CRIMINAL CODE AMENDMENT (PREVENTION OF LAWFUL ACTIVITY) BILL 2015

Second Reading

Resumed from 18 March.

HON ALANNA CLOHESY (East Metropolitan) [12.34 pm]: This is the third attempt I have made to complete my contribution to the debate on this bill, and I hope it will be my last. I am pleased that I have had three opportunities to place on the record my serious concerns about this bill. It is very seriously flawed. As I have mentioned on a couple of occasions, the size of this bill belies its impact. It is only a brief bill but if it is successful, it will have an extraordinarily wide impact. I do not know whether the government intended this bill to have such a wide impact or whether the issues that the opposition is raising are unintended consequences of these two amendments to the Criminal Code. I look forward to the Attorney General explaining to the house the consequences that he sees arising from the impact of this legislation. It is not made clear in the explanatory memorandum, the second reading speech or in the bill itself why there is a need for this bill and what its purpose is. The government has not put a clear case for the need for this bill. That, coupled with the lack of clarity and definition in the bill, means that there are some very serious consequences.

We see from the second reading speech that some new protest devices were used in a couple of recent protests. This, one assumes, required extra police resources. The police have a range of resources at their disposal. The problem for the police, I gather, is the lack of person power. This government has not kept its promises on the number of police officers on the beat, and therefore police find their resources stretched when there are peaceful protests, by and large, in centres outside the metropolitan area, or a long distance from Perth that require police attention. For every other circumstance, the police have adequate resources in the law at their disposal. They have the capacity to conduct a search of a person and to effect an arrest for trespass. A number of other legal tools are at the disposal of the police to be used in these environments. We do not actually know whether that is the reason this bill has been brought before the house, because of the inconsistencies between the second reading speech, the bill and the explanatory memorandum.

There are no clear definitions in the bill. In fact, there is an absence of any definition. That is unusual for a bill of this nature, because it leaves the bill open to some fairly broad interpretations by the police trying to use the bill in the context of a protest, by people not knowing their rights, by lawyers defending people charged under these new sections of the Criminal Code, and by the courts. That will have a cumulative effect. I am particularly concerned about people not knowing what their rights are when they turn up to a peaceful protest, and just on that level I find the bill unjust and unfair. However, the flow-on effects from that will result in a cost to people and to the courts. Even if just a couple of people are charged under these new sections of the Criminal Code, it will take court time to try to sort out the interpretations of this legislation. That is just poor management, but it is also unfair.

Another feature of this bill that is of concern is that, as a number of organisations ranging from churches to trade unions and environmental groups have pointed out, it criminalises peaceful protest. I am talking here about peaceful protest; I am not talking about any form of violent protest. Of course, there is no excuse for violence and I abhor violence. However, this bill makes it very unclear for protesters what their rights are and what their right is to protest. As I have said, Australia has had a long and proud history of protest, and that protest has had a significant or direct impact on the development of public policies and laws and on changing the social fabric that exists today. We have protested in a range of areas—social, economic and the environment—and I have to say that environment and women's rights tend to receive much more attention than any other form of protest. In fact, we have even protested about sporting fixtures. Protesting about a decision, law or proposed program is a right and an important feature of our democracy. If we do not hear those voices or if those voices are silenced in any way or stopped, we do not have the kind of social progress that has been experienced throughout Australia's history, and we then become stagnant and institutionalised. What is seen today as an outrageous form of protest will not be in 50 years. In fact 50 years ago, on 31 March 1965, two women, Rosalie Bognor and Merle Thornton, chained themselves to the bar of the Regatta Hotel in Queensland. They were protesting that they did not have the legal right to drink in that bar because they were women. Fifty years ago that action was considered to be outrageous. They chained themselves to a bar with a padlock and the police came and could not undo the padlock so those two women had to stay there. The police tried to tease them out and to undo the padlock; they stayed. The police could not undo it.

At the time, publicans and the general population believed that the bad language that men used in bars would be offensive to ladies and that in order to protect those ladies, they should not go into those bars. Of course, Ms Thornton and Ms Bognor did not want that type of protection, and they chained their ankles to the bar rail. Ms Thornton, recalling this event several years later, said, "They tried every emotional trick on us for about an hour to get us to leave voluntarily," because they could not undo the padlock, and finally they broke the chains.

But the women remained in the bar and in the end the police gave up and said patronisingly, "Goodnight, girls. Don't drink too much." It took 10 years for the laws to change to prevent discrimination against women entering public bars and similar places. What that did was bring attention to the issue and to allow voices that had not previously been heard in the public sphere to be heard and the issues to be raised. It changed attitudes, and that is what protest does and that is what new forms of protest also do—they contribute to the public debate and change sometimes outdated attitudes. That is why this legislation is offensive to a number of people who seek to represent those who currently do not have a voice. This legislation requires a great deal more attention from government.

