

# ***Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015***

## **EXPLANATORY MEMORANDUM**

### **Clause 1. Short Title**

Cites the short title of the Act as the *Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015*

### **Clause 2. Commencement**

Clauses 1 and 2 come into operation on Assent.

The remainder of the Act comes into operation on the day after the Act receives Royal Assent.

### **Clause 3. Act amended**

Clause 3 specifies that the amendments contained in the Bill are amendments to *the Criminal Code*.

### **Clause 4. Sections 68AA and 68AB inserted**

#### **1. Section 68AA Physical Prevention of Lawful Activity**

Section 68AA creates an offence of “Physical Prevention of Lawful Activity”. This offence will apply in cases where a person prevents a lawful activity from occurring, via actual or by threat of physical force, the creation or maintenance of a physical barrier or the creation or maintenance of a risk of injury to any person.

For the offence to apply, a person must create the physical barrier with intent to prevent the lawful activity. There is a presumption clause that presumes a person to have the requisite intention where the circumstances give rise to reasonable grounds.

The offence provides for a circumstance of aggravation where the offence is committed in circumstances where injury is caused or the safety of any person, including the offender, is endangered.

A Court convicting a person for this offence may order that the offender pay the reasonable expenses of, or incidental to any action by police and others in removing the physical barrier.

**Penalty**

Base offence - 12 months imprisonment or a fine of \$12000

Circumstance of aggravation – 24 months imprisonment or a fine of \$24000

2. Section 68AB Preparation for physical prevention or trespass

Section 68AB creates an offence covering activities that may lead up to the creation of a physical prevention of lawful activity. Specifically it will be an offence for a person to make, adapt or possess an item for the purposes of using the item to commit an offence of physical prevention of lawful activity, or trespass. This offence will apply to situations such as where protesters are found in the vicinity of a proposed protest site with devices such as thumb locks, chain locks, arm locks or any article that is adapted for the purpose of creating a physical barrier to a lawful activity or being used to facilitate trespass. It will also assist police in preventing the illegal manufacture of such devices.

The scope of things that may be captured by this section is defined only by the intended use of the article. There is a presumption clause that presumes a person to have the requisite intention, however, it will be necessary for police to show that there are reasonable grounds to suspect 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.

**Penalty**

12 months imprisonment or a fine of \$12000

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