

**CRIMINAL CODE AMENDMENT (PREVENTION OF LAWFUL ACTIVITY) BILL 2015**

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

Resumed from 17 September on the following motion moved by Hon Robin Chapple —

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

**HON KEN TRAVERS (North Metropolitan)** [3.30 pm]: I am very keen to support the motion moved by Hon Robin Chapple to refer this bill to a committee. There is no doubt in my mind that the Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015 clearly meets the test of the sort of legislation that should be sent to a committee to look at both the policy and the detail of the legislation. The policy needs to be looked at by the committee because this is a highly contentious piece of legislation. There is significant dispute within the community about whether this bill is even required, and that is the sort of thing that a committee of this Parliament can do; it can allow the public to have a say. It can take evidence and ask for submissions to be made on whether or not this bill is necessary. The first thing is to test the policy of the legislation through a parliamentary committee process. There is absolutely no doubt that this bill meets that test and should be sent to a committee. The other thing about the policy of this bill is the lack of clarity. The government says it is needed for a range of reasons. Others look at the reasons given by the government and can see numerous pieces of existing legislation to deal with the circumstances that the government claims this bill is required for. Again, this is a policy matter that could be examined by a parliamentary committee. We could get the finest minds, not just the fine minds that sit on the Standing Committee on Legislation, to provide submissions, and we could get evidence from the community if the bill goes to a committee. If the bill just continues through this house as it is currently progressing, the opportunity for this debate to be better informed will be lost. If ever there was a time for that to occur, it is when we have controversy with a bill such as this and many conflicting views being put. I do not know that the committee will necessarily be able to resolve every one of those and bring the bill back to the house, but I am confident that it will be able to come back to this house and clarify a range of the different claims being made about this legislation. That is why this bill should be sent to a committee.

Then there is the detail of this bill. This is where it gets even more confusing. If this bill does not go to a committee, I am sure that we will spend hours in the committee of this place trying to understand that detail. We recently saw circumstances in which the State Solicitor's Office provided advice to the government about a bill regarding the Auditor General and access to documents. Despite what was written in the explanatory memorandum, the State Solicitor's Office is now arguing that a clause does not mean what the explanatory memorandum states it means. That was, in my view, on a very simple matter. If that is the case for that legislation, what about the circumstances when there is so much doubt? Again, one of the problems that I have is that the courts will be struggling to understand when they come to interpret this bill, because there is not even the sort of clarity that there was about the rights of the Auditor General to have access to documents. Many different clauses in this bill require clarification. I suggest that it needs to go to a parliamentary committee so that the parliamentary committee can seek independent legal advice about what these different clauses mean. I do not think we will be able to achieve that during the committee stage of this bill. I am sure that, as the opposition, we will do our very best to try to draw out those points as we go through the committee stage, but I think it would be a far better process for this house and for this legislation for it to be referred to a committee.

The third reason, apart from dealing with the policy and the detail, is about the practices and the processes of this Parliament and whether we want to be efficient. We could spend days on this matter. It is worth noting that the motion was moved so long ago that Hon Robin Chapple thought that a committee of the house could consider the matters and report back to the house by 20 August. I last spoke on this bill on 17 September. The irony of all this is that it is clearly not the highest priority for the government to bring this bill on. It brings it on, it drops it off. I assume we will then go into this whole convoluted process in which we will get on to the short title debate, drop it off, go for another six months and achieve nothing. Sending it to a committee now could actually help resolve some of that process. If the bill goes to a committee, the Leader of the House could sit and have a chat with the Leader of the Opposition about the processes and how they will be dealt with. That is not uncommon in this place. It certainly used to be not uncommon in how legislation was dealt with, but it seems to no longer be the case. Referring it to a committee is a way of speeding up the practices of this house and the way in which this legislation can be dealt with. There is absolutely no doubt in my mind that this is the sort of legislation that not just should be but must be sent off to a committee. It will allow us to get clarification about whether the bill is needed. It will allow us to go through the detail and have independent advice about what the detail means, rather than the long, convoluted process that we will otherwise have in this house, and it will speed up the processes if the Leader of the House so chooses to do. The alternative, I suspect, is that forever and a day until this government loses office, we will have this bill brought on for a couple of hours here and then it will not be brought on. Anyone who thinks that this bill will not take hundreds of hours to progress through this chamber,

because of the controversy around the policy and the detail contained in this bill, is kidding themselves. That can be solved very quickly. The process can be shortened significantly by referring it to a committee at this stage.