HON AMBER-JADE SANDERSON (East Metropolitan) [12.45 pm]: I, too, rise to make a contribution to the Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015. It is a very short bill; in fact, it is remarkably short given the scope of its reach, or the potential scope of its reach. Most previous speakers have outlined a number of concerns, as have a broad coalition of community members and non-government organisations.

When the minister tabled the bill, he outlined that it intends to deal with innovative protest techniques such as thumb locking, but what it does is go much broader than that and captures people's everyday rights to protest and object to government or corporate policies. There are a number of contradictions in the second reading speech, the explanatory memorandum and the bill.

If we look at the bill clause by clause, we see that proposed section 68AA states —

> (2) A person must not, with the intention of preventing a lawful activity that is being, or is about to be, carried on by another person, physically prevent that activity.

First of all, "physically" is not defined in the bill. There is a distinct lack of definitions in the bill and "physically" is one of them. The proposed subsection continues —

> (a) if the offence is committed in circumstances of aggravation, imprisonment for 24 months …

In other cases, the penalty is 12 months and a fine of $12 000. That is a huge fine and a big sentence for protesting—exercising what is a person's right. According to the second reading speech, the purpose of the bill is to deal with these amendments. It states —

> 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 … In recent times … 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 …

The bill's so-called solution to this problem is clear —

> 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.

But the conduct prohibited is not just in the circumstances of aggravation; it is also in a situation in which a person potentially creates or intends to create a physical barrier. It is not just for when that person actually does create a physical barrier; it is if they are going about their business and they are suspected of being "about" to create a physical barrier or "about" to stop someone else's lawful conduct of business. It goes further than what is outlined in the second reading speech. The penalty for intending to do that is 12 months' imprisonment and a $12 000. Simply attaching bike locks, chains or ropes to a bulldozer would be an offence under this bill, even though the government has said that these are not really what it is aiming to target. Even though it is targeting what it calls "sophisticated" and "innovative" methods, bog-standard, easy-to-deal-with protest equipment would be captured under this.

Proposed section 68AB goes even further beyond the stated intention. It states —

> **Preparation for physical prevention or trespass**
>
> (1) A person must not make, adapt or knowingly possess a thing for the purpose of using it, or enabling it to be used, in the commission of —
>
> (a) an offence under section 68AA; or
>
> (b) an offence under section 70A.

That is "trespass". I will come to the trespass aspect of the bill, but certainly the manufacture of a "thing" is incredibly broad, and government benches may mock the fact that members on this side have raised the issue of a "thing" in legislation as extraordinary. If the government is legislating to specifically deal with thumb locks, it should name thumb locks. If the government is legislating to specifically deal with that apparatus—I am not sure what else people use—arm locks or leg locks, it should name those particular pieces of equipment. That is what amendments are for. If there is innovation and people are adapting their methods, the government should amend the bill to specify those methods, but it should not be so broad as to say a "thing"—anything could be used. It is broad, as Hon Alanna Clohesy has outlined. I do not understand the justification for why trespass has been included in the bill when there is significant legislation that deals with trespass, and I look forward to the Attorney General's response on that. The second reading speech does not refer to trespass; it refers solely to protesters chaining themselves to immovable objects. So why does trespass need to be dealt with in this legislation?

There have been a lot of claims, particularly in the second reading speech, about the cost that these so-called sophisticated protesters cause the state and the police, and there is an extraordinary provision in the bill under which people found guilty will have to pay appropriate expenses for their removal. That is just part of democracy, frankly. Let us see exactly what costs were caused by the protesters at James Price Point and in the south west forests and let us compare those costs with the other things that the state spends money on. That is just part and parcel of a healthy democracy in which people can protest and the police will deal with it. Yes, enormous amounts of resources should not be diverted to that, but the police must be adequately resourced to deal with existing law and order issues and peaceful protest demonstrations. That is what these are; they are not violent demonstrations. People can exercise their civil right to peacefully protest, and sometimes people need to use extreme methods to be heard. There is a lot of noise around government and it is very hard to get the message across. When people feel passionately about an issue, they have the right to chain themselves to something. If they want to freeze their thumb and stick it in a thumb lock, they have the right to say, "As a citizen of this country, I object to this and you have to remove me in order to continue with your business." I do not have a problem with people doing that.

