

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

*Introduction and First Reading*

Bill introduced, on motion by **Hon Michael Mischin (Attorney General)**, and read a first time.

*Second Reading*

**HON MICHAEL MISCHIN (North Metropolitan — Attorney General)** [3.42 pm]: I move —

That the bill be now read a second time.

A common tactic used by protesters is to lock themselves onto equipment, trees and other objects in order to block roads, or otherwise obstruct lawful activity. In recent years we have seen this tactic be used by those protesting development at James Price Point and anti-logging protesters in the state's south west. It is proving to be a very effective method of causing frustration and delays for workers and management at development sites and responding to protests of this nature can be a considerable drain on police resources. In the past protesters used simple devices such as bike locks, chains or ropes to crudely lock themselves to a picket line, tree, bulldozer or fence. These methods are easily combated by police, as it is generally a simple case of using bolt cutters or similar cutting devices to free the protester. In recent times, however, more innovative methods are being used to hinder police attempts to remove the protesters. A common method is to use devices known as thumb locks, or arm locks, to secure a person to an immovable object or to secure several people in a chain. These methods have been used in the state's south west to prevent land clearing. They were also used in protests at James Price Point to lock onto the contractor's machinery or a vehicle blocking a road.

Whilst there are various types of locking devices, a standard feature is to make the device in such a way that even the protester cannot unlock him or herself. A method used to achieve this is for the protester to use ice or cold water to shrink the diameter of their thumbs enabling them to force them into a hole in solid steel. Once in, the thumb swells and locks the protester's thumb in the device. Attempts to free the thumb from the lock causes further swelling and makes removal of the lock impossible without cutting the device. Removing these types of locks is extremely dangerous and in most cases will require a skilled technician. Even using a skilled technician, it is often not possible to remove it without causing some degree of injury to the protester.

A barrel lock is another device used to block roads and prevent lawful activity. Protesters use a large steel barrel with a hole in each side. Protesters then place their arm inside the barrel and using various means lock their arms to something within the barrel. The barrel is often weighted with cement and lined with random pieces of steel to make moving or cutting through the barrel difficult and dangerous. This tactic was used at James Price Point to block a road and prevent workers getting to the site.

Releasing protesters from these devices can take a number of days and often requires the use of specialist equipment and/or expertise. Dealing with these tactics at protests incurs considerable costs both in public expenditure and lost resources. Whilst large deployments of police are being used at such protests, the remainder of the community bears a reduction in policing services.

Current legislation has limitations in dealing with this problem. The main limitation is that these devices can generally be lawfully possessed and, so, in most cases police officers are not able to act until such time as the device is used. Another deficiency is the absence of an offence specific to situations where lawful activity is prevented from being carried out because of a barrier put in place by protesters.

In order to deal with these situations, police often employ the use of move-on orders that require a person to move on in various situations, including when a person is hindering, obstructing or preventing any lawful activity that is being, or is about to be, carried out by another person. Move-on orders are issued under section 27 of the Criminal Investigation Act 2006. This section allows an officer to issue an order to a person requiring them to leave a particular location and stay a distance away from that location for a period of time up to 24 hours. Move-on orders can be quite effective in dealing with offenders at demonstrations, as failure to comply with the order is an offence and renders the person liable to arrest. However, where a person is locked onto an object, issuing the notice is problematic as it may be that the protester is unable to comply with the order because they are unable to release themselves from the device. Accordingly, police are left in the position of having to employ specialist equipment and/or expertise to help extract the person and execute the arrest. This can be time consuming, costly and dangerous.

The bill addresses these concerns by creating two new offence provisions within the Criminal Code. Firstly, the bill will provide for an offence that applies when a person physically prevents a lawful activity from being carried out. This offence will enhance the ability of police to issue move-on orders when they suspect a person intends to commit the offence of physical prevention. It will also quite obviously provide a specific offence for those who successfully carry out the physical prevention of a lawful activity. For the offence to apply, a person

must create the barrier with intent to prevent the lawful activity. This is to ensure that accidental situations are not covered by the legislation. There is a presumption clause that presumes a person to have the requisite intention where the circumstances give rise to reasonable grounds.

To reinforce the unacceptable nature of using these types of devices that endanger health and safety, it is proposed to create a circumstance of aggravation where the nature of the obstruction endangers the safety of any person, including the offender. The offence committed in circumstances of aggravation will carry a greater penalty. The bill also proposes to enable a court to order that the offender pay for the costs associated with the attendance of police and others and the use of equipment that is necessary to remove the obstructions.

A second offence provision established by the bill will prohibit the manufacture and possession of things intended to be used to prevent lawful activity. Specifically, under proposed section 68AB, it will be an offence for a person to make, adapt or possess an item for the purposes of using the item to assist in committing an offence of trespass or physical prevention of lawful activity. This offence will apply to situations such as where protesters are found in the vicinity of a proposed obstruction site with devices such as thumb locks, chain locks, arm locks or any article that is adapted for the purpose of creating an obstruction. The offence will also assist police in preventing the illegal manufacture of such devices. The scope of things that may be captured by this offence is defined by the intended use of the article. Accordingly, it will be necessary for police to show that the person was in possession of the article in such circumstances that give rise to a reasonable suspicion that the person had the intention to commit trespass or physical prevention.

This bill gives police the required tools to appropriately deal with the changing tactics of protesters. It will enable the police to act earlier and more effectively. It will help prevent protesters from participating in dangerous actions that risk the safety of themselves, other protesters and the police who respond. For those who do choose to continue to participate in unlawful preventions of this nature, it provides appropriate penalties and ability for government to recoup the significant costs associated in responding.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party. Nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper 2595.]

Debate adjourned, pursuant to standing orders.