One of the things that we will need to do is give the committee a new reporting date. I am sure others will think of better dates. I know the legislation committee has another couple of bills to deal with, but I would suggest that the best time is to send it away and —

**Hon Kate Doust** interjected.

**Hon KEN TRAVERS:** I was going to suggest that the committee be asked to report when Parliament resumes in the new year. Give it the Christmas break to go out there and listen and talk to the community. I will not move that way, but, obviously, that is one of the issues with the motion that has been moved by Hon Robin Chapple that needs to be dealt with, so we need to reinforce those points. I have seen lots of bills come through this place. I have seen some go to committee that probably did not need to, but that is never a bad thing. I have seen lot of bills come in that needed to go to a committee and went. I have seen a few bills come into this place that it was essential to send to a committee, but they never got there; the Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015 is one of those.

My final comment is that we really need to think about the role of the upper house. If this bill does not go to a committee—if we do not do something different and it gets rubberstamped through by way of the brutality of the numbers of the government benches—and this legislation passes through, we will again leave it open to people to ask why we even bother having an upper house. The requirement for this legislation has really been questioned. If we do not use the committee processes to differentiate ourselves from the lower house, we will again leaving the upper house open to question. I think those of us who sit in the upper house have a commitment to it. I am not aware of any of us having been elected on the basis that we advocated for the abolition of the upper house. It has happened in the past, but I am not sure it has in more recent times. But we have to ask: why waste time having an upper house if we allow the brutality of numbers of the government benches to force legislation like this through and do not differentiate ourselves from the other place? Sending this bill off to a committee will send a clear message that we are different from the other place, and that we do business and consider legislation differently. For those reasons, I urge members on the other side to think long and hard.

It may be that at the end of the day the government still gets its bill through. Will the world stop turning because this bill gets sent to a committee? No. Are there protests going at the moment? Since the introduction of this bill, the government has given not one example of a protest happening at a particular point in time at a particular location as being the reason for this bill. This bill has been in this house for forever and a day, it seems. As I said, we were originally going to have it back by 20 August. Clearly, there is not a pressing need for this legislation to be passed as a matter of urgency. Some bills need to be passed as a matter of urgency. The Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Bill 2015 was sent off to a committee the other day. We put a very tight reporting time frame on that because the government is of the view that it wants that legislation through quickly because there is a pressing need, if we accept the policy of what that bill seeks to do, to have it back in this house quickly. That process is happening. This bill does not have any of those pressing needs; I have not seen the government give any examples of them. I am not asking the Attorney General to provide a list of pressing needs in his second reading response; I am talking about whether protests are going on, on a day-to-day basis, that demonstrate that this bill is absolutely required here and now.

The world did not stop turning over the last 10, 15 or 20 years because we did not have this legislation, and there have been plenty of protests over that time. Maybe the government wants to tell us that it needs it to go through Parliament because it is worried about the Roe Highway stage 8 project; maybe that is why it needs it through as a matter of urgency. Maybe it is worried that its appalling Roe 8 project will so motivate the public of Western Australia to come out that it needs this legislation through. Why not send it to a committee? There is no pressing need for this bill; it can be sent off. I urge the government to think about it. I can assure the Leader of the House that there are so many issues in this bill that we will be sitting here for many hours if we do not send it to a committee to have some of those matters clarified.

With those comments, I urge members to support the referral of this legislation to the Standing Committee on Legislation. I think we will need to amend the motion to allow for the bill to come back in the new year. The sooner this house makes that decision, the sooner that process will be underway. If the government continues to oppose and obstruct it and does not have a chat behind the Chair with the Leader of the Opposition to try to manage the process of this bill, I have no doubt that we will still be dealing with it in the new year. The process by which it occurs does not matter. It can be done in a far more efficient way that will send a good, strong message to the public that we are prepared to hear its views, or we can have a process whereby the government seeks to use the brutality of numbers to drive this through by bringing it up every couple of weeks, having

a couple of hours on it and then going back to the remaining legislative program. I urge members to support the motion, and I urge the Leader of the House to act and show some leadership on this bill.

**HON MARTIN PRITCHARD (North Metropolitan)** [3.45 pm]: I rise to support the motion that the Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015 be referred to the Standing Committee on Legislation.