Another very concerning aspect of this legislation for not just members on this side of the chamber, but also many members of the community is the reversal of the onus of proof in criminal law. I am not a lawyer, but I understand that one of the central tenets of our justice system is that a person is innocent until proven guilty and it is up to the prosecutor to provide evidence beyond reasonable doubt that the person is guilty. Essentially, a person could ride their bicycle with a thing, which in this instance is a bicycle chain, to a protest at Parliament House and be pulled over on their bike with their thing and be arrested under these laws on suspicion of creating a physical barrier or preventing people from going about their lawful activity. This bill would capture someone attending a protest with a bicycle chain, and it would be up to the person with the thing—the bicycle chain—to prove otherwise. It will automatically be assumed by the courts that they have done the wrong thing in the eyes of the government. It will automatically be assumed that they were at the protest and that they were going to commit that act, and it will be up to the person with the bicycle and their thing to prove to the courts that they were not going to do that. I do not know how a person would do that. I do not know how a person would prove to the court that they simply had a bicycle chain because they were going to lock up their bike so that it did not get nicked at the protest and they could get home.

Hon Michael Mischin: I don't know how someone who has read the legislation could think that.

Hon AMBER-JADE SANDERSON: I have read the legislation and that is exactly what it states.

Hon Michael Mischin: You didn't notice that there was a definition of "physically"?

Hon AMBER-JADE SANDERSON: That is exactly what it states.

Several members interjected.

The DEPUTY PRESIDENT: Order, members! Hon Amber-Jade Sanderson has the call.

Hon AMBER-JADE SANDERSON: Proposed section 68AB(2) states—

> A person making, adapting or knowingly possessing a thing is presumed to have the purpose referred to …

The person could adapt their bicycle lock in a particular way and that would be captured by this law. It is too broad. I object to its central aim. I object to the government trying to prevent people from conducting protests. There are many examples across the world in which civil movements and peaceful protests have been on the side of right and governments have been wrong, and they have resulted in great change for the better in our society. I object to the central objective of this bill, which is to prevent people from doing that. Some people may not object. Their objection may be that it is too broad. I also object to the fact that it is so broad that it would capture

everyday people going about their everyday business, including unions and people who attend protests, not the so-called activists. It is not as though we have an undercurrent or a subculture of activism, as developed in, for example, the United Kingdom or France with the environmental activism movement. We do not have that culture here. Those countries employ much more intelligent and innovative methods to deal with those activists instead of blunt instruments that capture a broad range of people going about their lawful business and essentially criminalise their peaceful protests.

In many ways this goes to the heart of how citizens are able to influence governments and government policy. If people such as Nigel Satterley and Gerry Hanssen can pay $25 000 to have lunch with the Premier once a month, or however often they do that, they can influence government policy.

Several members interjected.

Hon AMBER-JADE SANDERSON: Let me put it this way: they can put their point of view directly to the Premier. When do people get the opportunity to do that with government? They do not. When governments are not listening, people resort to protesting. Cleaners do not have access to governments, so they join unions and they protest.

Hon Michael Mischin: And unions elect the parliamentarians and tell the parliamentarians what to do.

Hon AMBER-JADE SANDERSON: Labor politicians represent working people—absolutely. The Labor Party was started by the union movement. We openly represent working people.

Several members interjected.

The DEPUTY PRESIDENT: Order, members! I remind members that we are dealing with the Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015.

Hon AMBER-JADE SANDERSON: This goes to the heart of people's ability to influence government policy. When governments are not listening, people resort to extreme methods. I do not in any way condone violent protesting or violent methods, but that is not what this bill will deal with. It will deal with very specific peaceful protests.

A number of movements over the years resorted to what were at the time incredibly unacceptable methods. Hon Alanna Clohesy pointed out the fabulous example of the two women who chained themselves to the bar at the pub because they could not drink there as the blokes wanted to protect the ladies from their bad language. It is up to women to decide what they will be protected from. Those women took extreme action. It was a very hard and challenging thing to do, but they stood up and did it. Another example of people, particularly women, who have taken action that would be captured under this legislation is the suffrage movement. The National Union of Women's Suffrage Societies started as a lobbying and fairly benign organisation. It relied on persuasive arguments and lobbying, and it went on and on and on. It made all the right arguments: "We pay taxes, so we should have equal rights. We have to obey the law, so we should also be elected to participate in developing those laws." They were all sensible, cognitive arguments, but they fell on deaf ears; people did not listen. There was a break-off group, which decided to take further action. That group employed a range of methods to draw attention to its activities. A number of these methods were controversial at the time. Through the hard work of Millicent Fawcett, who founded the National Union of Women's Suffrage Societies, a number of members of the Labour Representation Committee, which was the beginning of our Labor Party, were converted. The unions and the Labor Party have always been on the side of progress and were certainly central to supporting women having the vote. Most of the men in Parliament just could not believe that women could understand how Parliament worked so they would not let them in. There was a break-off group, the Women's Social and Political Union, founded by Emmeline Pankhurst.

Sitting suspended from 1.00 to 2.00 pm

Hon AMBER-JADE SANDERSON: I will resume my contribution by acknowledging an interjection by the Attorney General before we broke for lunch. I stated that the term "physically" was not defined in the Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015; it is, and I stand corrected on that. I wanted to correct the record.

