly interjections this evening. I will try to assist in that regard.

I looked at the penalties in the Mental Health Act 2014; a bill that we recently passed in this place. There is a penalty of \$6 000 if someone is kept in seclusion without proper authorisation, yet the bill before us creates an offence for possessing a "thing". As a result of possessing that thing, somebody could end up in prison for

12 months and be fined \$12 000. If they use that thing in circumstances of aggravation, the penalty is \$24 000 and two years' imprisonment. That is a concern. I do not think these penalties have been looked at properly or have been given due consideration. They are not reasonable. This is one of the reasons the Standing Committee on Legislation could, and should, look into this bill.

Several members interjected.

Hon STEPHEN DAWSON: It is 10 minutes before six o'clock. I, too, am looking forward to teatime. I would encourage members on the far side not to lead me astray. If I get led astray, I will have to make the point again.

The ACTING PRESIDENT: Order! One of the ways they will not lead you astray is if you do not talk to them.

Hon STEPHEN DAWSON: Thank you, Madam Acting President. I will certainly continue to make my contribution through you this afternoon. Perhaps I should lower my voice and that way members opposite will not rudely interject if they cannot hear me!

One of the reasons I think the Standing Committee on Legislation should look at the Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015 is in respect of the penalties included in the bill; I think they are far too high. I think the fact that someone could be jailed for up to two years as a result of this bill is a real concern. I make that point.

There are a number of penalties included in this bill, but I will not read them this afternoon, or just yet; I might read them next time. I mentioned that I was concerned that the bill creates the offence of possessing a thing to be used for preventing lawful activity or trespass. Other members have mentioned this previously, but I think it is worth labouring the point: this can apply to literally anything, and it criminalises the possession of ordinary, everyday items. It is so broad it could apply to the possession of a pair of shoes or an umbrella, and I do not think members opposite have thought about this hard enough and long enough. I think the legislation committee could actually look into the definition of "thing" and could and should put some barriers against or boundaries around it so that we know what a "thing" is, we know what is included in this legislation, and we know what people might be captured by—what issue might capture people, or what issue might result in people being fined as a result of this bill.

Another concern of mine, which I think the committee should also look into, is that this bill reverses the onus of proof. In circumstances giving rise to a reasonable suspicion, anyone charged would have to prove that they did not intend to prevent lawful activity. That onus of proof is a very big one. I think the presumption of innocence is a fundamental part of our existing law, and I am very concerned about this move. Again, perhaps the Attorney General might talk to this issue when he eventually makes his comments on the bill, but I think if we sent this to the legislation committee now, it could look into this bill, look at what it means, look at whether it is needed and look at the monumental change that will result from it.

There are laws that currently give the police the power to charge people for trespass. Proposed section 68AB, "Preparation for physical prevention or trespass", carries a penalty of imprisonment for 12 months and a fine of \$12 000. There are already existing laws that capture trespass and there are already existing police powers that allow them to issue move-on notices. In fact, move-on notices can be issued pre-emptively if police are concerned that an offence is going to be committed. Even before an offence takes place, if the police are concerned that it could take place, they can issue a move-on notice. That is in the existing legislation. The amendments in this bill are too far-reaching. The legislation committee, or any other committee—in this case, the motion obviously refers to the legislation committee—could actually look into whether this legislation is really needed and whether there are existing laws already in place in this state that could be used to do the same or similar things, which would mean that the bill before us was not needed.

Like Hon Sally Talbot, I still struggle with the reasons why this bill is before us, where it came from and what its genesis was. What was the issue that led to the government putting this bill before us? I probably will not get an answer to that tonight or, indeed, at all during this debate, but it is of real concern that this bill with its strong penalties is before the house and that the government will not heed the concerns of members on this side of the house. It may be that even if this bill were to go to a committee, there would still be issues of concern about it after the committee report had been handed down, and perhaps certain members on this side would still vote against it; but if it had been sent to the committee months ago, we would have had the results back by now and it would be a very different debate happening tonight.

I am also concerned that the bill is badly drafted; I have mentioned some of these points previously. There are very broad, undefined terms, and as other members in this place have said, poorly drafted legislation can be misused by governments of all persuasions when the need arises. We are the house of review, the upper house; we should be proud of the legislation that passes through this chamber, and I certainly am not proud of this legislation—partly because I do not agree with it, and partly because it is drafted in such poor and broad terms. Given those issues, a proper review of the bill should take place in the legislation committee.