The first thing I would like to say is that the proposed action, through this motion, seems to be a very simple way of dealing with this bill. In hindsight, it would have been a more expedient way of dealing with this bill, rather than having maintained the position that there is not sufficient opposition or general misunderstanding about what the bill sets out to achieve. I again suggest that it would have been sensible to accept that, at least on the surface of it, the bill goes much further than necessary or intended to adequately deal with the issues the government identifies as the problem. This week is a very good example of the support this side of the chamber is prepared to give to good legislation, as a number of bills will gain Labor Party support with minimal delay or disruption. That this bill is being so intricately scrutinised and debated, in contrast to those bills, should demonstrate our resolve to resist bad or, in this case, badly drafted legislation. That is the crux of my argument and my contribution.

**Hon Simon O'Brien**: I thought that was your concluding remark. I was going to say, "More, more"!

**Hon MARTIN PRITCHARD**: Sending this bill to the Standing Committee on Legislation will, in my view, deal with the real issue in this debate, being that the drafting is so clumsy that it seems not only to try to act as a deterrent to the few being targeted, but also it offends members of the broader community who believe that the government is trying to legislate away their right to protest peacefully. The Standing Committee on Legislation will have the ability to avail itself of expert opinion, and examine and scrutinise the bill in a far more thorough way than it will be possible for us to do in this place. That is one of the great strengths of the committee system.

Honourable members opposite may contemplate and question whether I am generally supportive of the intent of the bill, but that is not what we are dealing with here. All the government comments I have read seem to justify the introduction of these new laws and penalties as a measured response to the changing tactics of the so-called radical protesters at places like James Price Point. Unfortunately, I do not think the drafting of this bill puts it in the realm of necessary, proportionate or reasonable to achieve that objective. That is the major reason it should be referred to the Standing Committee on Legislation.

The government is quick to say that this bill is not intended to affect those who take up their right to peaceful protest in a lawful way. Even in the second reading speech the government tries to draw the distinction between the old tactics of protesters using simple devices such as bike locks, chains, ropes or crude locks to crudely lock themselves to picket lines, trees, bulldozers or fences, and the new tactics of using devices known as thumb locks, or arm locks, to secure a person to an immovable object. As an ex-union official, I have been involved in many peaceful protests and on many issues, not just industrial, and I have never used any of these objects, the new or the old.

Several members interjected

**The DEPUTY PRESIDENT**: Order, members!

**Hon MARTIN PRITCHARD**: I suspect that 99.9 per cent of the public who are moved to protest on something they do not agree with are just like me.

One of the longest protests I was involved in occurred very close to this place, and I would like to remind members of it as a way of demonstrating why I believe this Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015, as it is currently drafted, should be referred to the Standing Committee on Legislation. I would like to recount a very brief history of that protest for those members who may not have been in this place at that time. Solidarity Park was founded in 1997 during the third wave industrial campaign when the government introduced legislation that was believed by many to introduce unfair and exploitative employment practices. On 29 April 1997, 30 000 unionists and community supporters marched on Parliament House to demand the scrapping of these unjust laws. The government rejected their demand, so on 1 May, May Day, a site was pegged and legally claimed by unionists under the provisions of the Mining Act. The first thing I draw from that example is that with 30 000 protesters in one place anywhere, we would think it would most likely interrupt somebody's lawful activity. But I believe that that is a small price to pay to secure the democratic right to express our views through peaceful protest. The unions coordinated a six-month long 24-hour-a-day protest occupation of this site in defiance of the pending legislation and attempts by the government to require union and community protesters to move on. They refused to do so and the legislation was passed, but it was never fully enacted. The change of government in 2001 saw the laws repealed. Originally called the workers' embassy, that site was renamed Solidarity Park in late July 1997, as most people understand, very close to Parliament House.

**Hon Simon O'Brien:** Hon Tom Stephens when Minister for Local Government, I think, had it registered as a heritage site, didn't he?

**Hon MARTIN PRITCHARD:** The honourable member may very well be right.

**Hon Simon O'Brien:** Mad as a cut snake, was Hon Tom Stephens.

**Hon MARTIN PRITCHARD:** I was involved in that campaign. I used to come up here every evening for six months and stay until about two o'clock in the morning, go home, have a quick sleep and then go to work. On weekends, we would be here for longer, so I am very intimately aware of how that campaign went and quite proud of the time. It was not a comfortable situation but I was quite proud to be involved. As uncomfortable and wearying as that protest was for the participants and as inconvenient and embarrassing as it was for the government, it was a peaceful and good demonstration of democracy. The point I want to make and the concern I have about the bill's drafting is that I fear that the protest at Solidarity Park would probably have offended this bill as it is currently drafted, in any number of ways, and that is why I would like the Standing Committee on Legislation to look at it closely to make sure it reflects only what the government really wants to achieve and goes no further. At the time of the workers' embassy there was pressure on the police to move the protesters on and this bill, which is very broad in its terminology, would probably have given them all they needed.