We have talked at length about this bill. My concerns, for those not in the chamber or who were away on urgent parliamentary business, relate to every aspect of the bill. Its length is very short, but its scope is very, very broad. It is causing a lot of anxiety in the community. Proposed new section 68AA, "Physical prevention of lawful activity", will basically be used for anyone who stands in the way or creates some sort of physical barrier. The stated objective of the bill is to deal with what has been termed as innovative ways of protesting, such as someone attaching themself to something with thumb locks, arm locks or leg locks. However, the bill goes a lot, lot further than that and encompasses things such as chains, locks, ropes and bike locks that are really quite

simply dealt with by the police with the use of boltcutters to remove people from those sites, after which the police can issue move-on orders. I think the bill is not specific enough in its stated objective as it relates to the content of the bill. I fundamentally object to the stated objective of the bill, which is to prevent people from protesting peacefully in a way that is, I acknowledge, deeply inconvenient to the police. It is deeply inconvenient to government and extremely inconvenient to corporations, but it is the democratic right of people to do that if they want to risk their lives or they feel so deeply and passionately about an issue. It seems to me that some members on the other side have never felt so deeply or so passionately about something that they would put their lives at risk. As long as people do that peacefully without causing harm to other people, they should be able to do so and not be criminalised.

The reversal of the onus of proof continues to be a significant concern. The second reading speech does not seem to contain an explanation for the necessity for that or why the police or prosecutors cannot produce enough reasonable evidence to prove that someone is guilty of an offence or intended to commit one. No sensible reason has been stated by the government for the requirement to reverse the onus of proof. It is a fundamental principle in our justice system that someone is innocent until proven guilty. If someone on a bike with a bike lock in their possession on their way to a protest is charged under these laws with the intent to commit an offence, how will they prove their innocence? I do not know how they would go about doing that, and that is a fundamental flaw in the bill that could potentially capture a range of people who are simply going about their business.

I talked previously about the need in civil society for people to be able to protest peacefully, put their point of view and influence government policy and decisions. This bill assumes that governments are always right, yet history shows us that governments do not always get it right—they absolutely do not. Previous governments have not had it right and future governments will not always have it right. Governments are run by humans from both sides of the political spectrum, and human beings make mistakes; bad or mistaken decisions are often made. This bill assumes that government is always right and therefore the need to protest in such an extreme way is not required. I do not support that view at all. A number of movements over the years have driven important social change when governments have been really wrong and taken a position that has alienated and discriminated against large sections of society.

I was talking before lunch about the women's movement and the strategies adopted and developed by the women's movement to allow women the right to vote, run for Parliament and participate in the political process. The women's movement was started in the late 1800s by Millicent Fawcett as the National Union of Women's Suffrage Societies. It started as a peaceful movement. The group did not want to engage in any violent or troublesome activity; it wanted to persuade men that women could be trusted with the right to vote. The game plan involved logical arguments and heavy lobbying of the right people, so that is what it set about doing. The group said that women paid taxes and therefore they should have the same rights, and that if they have to obey the law, they should be able to participate in the making of those laws—all sensible, logical arguments. The group lobbied for years and years and years, but nothing changed. The government did not change its view; it was not listening. So, a section of that movement broke off, led by Emmeline Pankhurst and her two daughters. That section was called the Women's Social and Political Union and it did take more extreme action. It took that action at a time that coincided with the mass circulation of newspapers, and harnessed the ability to take radical action. It engaged in what were seen at the time as incredibly unacceptable, radical, out-there forms of protest, such as people chaining themselves to government buildings—actions that today are seen as pretty by-the-bye and not something that the government tends to be that concerned about, as stated in the second reading speech.

Hon Michael Mischin: What about throwing bombs at people's houses?

Hon AMBER-JADE SANDERSON: I am talking about peaceful protest.

Hon Michael Mischin: Yes, but that is not what they were doing.

Hon AMBER-JADE SANDERSON: I am talking about peaceful protest.

The group did a range of things. I have said previously that I do not support any form of violent action for anything or any cause. The group started off relatively quietly, but in 1905 Christabel Pankhurst and Annie Kenney interrupted a political meeting in Manchester to ask two Liberal politicians, Winston Churchill and Sir Edward Grey, whether they believed women should have the right to vote. Neither man replied. As a result, the two women got out a banner which had on it "Votes for Women" and shouted at the two politicians to answer their questions. Such actions were all but unheard of then when public speakers were usually heard in silence. They were arrested for causing an obstruction and a technical assault on a police officer. Those people were adapting and developing protest to have their voices heard. They chained themselves to government buildings and Buckingham Palace. Those sorts of actions would have been captured under this kind of legislation—absolutely they would. Those sorts of actions, along with a range of activities that were driven by the women's movement, helped to support the right of women to vote and to stand for Parliament. This is the

kind of retrograde legislation that this government is bringing into Parliament in an attempt to quash the ability of people to develop and innovate in their protests against government decisions.