There is another reason why I believe this bill should go to the legislation committee and that is, to be frank, because my constituents are concerned. I have had more contact from my constituents on this bill than for most other pieces of legislation that have come before me. I asked my office to do a bit of an exercise to tell me where these people were and what they were saying, and they were all saying that they were deeply concerned about the bill. In fact, I will quickly read one letter from a constituent just to put it on the record. The sentiments in this letter were echoed by a number of people. I am reading this letter because it forms a big part of the reason why I think this bill should go to a committee. It reads —

I am deeply concerned by the Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015 and the implications it has for Western Australia's democracy and the rights of citizens to engage in peaceful protest.

Australians have a long and proud history of peaceful demonstration which has been instrumental in securing the rights that many of us now take for granted.

The right to vote, to a fair wage, to a fair price for farm produce, and the protection of the places we love would not have been achieved if it were not for citizens engaging in peaceful protest.

This excessive legislation creates very broad new offences which unreasonably infringes on the international human right of freedom of assembly, and would be open to misuse.

Legislation which targets peaceful protest and removes the presumption of innocence for citizens has no place in Western Australia or any democracy, and I do not support its introduction in any form.

I am calling on you as my representative in Parliament to oppose this bill in order to protect our fundamental rights and values and to maintain the healthy function of our democratic society.

Please respond to me confirming that you will not support these draconian laws in State Parliament.

We have a right to be heard and that is our best way to be heard on mass. You parliamentarians wouldn't know what peaceful is the way you yell and scream at each other in question time. We deserve more respect to voice our own opinions in the best way we can.

Yours sincerely, Jack Austin

Western Australia 6725, Australia

His postcode is 6725, so he is probably from Broome. There are some things in that letter that I disagree with; I actually think that we in this place are, for the most part, fairly collegiate, and that we listen to each other with respect and have serious debates. Perhaps Mr Austin might have been correct if he had been talking about the members of the Legislative Assembly screaming at each other, but we do not do that in here, and —

Hon Kate Doust: He might like to give evidence to a parliamentary committee.

Hon STEPHEN DAWSON: That is a good point, honourable member; he might like to give evidence to a parliamentary committee if he were called and if Hon Robin Chapple's motion is successful tonight. That letter, by the way, was sent to all members of the Mining and Pastoral Region, the state government email address, and to Josie Farrer, the member for Kimberley, who is the local member.

It was not only Mr Austin who raised concerns; I also was contacted by Katherine Taylor from Broome, people from the suburbs of Karratha, people from the goldfields, people from Derby, Kalgoorlie, Cable Beach, Esperance, Port Hedland, Exmouth, North West Cape, people from universities and people from right around the state—people who are concerned about this bill. That feedback is one of the big reasons I think this bill warrants a further look and should go off to a committee, because my constituents are concerned, so I am concerned. I believe they have valid reasons for being concerned, and it would be remiss of me to not act on their concerns and to not support Hon Robin Chapple's motion tonight.

I also received correspondence from the Human Rights Law Centre in Melbourne in relation to the Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015. It also was concerned about this legislation. The letter reads, in part —

Namely, we are concerned that the two offences introduced by the Bill infringe the right to freedom of assembly and free expression. We are concerned that the offences are drafted so broadly as to capture legitimate protest activity. This is particularly concerning given the offences carry serious and disproportionately severe penalties.

It goes on to urge the Parliament not to pass this legislation. Further along, the letter reads —

In the short term, we urge members of parliament to consider referring the Bill to a committee for inquiry so that the legal and human rights risks can be properly considered. Those are two further reasons why this bill should go off to the committee: the Human Rights Law Centre, an august body, has raised its concerns that the legal and human rights risks are so great that they need to be considered by a committee.

Sitting suspended from 6.00 to 7.30 pm

Hon STEPHEN DAWSON: Before the dinner break, I was outlining some of the reasons that I believe the Criminal Code Amendment (Prevention of Lawful Activity) Bill should be referred to the Standing Committee on Legislation. I do not propose to go back over those reasons and make the same contribution again, but I will quickly touch on some of the reasons that I believe this bill should be referred to the committee. I had mentioned that the motion is slightly out of date, given that we have passed the reporting date of 20 August, so I hope that someone comes up with an amendment to push that out to, say, February next year.