**Hon Michael Mischin:** How? There are move-on orders already. The government passed them. How would that affect what would have happened back then?

**The DEPUTY PRESIDENT:** Order members! If the Attorney General wants to make a contribution to the debate, he is more than welcome to. At this point in time Hon Martin Pritchard has the call.

**Hon MARTIN PRITCHARD:** Thank you, Madam Deputy President. One reason I say that is that many of the protesters were from the building industry, although, as my presence there demonstrates, many other unions and community groups were also present, but it is those in the building industry who best make my point. They were coming straight from work, as many of us were, in their vans and work trucks. To assume that there would be "things" in those vans and trucks that could possibly be used to create a barrier would be a very, very safe bet. That, coupled with the reverse onus of proof proposed by the drafting of this bill, would probably have spelt doom for the workers' embassy. If that had happened, I suspect we may have seen an escalation of tension in other areas as people felt frustration at not being able to protest peacefully but, thankfully, that did not happen.

I look at this referral motion from the viewpoint of the newest member of this place and as someone who is very new to the good work that committees do in doing the checks and balances that often improve many bills that ultimately pass into legislation. I appreciate that the committee system can consider bills in more detail than is possible in the time allowed in this place, but it does so and reports to this place to make a final determination. I understand also that the Standing Committee on Legislation focuses on the feasibility, clarity and technical competence of the bill. It is the clarity and technical competence of this bill that I am questioning, and that again is why I think the bill should be referred to that committee. Indeed, I would be very surprised if this motion does not receive widespread support because—I want to make this very clear—I understand that we are sending it to the committee for it to review and return it to this place. We are not sending it there to be voted on. We are voting to send it to a bipartisan committee to discuss, among other things, whether the proposed wording is appropriate and suitable to the intent of the bill. In supporting this motion, I note that the committee is very competently chaired by Hon Robyn McSweeney, with other members being Hon Sally Talbot, Hon Donna Faragher, Hon Dave Grills and Hon Lynn MacLaren. I do not think I need to go through their personal attributes in any way, but I certainly have every confidence in them to deal with the issues that this motion is proposing to forward to them.

**Hon Lynn MacLaren:** Thank you, member.

**Hon MARTIN PRITCHARD:** I would also like to add, however, that I feel that they are, in persuasion perhaps, very reflective of this place. For that reason, I am not sure why the government would not have every confidence that they would do a very good job in not only improving the drafting but also maintaining the underlying theme of which the government is so wedded. I stress again, that my concern—the reason I am supporting the referral motion—is focused on the drafting problems of this bill. I make no comment about the intent of the bill as that is not what we are dealing with here today. Supporting the referral motion seems highly sensible considering the amount of fear and concern that has been expressed about the wording far exceeding the bill's intent. That it is not fit for purpose at the moment is beyond any doubt to me given the broad range of opposition. I would like to highlight my point through some very brief examples. The sort of fear and concern that I am hearing from constituents was reported by the ABC on 21 April and *Farm Weekly* on 20 March, and I will highlight a couple of points, if I may. In just a few short paragraphs, it was stated on the ABC news on 21 April as follows —

A disparate group ranging from church leaders to farmers have taken their concerns about proposed anti-protest laws to the steps of WA's Parliament.

For the sake of brevity, it states further on —

One of the key groups opposing the laws are farmers involved in the Lock the Gate campaign to prevent fracking gas exploration on their land.

Further on again it states —

Government has insisted the legislation will only target radical protesters using devices like chains or thumb locks to block or stop lawful activity.

But opponents raised concerns that proposed laws did not specify devices, but instead referred to a "thing" which may be used to prevent lawful activity.

It continues —

Mr Copeland said that left farmers open to criminal charges.

"I have a piece of chain and a padlock —

I am sure members have heard all this before —

under the seat of my ute that I use for my trailer, and if I go to a protest I can be arrested and even end up in jail because it's perceived that I will use it," Mr Copeland said.

Nationals leader Terry Redman addressed the protest rally and assured the groups that only radical protests would be affected.

I refer to that article because it shows that there is at least one member of the public who does not understand. Again, I will refer briefly to the *Farm Weekly* of 20 March, which states —

WAFarmers president Dale Park is concerned farmers could face significant fines or jail time under the amendments, if they were to create a physical barrier to lawful activity or were suspected of being about to.