Another important civil rights movement developed on peaceful civil disobedience that we have seen around the globe in places such as India and America is the US civil rights movement. Large sections of that movement were centred on the principle of nonviolent, peaceful protest, such as sit-ins at lunch bars, sit-ins on public transport, and freedom rides during which people sat in a bus in the white section and the black section of the bus to protest segregation. These protests in that movement helped to overturn segregation in the United States. These protests would have been captured by this legislation because they created a physical barrier to prevent people from going about their lawful activity.

Frankly, it is hard to believe that the government of Western Australia is introducing a draconian law such as this, when it does not have to deal with the kinds of social disruption, anarchy and activism that many European countries without such a draconian law have to deal with. This law is utterly extreme. As I said previously, it assumes that people have access to and are able to influence government policy. They do not have such access and are absolutely not able to influence it. Peaceful protest is how people do that.

A range of non-government organisations and members of the community have come together. I did not think that we would ever see the Western Australian Farmers Federation stand together at a rally with the Conservation Council of Western Australia, but yesterday we did. They stood together, despite their entirely different world views, because they understand the importance of being able to stand up and protest for something they believe in deeply. This government is trying to prevent that because it is convenient and much easier to do that than to allow them to protest. I acknowledge that dealing with protests is an absolute pain for police and that more often than not they would rather direct their resources elsewhere. The fact is that peaceful protest is part of democracy and part of the community and society in which we live. It is not at all appropriate for this government to attempt to limit democracy and people's ability to express their displeasure at the policy of governments and corporations. The community will not abide by it. Already more than 40 organisations that would usually support this government have come out against this legislation.

I therefore urge the government to rethink this legislation. I urge members of the National Party to think carefully about their support for this legislation and the impact it will have, particularly on the farming community. I essentially want to see this legislation killed off. It is not appropriate in a civil society that should allow vocal and peaceful protest.

HON STEPHEN DAWSON (Mining and Pastoral) [2.13 pm]: I was slow to get out of my chair this afternoon because I honestly believed that Hon Simon O'Brien would make a contribution to the Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015. I am sure that he, too, is offended by this bill. This bill takes us back to the Dark Ages. It certainly echoes legislation that this state has seen previously under the Court government when it legislated, in an amendment to insert section 54B of the Police Act, to ban gatherings of more than three people without police approval.

Hon Simon O'Brien: I think the Greens would have been all right!

Hon STEPHEN DAWSON: Hon Simon O'Brien will get his chance this afternoon, and I look forward to it.

I believe the Barnett–Redman government is acting like a colonial power. It is trying to take away established rights in this state. Why? Police in this state already have the capacity to search, they can already arrest someone who is trespassing and they already have the power to issue move-on notices. As my colleague Hon Amber-Jade Sanderson said, although this is a short bill, it is far-reaching, and I contend that it is a very damaging bill for the state.

Why is this bill before us? We have heard that it might be to do with protests at James Price Point or protests in the forests in the south west. I say at the outset that I, too, do not and never will support violent protests. However, I do support the right of people to take nonviolent direct action, which is what we are talking about and which will be banned as a result of this legislation. Some horrible things did take place at James Price Point in Broome, and there were cases of people spitting on police officers or spitting on Woodside workers. That should not have happened—absolutely it should not. However, I do not believe that this bill before us will fix that problem.

Again, if it were not for protests such as those at the moment in Mowen and Helms forests in the south west, many of our south west forests would not be protected as they are today. I have to say that governments of all persuasions recognise that good legislation was brought into Parliament to ensure that many old-growth forests could not be felled, and it is governments of all persuasions that support protecting that unique environment for future generations.

As a former staff member for the Minister for Environment, I, too, have been in situations when protesters have used thumb locks to make a point. On two, if not three, occasions in Hon Judy Edwards' office when Labor was last in government, a protester got into the office under false pretences and used a thumb lock to lock himself to the door. We could not open the door for the day and it did cause a bit of not angst but definitely pain in the office. We did not have someone swearing or spitting at us, but we did have someone with thumb locks. It did cause a pain in the office, but I respect that person's right, having got into the office in the first place, to peacefully protest.

Hon Michael Mischin: Were you able to carry on your business?

Hon STEPHEN DAWSON: I did not hear the Attorney General's interjection, but actually I am not taking interjections this afternoon.

Hon Michael Mischin: Were you able to carry on your business?

Hon STEPHEN DAWSON: No; for a period in one of those cases we were not able to.

Hon Michael Mischin: But you weren't stopped from doing it all day.

Hon STEPHEN DAWSON: In one case we were stopped.

Hon Michael Mischin: All week?

Hon STEPHEN DAWSON: Not all week, but in one case we were stopped.