I will quickly go through the reasons. I believe the bill criminalises peaceful protest. People all over the world and throughout history have engaged in non-violent direct action to establish rights and protect beautiful places. This bill will do away with that, and that is one reason it should be referred to the committee. This bill applies to public land and private land. This bill could be used against a farmer who is protesting about fracking on their land; they could be caught by this legislation. Again, I believe that that should not happen. That is another reason that this bill should go before the legislation committee for further work. The bill creates an offence of possessing a thing to be used for preventing lawful activity or trespass. It could apply to literally anything. As I said previously, it could be an umbrella; it could be all sorts of things. The sky is the limit. We do not know exactly what is included under the bill, and I think the learned people on the committee are the right people to look into this.

Hon Jim Chown interjected.

The ACTING PRESIDENT: Order! I think we need to listen to the speech of Hon Stephen Dawson.

Hon STEPHEN DAWSON: Committees are wonderful things. I think of the hardworking and diligent Standing Committee on Environment and Public Affairs. We have exceptional powers. We can call people in, we can call for public submissions, we can have public hearings and we can insist that people come in, although those powers are rarely used. In this case, an opportunity should be given to members of the community to make a submission on this legislation and tell the committee exactly what their concerns are face to face. The committee option would provide an opportunity for those disparate groups that have raised concerns about this legislation to explain why they have those concerns and to give practical examples of those concerns and the issues that could arise as a result of the legislation. That is a real reason for this bill to go before the legislation committee for further work. The groups that have raised concerns about this legislation are from all walks of life. Environmental groups, the Conservation Council of Western Australia, the Western Australian Farmers Federation, community legal centres and the Western Australian Council of Social Service have raised concerns about this legislation. Certainly, the president of WACOSS wrote to me in September raising concerns about this legislation. I will put this on the public record because I think this is another reason that the bill should go before the committee for further consideration. The letter states —

Dear Stephen,

Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015

I write on behalf of the Western Australian Council for Social Service in relation to the above named Bill, which we understand was debated last week —

This was dated 21 September —

and will be debated again tomorrow by the Legislative Council, with an urgent request that the Bill be referred to the Standing Committee on Legislation for further review and consultation with the Western Australian community sector.

The Council is deeply concerned that the Bill unreasonably limits human rights that are core to our democratic system and civil society. In particular we are concerned that this legislation would not only criminalise some forms of activity related to peaceful protest, but would remove the presumption of innocence for citizens engaging in such activities.

Given the risk of these serious, and potentially unintended consequences of this Bill, we strongly urge you to refer this Bill to the Standing Committee on Legislation for inquiry where its contents could be thoroughly considered in consultation with relevant stakeholders in the community services sector. The sector is committed to working collaboratively with the Government and WA Parliament on the health and wellbeing of civil society, and seeks an opportunity to be engaged in the Parliament's consideration

of this Bill. Many community sector organisations have also made their own representations to you on this issue.

That was Steve Joske, the president of WACOSS, not begging us, but imploring us to send this bill to a committee. There are real, valid concerns by a range of organisations in this state. We often get letters from different groups expressing concern about legislation, but this is a fairly strongly worded letter to me, although I think we all got a copy of the letter. It is an appeal by these non-government organisations for us to stop in our tracks and stop what we are doing in this debate at the moment and ensure that this legislation gets the proper scrutiny it deserves.

Monumental changes are proposed in this legislation. We should all be very conscious of what those changes could and may mean for not only us, but also Western Australian society. They will have long-term and lasting effects on civil society groups and non-government organisations. If the bill goes through, I hope, of course, that the act will not be around for very long. I am pleased to say that Hon Mark McGowan has committed the Labor Party, should it win government at the next election, to repealing the legislation as a priority. Most pieces of legislation go through this place in a bipartisan way. We might stand and raise elements of concern, but the majority of legislation goes through this place with us all on the same side because we believe that we are making better laws. In this case, though, we believe that this legislation is deficient. It is not just members on this side of the chamber; community organisations of all political colours believe that this bill is deficient and has concerning elements. As a result of that, Labor has committed to making repeal of this law a priority. I hope it does not get to that stage, because I honestly believe that the Standing Committee on Legislation could give the bill proper scrutiny, and could have those groups give evidence. We should not be rushed; let us take our time on this. As I have said previously, we have raised concerns that we believe the bill is broadly drafted and potentially open to misuse. Stifling a person's right to peaceful protest has potentially dire consequences, so we should take our time, allow public submissions and ask people in to give evidence. The first letter we received from some of the groups opposed to this legislation had about 40 signatures. Since then, I have received another letter signed by almost 70 groups from across Western Australia expressing concerns about this legislation. The most recent pieces of correspondence I have had on this matter support Hon Robin Chapple's motion to refer this bill to a committee, to give these groups the opportunity to express their fears and tell us what is wrong with the bill in their own words.