WAFarmers staged a peaceful protest at the Make Smoking History Wagin Woolorama, holding up a "Save Lives, Save Rail" banner as Transport Minister Dean Nalder officially opened the event.

"As I understand it, a police officer could have apprehended me beforehand on the grounds that I might be about to prevent a lawful activity, which is ridiculous," Mr Park said.

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

The report continues —

... Nationals WA leader Terry Redman said farmers should not be concerned.

"The Nationals support this bill," Mr Redman said.

"The state government should take a strong line on anyone preventing, or attempting to prevent, others from carrying out a lawful activity.

"No reasonable person would think these laws would apply to farmers going about their normal, everyday business ...

I am trying to highlight the concerns that a number of people have about this bill. I ask: is it not important that members of the public at least understand the laws so that they can make sure they act within it? The current drafting of the bill is not understood and that is why it should be referred to the Standing Committee on Legislation. In my view, it is best equipped to determine whether I am validly representing a widely held view of my constituents in this place.

The articles I have referred to not only highlight the fear and concern felt by farmers, but also seem to show that the bill as currently written is not intended to go that far, according to the Minister for Police and the Leader of the National Party. For that reason, I at least suspect that the National Party members in this place would support this referral motion. I suspect that they may agree that it would tidy up the wording so that the constituency that they claim to represent would have more confidence that the bill says what it means and means what it says. Putting this bill through the committee process will do nothing, other than enable a full and frank discussion of

the wording of the bill to better match it to the intent of the government. I imagine that that process will certainly go some way to clearing up the confusion and fear already in the public arena.

As I said, there seems to be a great deal of confusion about the extent of the impact of this bill on the public's lawful activity and I understand that is not the intent of the government, which is why I believe that this bill should be referred to the Standing Committee on Legislation.

I refer to another article in *The Age* of 24 March that raises some of the same concerns from a different quarter, which reads —

With the stated intention of clamping down on “radical” protest activities, the *Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015* contains provisions that go much further, using overly broad language and unjustifiably abandoning the presumption of innocence that is fundamental to our legal system.

Further on, the article states —

But the wording used in the legislation is so wide and ambiguous that it criminalises far more than benign activities. The laws risk infringing on basic civil liberties including the right to peaceful protest, when the police already have the legal powers they need to keep things from getting out of hand.

Again, I only report on that so it is not thought that the concerns about the bill are mine alone.

I have also received an email that I would like to read a small part of into *Hansard* as it struck a chord with me. I think many members have received this email from Professor Jürgen Brühmer, Associate Professor Mary Anne Kenny, and senior lecturer Anna Copeland, which I received on 16 September 2015, and I am happy to make it available. I will read small parts of it if I may. It states —

The drafting of this bill can only be described as extremely loose, in that far from specifically targeting the issue it purports to address, it sweeps within its purview any ‘thing’ which in the circumstances give ‘reasonable grounds for suspecting’ will be used in a protest.

Further on, it states —

We do not necessarily support an unreserved right to protest, when protests results in endless blockades, violence or a danger to the community at large then some limits are warranted. However this piece of legislation is far too broad in scope, it imposes disproportionately severe penalties and will result in the criminalisation of many peaceful and legitimate forms of protest or dissent.

The point of reporting on the comments of others is to highlight that the concerns that I raise are not mine alone. They are not even the concerns of the opposition parties alone. They are widely held concerns about the drafting of this bill, and even if the government is able to ram through this bill in the belief that it is right, it does not deal with the concerns and confusion about what the bill really means.

During my previous employment, I was responsible for drafting enterprise agreements that governed the wages and conditions of up to 300 employees at a time. Although I do not claim to be competent in drafting bills that eventually pass into law, I have some understanding of the blind spots that can hit the drafting process when it is done in a hurry or under pressure—and I think that is what has happened here. I also understand how it feels to be enamoured of our own work to the exclusion of good sense. The industrial relations system at both a state and federal level also understands that this can happen, and for this reason it has a process of arbitration if there are disputes based on trying to determine what was meant by the person drafting a document. This situation is far more serious as it has the possibility of impacting upon many more people with some hefty consequences for anyone who falls foul of the law. I ask: should we not try to get it right, because there are many people who believe that what is proposed is not there yet? Again, I make the suggestion that good sense would warrant that even if the government thinks that this piece of work is as good as it gets, there should be no real concern about getting a final tick off from the Standing Committee on Legislation, as this motion suggests.