Hon Michael Mischin: So, you would allow government to be interrupted?

Hon STEPHEN DAWSON: I look forward to the Attorney General's contribution this afternoon. I have only 40 minutes left. The Attorney General has unlimited time to respond to our contentions, suggestions and comments, so I look forward to his contribution when he rises to his feet later—and, honestly, that may well be after Hon Simon O'Brien has spoken too!

Several members interjected.

The ACTING PRESIDENT (Hon Brian Ellis): Order, members! Hon Stephen Dawson has the call.

Hon STEPHEN DAWSON: It is a pain and it can be a pain, absolutely, that people can come in and disrupt business. In this case it was in a ministerial office. We then took action to ensure that people could not get into our office as easily as they had previously. Yes, it does cause pain, it does cause distraction and it does derail the office's plans for the day, but I do not think this piece of legislation will fix it.

I will move on to talk about the protests —

Several members interjected.

The ACTING PRESIDENT: Order, members. I think the member has indicated that he does not wish to take interjections.

Hon STEPHEN DAWSON: I thank you, Mr Acting President; I appreciate your protection this afternoon, because it is very distracting to have a cacophony of voices on the far side trying to interject. I will ensure that I make my comments directly to you, Mr Acting President. I know that you will ensure that the chamber is silent while I make my comments this afternoon, and I will ensure that I do not take interjections. I am not sitting down. I thought you were making a comment.

The ACTING PRESIDENT: I thought you were finished.

Hon STEPHEN DAWSON: Members may wish.

I will move on to the protest against the detention of children by a number of Christian leaders last year at the office of the Minister for Foreign Affairs, Hon Julie Bishop. I will park the federal policy issue—I will not touch on that this afternoon. In this case, 11 protesters—priests, pastors and a child—came for a peaceful protest. In fact, I think they brought cookies and possibly flowers. I think they may have got into the office under false pretences; they might have said that they were other people who were coming for a meeting. Once they were in the office, they sat, prayed and chatted. They did not cause uproar. There were no fights or fisticuffs or violence. They simply sat there. They might have caused concern for the officers and obstructed the business of the office, but they were taking nonviolent direct action. They contend that they were sitting there because they wanted an answer from the federal government about why these kids were being locked up. They did not get an answer. The police were called. The police came and took them away to the lockup. We heard from other members about the action taken by police. Some of these people were strip-searched. I am pleased to see in the media today comment from the Commissioner of Police about introducing scanners that may mean that we do not need as

many invasive strip-searches that police contend are needed now. In reality, whether or not we have those things, I do not think that 11 priests and pastors should have been strip-searched. What kind of lunacy is that?

Hon Nick Goiran: What is your point?

Hon STEPHEN DAWSON: I am making my point. Hon Nick Goiran, I am saying that if this bill were in place, we would potentially see 11 priests and pastors locked up in the state's prisons. We already know that our prisons are overflowing. Why in God's name would we put 11 priests and pastors in prison for nonviolent direct action?

Several members interjected.

The ACTING PRESIDENT: Order, members! There have been a lot of interjections on this bill. We allow a certain amount, but when it gets to the level it is getting to now it is impossible for Hansard to hear the speaker.

Hon STEPHEN DAWSON: Why would we send 11 priests and pastors to prison? We should not do that. I believe people have the right to nonviolent protest, and I think this bill goes way too far. It is certainly not just me who thinks this bill goes way too far. As colleagues on this side of the house have pointed out, about 40 groups in this state have come out against this bill.

Hon Nick Goiran: What if it were 100?

Hon STEPHEN DAWSON: The more the merrier. The longer this farce goes on and the government continues to push this appalling legislation, more and more groups will come out against this bill. It is a terrible piece of legislation that takes away long established rights in this state. Environmental groups have protested against this bill and shared their concerns, but it is not just environmental groups that are against the bill, because religious groups are also against it. Representatives of the Catholic and Anglican Churches have said that they are concerned about this legislation. But it is not just the environmental groups and churches, as members on this side of the chamber pointed out; we have seen the Western Australian Farmers Federation, members of which could never be called rabid left-wingers —

Several members interjected.

The ACTING PRESIDENT: Order, members! Any member with the call has the right to make his or her contribution to the debate. As I said before, we have some interjections at times, but I think members should respect the member on his feet.

Hon STEPHEN DAWSON: Mr Acting President, certainly in my dealings with the Western Australian Farmers Federation, I have never seen it as a rabid left-wing group.

Hon Kate Doust interjected.

Hon STEPHEN DAWSON: I am not taking interjections from Hon Kate Doust either. I have to be fair this afternoon. I just want to make my points, and I look forward to others' contributions. Again, I have to say that Hon Kate Doust has made a fine contribution on the bill already.

