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That offence was repealed in 2004 as part of a considerable law reform exercise around the Police Act and simple offences that were contained within that act. Several preparatory offences such as loitering, evil designs and obstruction were also repealed in favour of a move-on order provision that now appears in section 27 of the Criminal Investigation Act 2006.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

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