I have to say that I personally agree with many of the concerns raised about the broad range of this legislation. I think it could snare many innocent members of the public, not just the so-called radical protests that the government says that it will target. I do not understand why the government continues to try to push this through Parliament without it being examined thoroughly.

Again, by way of example, a couple of weeks ago while I was attending another important standing committee, I received a text at 9.49 am from a representative of the Parliamentary Services Department informing me that an unannounced taxi rally had just descended on Parliament House and it was having an immediate impact on traffic flow. The tone of the text suggested that possibly some staff and members of the public were not able to leave Parliament to go about their lawful activities because the taxis were in the way. I suppose a taxi is a thing and it was forming a barrier. The tone of the text suggested that possibly some staff and members of the public were not able to leave. My question is: does anybody else share my fear that the taxidrivrs concerned could lose

their taxis and/or spend the next 12 months in jail? Of course, it is not likely, but should it be possible in our society? Can I just add that the protest had dispersed by 10.21 am. I think police already have a suite of offences such as trespass, property damage and breach of the peace at their disposal, and police powers already allow them to issue move-on orders when officers suspect that protesters are breaching the peace or preventing a lawful activity, or are about to commit an offence. Still, that is not what we are talking about today. What we are discussing is whether the bill should be referred to the Standing Committee on Legislation to have another look at it and, unless there is something that many members of the public, including me, do not see, that is what should happen. I understand it when police minister Liza Harvey tries to placate the community by saying that the laws are needed to prevent extreme forms of protest, so I ask why the legislation is not written to reflect what the government says it means and, because it is not, I begin to suspect that there is some ulterior motive to keep this legislation as general and as broad as possible.

I am not sure why the Nationals have not listened to their own concerned constituents and had these passages amended before this piece of legislation came up for debate.

Several members interjected.

**The DEPUTY PRESIDENT:** Order, members!

**Hon MARTIN PRITCHARD:** I think that the drafting error that causes me the biggest concern is that the proposed legislation does not specify devices but refers only to things that aid in the prevention of lawful activity—things that can be owned by any law-abiding person. This offence carries the serious penalties of prison for up to one year and a fine of up to \$12 000. This goes back to the earlier mentioned fear of farmers carrying around locks on their private property or taxidriviers trying to save their livelihood. I had a quick look at how the *Australian Concise Oxford Dictionary* defines a “thing” and the description is very, very long but the most relevant part states that a “thing” is an inanimate material object or an unspecified object or item. We cannot get much broader than that. Indeed, I ask what object could not be described as a “thing”? Again I stress that I do not suggest that I have any expertise in drafting laws, but would the term “restraining device” not be closer to the mark if the concern is that protesters are affixing themselves to machinery in ever more imaginative ways?

The legislation also takes away the basic common right of the presumption of innocence, moving the onus on to the members of the public to prove their innocence after the fact. With the concerns over this legislation, it looks like another hastily put together piece of work, another one of the government’s knee-jerk reactions, which has not been thought through at all.

In closing, I just want to refer to Hon Adele Farina’s contribution to the debate earlier, which I thought was excellent. May I say, Madam Deputy President, I think your contribution was exceptionally good. One comment really struck a chord with me and if Madam Deputy President will allow, I will quote it —

We need to ensure that the laws we make are clear and certain so the people whose behaviour we seek to modify understand the behaviour we seek to modify and the behaviour they need to avoid to avoid falling foul of the law.

That is what I am trying to say. It is not me saying that I do not understand the legislation or that it is too broad, and it is not this side of the chamber that is saying it; it is many, many people in the community, and I do not understand why the legislation could not just have gone to the committee, with any concerns dealt with at the committee stage, and come back here. In that case, I think there probably would have been support, but we will never know, unless, of course, the government agrees and there is now the opportunity for the legislation to go to the standing committee.