The Western Australian Farmers Federation is not a rabid left-wing group, yet it is not in favour of this bill. That is churches, environment groups and the Western Australian Farmers Federation that are not in favour of this bill. Of course, we have also seen the union movement come out against this bill. This is a broad coalition of concerned community groups that oppose this government's, I have to say, extreme protest legislation.

Yesterday I was in the chamber talking about a different piece of legislation so I was unable to go to the Parliament House steps to greet and hear from representatives of those groups who had gathered to voice their concerns. I understand that representatives from the Western Australian Farmers Federation, the Law Society of Western Australia, some religious organisations, the Conservation Council of Western Australia, the union movement and some environmental groups expressed their concerns about the legislation. One of their concerns is that this legislation will reverse the onus of proof. They referred to people protesting or in possession of a "thing". We have had a bit of debate about a thing and I look forward to the Attorney General telling us exactly what a thing is and why there is no definition of "thing" in this bill, because I am certainly flummoxed by it. The representatives expressed concern that people in possession of a thing will have to prove that they are innocent and do not intend to prevent a lawful activity.

I was not there to hear the Leader of the Opposition in the other place, Mark McGowan, say that if these laws were passed, a future McGowan Labor government would repeal them. I congratulate him for that commitment.

The Western Australia Labor Party opposes these extreme laws. They are wrong and they will treat peaceful protesters as criminals. These laws go way too far. As I prepared to speak on this bill, I read an online article

from *The West Australian* of Monday, 16 March about a 91-year-old Victorian grandmother who tied herself to a tree. It reads —

> A law-abiding, 91-year-old woman has tied herself to a tree to stop it being chopped down.
>
> Grandmother of three, Isabel Mackenzie says hundreds of trees along Victoria's Western Highway, some more than 600-years-old, will be cut down because VicRoads wants to widen the road … east of Ararat.
>
> "All my life I've been a strictly law-abiding person, but because of this unconscionable damage, I feel impelled to act," Mrs Mackenzie said.
>
> The protest is small—there is one other protester tied to the tree with Mrs Mackenzie and two others supporting them on the roadside.
>
> However, they are making their point with passing motorists beeping, waving and even stopping to voice support …

The article states that a bus load of tourists who went by showed their support by helping to hold up placards. Of course, this happened in the socialist utopia of Victoria. If 91-year-old Isabel Mackenzie had been protesting in Western Australia and these laws were in place, she may well have ended up in prison for probably not 24 months but possibly up to 12 months, and she may well have faced the prospect of being given a massive fine that we will see imposed by this legislation. Why in God's name would we send a 91-year-old grandmother to prison for taking nonviolent direct action by tying herself to a tree? In the end, the police spoke to her and she said that they were very nice and pleasant, and the people she was with untied her and she left and went on her merry way. If this had happened in Western Australia and these laws were in place, there is no doubt that the police would have intervened at an early stage and may well have arrested her, and this 91-year-old woman would be helping to clog up our prison system.

Hon Michael Mischin: Is that what the member really thinks?

Hon STEPHEN DAWSON: When people feel powerless, for many of them protesting is the only thing left to do. I have to say hand on heart that I have been involved in many protests over the years as a student office bearer of a student guild or at the National Union of Students or as a member of a union. I have been involved in a great many protests, as have others. If this bill was in place when those protests happened, some or, in fact, many of us may well have been arrested to face time in court and be fined thousands of dollars. It would be hypocritical of me to say that it was okay for me to protest all those years ago and it is not okay for somebody to protest today, because that is not the case. Everybody should have the right —

Several members interjected.

The ACTING PRESIDENT: Order, members! It is probably an appropriate time to welcome students from Newman College to the gallery. I hope they enjoy their visit today.

Hon STEPHEN DAWSON: As I was saying, I would be a hypocrite if I supported this bill and allowed such draconian measures to be introduced in this state when I have previously protested and I did not face laws that were as harsh as the laws before us. I will talk about why some of those groups are against these laws.

Hon Alyssa Hayden: Are they relevant?

Hon STEPHEN DAWSON: If the interjections were relevant, I would certainly consider them. I will tell the house why some of those 40 community groups are concerned with this bill. UnionsWA has advised us that it has concerns for a number of reasons. Firstly, a new offence of physical prevention of a lawful activity will be created and there will be consequences for both protected and unprotected industrial action—I will come back to that later. Other reasons for concern are that this bill reverses the onus of proof, and it creates the offence of preparation for physical prevention or trespass.

