

Before reviewing the history of these offences, I ~~will~~ <sup>received</sup> include the following statement from the Director of Clinical Programs and Dean of Law at Murdoch

The Western Australian parliament is today debating the Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015.<sup>1</sup> This bill, which is a response to the recent conduct of environmental protestors, is concerning in its scope. While the second reading speech describes it as giving police "the required tools to appropriately deal with the changing tactics of protestors", closer inspection reveals that it goes much further than what is necessary for the government to do to achieve its own objectives. Any peaceful demonstrator is put under a risk of severe criminal liability for participating in a demonstration, including 12-24 month sentences for newly created offences that need very little or no evidentiary basis.

The right to protest is not only protected under international law (and forms part of Australia's international obligations) it is also the cornerstone of our – and any – democratic system. Australia itself was present in the United Nations Human Rights Council for the 25th Session in March last year; when it called upon States

*to promote a safe and enabling environment for individuals and groups to exercise their rights to freedom of peaceful assembly, of expression and of association<sup>2</sup>*

The bill is designed to give police the power to arrest and remove protesters before they lock themselves to trees, machinery or other devices in such a way that their removal becomes very difficult. It can be a legitimate aim of the government to prevent or sanction such behavior. The freedom to demonstrate does not include the right to endless blockade or the right to – actively or passively – physically force one's own will onto others in an unreasonable manner. The problem is that achieving this legitimate goal does not warrant the type of sweeping legislation proposed and the disproportionate penalties prescribed.

As the second reading speech acknowledges, there already exists substantial powers for police to apprehend and arrest protestors. Move on notices are available to police, which, if breached, can result in arrest. There are other powers under the Criminal Code and other legislation which give powers to police to apprehend those on or near certain property. There are multiple options ranging from applying existing law, including the option of claiming damages from those engaging in activities outside the scope of peaceful demonstration to a wording of new legislation that would much more accurately capture what might well be a legitimate interest of the government in such circumstances.

By contrast, the bill under consideration is proposing legislation which is so broad, that any citizen would have to think twice about participating in any form of protest for fear of criminal charges arising out of this bill if it became law. After all, on the language of the bill a crime is committed by the protestor if she cannot disprove that there was an intention to prevent a lawful activity. It is hard to see how a protest of more than a few people on a street would not prevent a lawful activity being carried out by others. Even a small demonstration that stops traffic for an hour would fall into this definition.

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

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<sup>1</sup><http://www.parliament.wa.gov.au/parliament/bills.nsf/BillProgressPopup?openForm&ParentUNID=1E00CF48C52EF57848257DF6000AA4DF>

<sup>2</sup>[http://en.rsrf.org/IMG/pdf/re\\_s\\_cdh\\_peaceful\\_protest\\_mars\\_2014\\_english.pdf](http://en.rsrf.org/IMG/pdf/re_s_cdh_peaceful_protest_mars_2014_english.pdf)

circumstances give 'reasonable grounds for suspecting' will be used in a protest. History has taught us over and over again, that when law is broad and discretionary it is open to abuse. The Courts could, of course, limit the scope of such broad legislation by way of interpretation but that will leave potential protestors with all the risk of not knowing whether they are acting legally or might face jail time. If nothing else this legislation will have a chilling effect on any and all potential demonstrations or protests.

The bill is designed to give police the power to arrest and remove protesters *before* they lock themselves to trees, machinery or other devices in such a way that their removal becomes very difficult or impossible thus ensuring ongoing disruption of conduct that the protestors oppose. It can be a legitimate aim of the government to prevent or sanction such behavior. The freedom to demonstrate does not include the right to endless blockade or the right to – actively or passively - physically force one's own will onto others in an unreasonable manner. The problem is that achieving this legitimate goal does not warrant the type of sweeping legislation proposed and the disproportionate penalties prescribed.

No matter where one stands politically, the proposed measures are an unnecessary and therefore disproportionate restriction of a core democratic right. They need to be reconsidered.