**HON SALLY TALBOT (South West) [4.14 pm]:** I congratulate Hon Martin Pritchard on an excellent contribution to the debate on the referral of the Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015 to the Standing Committee on Legislation. These referral motions are not the most straightforward of topics to debate as they have very narrow terms of reference and I think the way that Hon Martin Pritchard focused on not the intent of the bill, but the way it is drafted, highlighted in a very proficient way the problems we have when we come to deal with this bill and the referral motion moved by Hon Robin Chapple. It is very important to stress that we are not talking about the material referred to in the second reading debate when we tried to point out to the government why what it presented to this place offends so many people in the community. During that debate, of course, we tried to tell the government what it needed to explain and what was causing the confusion in the community. Without blowing my own trumpet, I think we did that well. We certainly dealt with it at great length and members had the opportunity to go into the various clauses of the bill. It is not a long bill and, on the face of it, it is not a terribly complicated bill. Of course, we got to the end of the debate, which took up many, many hours, and we still found that essential matters had not been clarified. It is absolutely ridiculous to get to

a stage at which we are just saying, “Yes, you do” and “No, you do not.” That is not the way that parliamentary debate is conducted. We have spent many hours —

**Hon Michael Mischin:** You have spent many hours.

**Hon SALLY TALBOT:** We have—I was using the collective on my side of the house. I know the other side does not believe in the collective, so I will not go there; I am talking about my collective on this side. We have spent a considerable amount of time pointing out why this bill will not work. It is not some misguided intention on the part of the government that will not enable it to work; it will not work because what the government says it wants the bill to do will not happen as a result of this bill. That is the fundamental problem we are engaged with here. Instead of just voting the bill down, instead of just saying no, we are saying to give us a chance to look in more detail at how the objects the government says it wants to achieve might be achieved, because they surely will not be achieved by this bill going through this place and being gazetted.

**Hon Simon O’Brien:** In your previous contribution, you said that you and your colleagues would be opposing this come hell or high water, no matter what happened.

**Hon SALLY TALBOT:** I certainly did, and I can tell Hon Simon O’Brien that I paid particular attention to his contribution to this debate, because I think it was very, very telling and he made some very pertinent comments.

**Hon Simon O’Brien:** I may seek leave to continue my remarks.

**Hon SALLY TALBOT:** I would be very happy to support that.

**Hon Simon O’Brien** interjected.

**The ACTING PRESIDENT (Hon Liz Behjat):** Order!

**Hon SALLY TALBOT:** I have dipped my toe in the water and I have read the tea leaves. I have been looking across the chamber very intently and reading the body language of those on the other side, and I bet these guys will not support the referral motion moved by Hon Robin Chapple.

**Hon Michael Mischin:** We have as open a mind as you on these things.

**Hon SALLY TALBOT:** Is that right? I am delighted to hear that.

**Hon Michael Mischin:** You might turn around and be persuaded to vote for this bill after I’ve finished!

**Hon SALLY TALBOT:** I take Hon Michael Mischin absolutely on face value. I know he is open to persuasion, but by some of his interjections, I just get the feeling that he is not inclined to support this referral motion moved by Hon Robin Chapple. If we do not get the chance to scrutinise this bill in committee, I will most certainly vote against it, as will everybody else on this side of the house. More than that, in the third week of March 2017, we will be able to repeal the bill because that is what the Labor Party has undertaken to do. The bill is that bad that we cannot live with it and we will repeal it, with the support of the Greens, as Hon Lynn MacLaren has just indicated. We will vote against it if the government uses its numbers to defeat this referral motion.

I want to spend the next little while explaining to government members why I think that that is the wrong decision to take. I am greatly encouraged by the fact that Hon Michael Mischin has assured us that his mind is still open. I will do my very best to play my small part in persuading him to support the referral motion. A committee inquiry can achieve a number of things. One does not have to go back very many years. Even members of Parliament who are in their first term have seen examples of committee processes that have resulted in people changing their minds. This is particularly important for members in this house who do not have their own party room to go to. Hon Rick Mazza and I have exchanged comments on many occasions about the fact that he has reached complete consensus in his party room! I suggest to somebody such as Hon Rick Mazza that supporting this motion would be a good thing because if we can get this bill into committee, everybody has the chance to have their say about the way it might function. The best ideas may well come from unexpected places. They may well not come from people who have been considering this bill for many, many months. We all know there is a sense in which one can get too close so that they cannot see the wood for the trees. That is essentially what members from this side of the house have been trying to say. Nobody from this side condones illegal activity in any milieu whatsoever. There has never been a defence of illegal activity from this side of the house. The opposition suggests that the way this bill is drafted will result in a lot of lawyers making a great deal of money. A lot of people in industry or in resource production of some kind or another, who consider that they are going about lawful activities, will be intensely frustrated by lengthy court processes that a bill of this kind will inevitably entail. We suggest that we get this bill before a committee. I know that Hon Robin Chapple’s motion specifies the Standing Committee on Legislation, but if the government’s problem relates to which committee it should go to, tell us which committee it can go to. It does not have to be the legislation committee. If there is a reason for not sending it to the legislation committee, let us talk about sending it to another committee. There are at least two other committees that would be able to accept



consideration of a bill of this kind. At least if the bill gets to committee, members can start looking at what the government's objects are and at the ways in which those objects might be frustrated because of the vagueness of the terms contained in it. We can all work together to resolve that so that if people are engaging in illegal activity in order to prevent a lawful activity, the authorities, whoever that may be, have the power to act. It might be police or it might be local council rangers; it might be any variety of public officers who could be given authority to intervene.