Before the break I quoted briefly from a letter from Anna Brown of the Human Rights Law Centre. I will go back to that letter, but I will not quote the same points, because I do not want to be accused of repetitious behaviour. The letter reads —

There is no time period specified in the legislation so even a brief interruption to a lawful activity will trigger the offence. Further, the legislation effectively reverses the onus of proof requiring people to disprove that they intended to prevent the lawful activity if there are reasonable circumstances suggesting they did.

This vague and excessive legislation is simply not needed. Police already have a suite of offences like trespass, property damage and breach of the peace at their disposal as well as overly broad powers to move protesters on if they reasonably suspect they are breaching the peace, preventing a lawful activity or about to commit an offence.

I made that point earlier. Police in this state have strong powers, and I would say sufficient powers, in other pieces of legislation to do most of the things that this piece of legislation seeks to allow in a different way. We do not need this piece of legislation; we could just use existing laws. The letter continues —

The Bill is so excessive as to raise concerns regarding its constitutional validity. For this reason, we have sought a written opinion from leading constitutional expert Bret Walker SC on whether, if passed, the legislation would risk constitutional invalidity due to its impact on the implied freedom of political communication. We expect this opinion to be finalised in the coming two to three weeks and we would happily make a copy available to assist parliament in its consideration of the Bill.

I have not seen any further correspondence on this issue.

Hon Nick Goiran: What is the date of that piece of correspondence?

Hon STEPHEN DAWSON: It was 17 September, so it is actually past that time; we are about four weeks later. Hon Nick Goiran would know that sometimes our learned colleagues in the legal profession like to take their time when giving this advice. I have not seen any further advice to us as yet. However, given that an eminent Senior Counsel is providing a written opinion on this bill—bear in mind he is a leading constitutional expert—and that the Human Rights Law Centre has asked him to provide advice, that is another reason for us to hold our horses, slow down a bit and wait to see the outcome of that. Better than just waiting and seeing, let us send this

bill off to the Standing Committee on Legislation of the Legislative Council and, if that advice comes in, it could surely be forwarded on to the committee and included in its deliberations. It would not have to hold up the committee. The committee obviously would not have to wait until a piece of legal advice came in. In fact, the committee could get its own advice. We have terrific staff on our parliamentary committees in this place—qualified staff who could give advice or seek out advice from whoever they think is appropriate. Given that this letter has been written to us and the fact that an eminent constitutional expert is likely to provide advice on the bill, we should refer this bill to the Standing Committee on Legislation. The letter continues —

We urge the parliament not to pass this legislation. In the short term, we urge members of parliament to consider referring the Bill to a committee for inquiry so that the legal and human rights risks can be properly considered.

I have outlined some of the reasons I believe this bill should go to a committee. Hon Robin Chapple's motion is a good one. We need to provide more scrutiny on this bill because of the level of community interest and concern. As I said, all sorts of groups—church groups, environment groups, farm groups and civil society groups—have expressed concern about what the bill might mean to them, what it means to society and what its lasting effects might be. We should be referring this bill to a committee.

The other reason I believe this bill should be referred to a committee is that my constituents have expressed concern about it, right around regional Western Australia, in Kalgoorlie, Broome, Derby and Exmouth. They have written to me expressing concerns about this bill. I am shocked at the level of community concern about the bill, and that is one of the main reasons I am standing here tonight saying that this bill should be referred to a committee. Hon Robyn McSweeney's committee is perfect for this. It has done some very good work previously on our behalf on a range of pieces of legislation. The Standing Committee on Legislation is equipped and skilled enough to do this. Given the level of concern about this bill, I believe that extra scrutiny is warranted. With those comments, I will conclude my remarks.

Debate adjourned, on motion by **Hon Peter Collier (Leader of the House)**.