For a number of other reasons I am not convinced that this bill is even needed. I outlined my reasons in my contribution to the second reading debate. I think that we probably have sufficient powers within existing statutes to enable authorities to deal with the sorts of things that the government appears to be talking about. Referring this bill to a committee would give me, and others who are of that view, a chance to explore that. Even in the nearly three years that this government has been in existence, history shows that people's minds can be changed out of the committee process. In committee, a number of different viewpoints can be heard and a variety of people with different experiences can be consulted. They might be experts in the field. In this case, they might be people with particular expertise about the way the law operates in relation to protest. For example, one of the issues that has been of enormous concern—a number of members on this side have raised this during the second reading debate—is how we are supposed to distinguish between lawful and unlawful protests, particularly because we now have a category of “protected industrial action”. It is far from clear to us on this side of the house how this law is supposed to interact with things such as protective action.

In her second reading contribution, Hon Sue Ellery raised a number of points about the way this bill might interact with other legislation.

**Hon Paul Brown:** Have you got an example of your mind being changed by a committee that you have been on?

**Hon SALLY TALBOT:** Yes, I have actually.

**Hon Paul Brown:** Can you provide us —

**Hon SALLY TALBOT:** No, I have too much to talk about with this bill. I will be happy to sit down with Hon Paul Brown to talk about the number of occasions that my mind has been changed. I can give examples of other members, too, who have stood in this place and said the same thing.

Consulting a range of experts in the field and from industry—people with other experiences that we cannot draw on here—would be beneficial. We will end up with a better bill if all the key stakeholders can explain, in the context of a committee hearing, their issues with this bill. By “stakeholders”, I certainly mean industry. I would like to hear from some of the multinational companies in this state about whether they feel this kind of legislation is needed. I would like to hear from some of the exploration companies about whether they feel this is needed. But I would also like to hear from representatives of the groups that Hon Martin Pritchard referred to, such as farmers in the midwest, and from some of the conservation groups in my electorate in the south west about the measures contained in this bill. A variety of viewpoints and a whole series of consultations with experts and other people with a diverse range of experience from industry would be able to be incorporated into a considered response to this bill.

Of course, this is the most important point. Hon Paul Brown asked me whether I could give any examples of minds being changed, and I am sure that this is borne out by the experience of every member in this place: although committees are not always friendly and consultative affairs, they tend to be less adversarial and less partisan than debates in this place. We have such rigorous rules about privilege and confidentiality relating to committee work so that members can give material a degree of scrutiny in an atmosphere in which they are simply being asked for their views, opinions and assessments of different things. We have all worked in this way. I think all members know that minds can be changed in committees essentially because a bipartisan approach is possible.

If we limit our debates to parliamentary debates, we end up simply defending positions rather than defending ideas. When I say “simply”, I mean that in the broadest possible sense because often these things are far from simple. We end up defending positions rather than contesting ideas. In the 10 years that I have been in this place, I have very rarely witnessed a true contest of ideas; I have witnessed a number of defences of entrenched positions. But of course that is not true of committees. We all have examples of that. Let us get this bill referred to a committee so that we can start having a true contest of ideas and let us see what comes out at the end. Committees do not often produce minority reports. An outsider watching the way that this place works might form the opinion that committees work in essentially the same way; for example, if a committee is made up of three government members and two opposition members, there will always be a minority report from the two opposition members that states that they do not agree with the government members. That is simply not the case; it is not the case across most of our committees that at least for part of the time, if not the majority of the time in some cases, they are able to work across parties and across both sides of the chamber to arrive at conclusions that

receive unanimous endorsement from the committee. Again, if I had more time, I could give a whole series of examples of that. We can also have minority reports that end up carrying the day. The most recent example of that was, I think, the report on recreational hunting in national parks. The minority report, which opposed the opening up of national parks to hunting, has actually become the government's position, even though the minority report was written by two Labor members and the government is a Liberal–National government.

Debate interrupted, pursuant to standing orders.

[Continued on page 7553.]