I will turn to the issue of protected and unprotected action. Late last year the Tasmanian Parliament passed legislation that targeted protesters at mining and forestry sites. The Workplaces (Protection from Protesters) Act 2014 is significantly more developed than the Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015 before us this afternoon. In the Tasmanian act, section 4, "Meaning of protester and engaging in a protest activity", defines protesters and also sets out defences. It states —

> (1) For the purposes of this Act, a person is a protester if the person is engaging in a protest activity.
>
> (2) For the purposes of this Act, a protest activity is an activity that —

(a) takes place on business premises or a business access area in relation to business premises; and

(b) is —

(i) in furtherance of; or

(ii) for the purposes of promoting awareness of or support for —

an opinion, or belief, in respect of a political, environmental, social, cultural or economic issue.

(3) For the purposes of this Act, a person is engaging in a protest activity if the person participates, other than as a bystander, in a demonstration, a parade, an event, or a collective activity, that is a protest activity.

(4) Nothing in subsection (3) is to be taken to limit the generality of subsection (1).

(5) For the purposes of this Act, a person is not to be taken to be engaging in a protest activity in relation to business premises, a part of business premises, or a business access area in relation to business premises, if the person has the consent, whether express or implied, of a business occupier in relation to the business premises —

(a) to be on the premises, part or area ; and

(b) to engage in the protest activity on the premises, part or area.

(6) For the purposes of this Act, a person is not to be taken to be engaging in a protest activity in relation to business premises, or a business access area in relation to business premises, if the person is —

(a) a business operator in relation to the business premises; or

(b) a business worker in relation to the business premises who has the express or implied consent of a business operator in relation to the premises to engage in the protest activity.

(7) For the purposes of this Act, a person is not to be taken to be engaging in a protest activity on business premises, or a business access area in relation to business premises, if the protest activity is —

(a) protected industrial action within the meaning of the Fair Work Act 2009 of the Commonwealth; or

(b) part of lawful industrial action undertaken by a State Service officer or State Service employee.

(8) For the purposes of this Act, a person is not to be taken to be engaging in a protest activity if the activity is within a class of activities prescribed not to be protest activities for the purposes of this subsection.

Obviously, the Tasmanian government consulted on its bill—it certainly spoke with somebody about it. I do not believe that this government has consulted with anyone on this bill. I look forward to the Attorney General making his comments on this Criminal Code Amendment (Prevention of Lawful Activity) Bill. In fact, I will ask him some direct questions: When the Attorney General replies to this debate, can he advise who was consulted on this bill? Why, in particular, did he not ensure that protected industrial action within the meaning of the Fair Work Act was considered? Why was that type of protest or action not excluded from the bill?

One of the other groups that has been speaking out on this bill is, of course, WAFarmers. This time last week, when the debate had just started in this place, WAFarmers issued a media statement headed "Protest laws could affect farmers". I will place that statement on the record because I believe it is important to recognise in this place the level of concern, certainly from an organisation that represents a number of farmers in the state. It is obviously not the only representative body, but it is certainly a leading representative body for farmers. It states —

> WAFarmers is concerned about new legislation currently being debated in the Upper House which potentially criminalises peaceful protests, including those staged by farmers on issues affecting agriculture.
>
> The Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015, introduced to the Legislative Council, has attracted criticism for its broad language, reversal of the onus of proof and its application on both public and private land.

> WAFarmers President Dale Park has expressed his concern about the potential ramifications for farmers who could face significant fines or jail time if they were to create a physical barrier to lawful activity or were even suspected of being about to.
>
> WAFarmers recently staged a peaceful protest at Wagin Woolorama, holding up a 'Save Lives, Save Rail' banner during Minister Nalder's opening address.
>
> "As I understand it, a police officer could have apprehended me beforehand on the grounds that I might be about to prevent lawful activity, which is ridiculous," Mr Park said.
>
> The legislation is not specific and uses broad language, such as the term 'thing', when referring to objects which people may use to prevent lawful activity.
>
> At a press conference yesterday, Police Minister Liza Harvey said the laws are needed to prevent extreme forms of protest and that "it is not about farmers driving around their properties with padlocks and chains."
>
> "Even if farmers are not the direct target of this legislation, as Minister Harvey has indicated, they are still at risk of being punished for exercising their right to protest peacefully," Mr Park said.

I and a number of other members of this place have been involved in a standing committee inquiry into fracking. It has been a very topical issue in this state and, indeed, nationally and internationally, for a period of time. Although I will not go into the deliberations of our committee, in my capacity as a committee member and a member of Parliament, I have been contacted by a number of farmers who are concerned about fracking and about big oil and gas and mining companies accessing their land and, in their words, destroying their livelihood and the land they have farmed or, in some cases, their families have farmed for a number of generations. They are concerned about fracking, but since this bill has been introduced into this place, some of them have raised concerns about what this bill will mean for them and how they may well be caught by the provisions of the bill. One farmer asked: what if my dog, with a bowl of water beside him, is tied to the gate? The farmer knows the mining company is on the way in, and if there is a big, nasty barking dog at the gate, would that be classed as obstruction? Could that farmer face serious fines? Could he be jailed? What if his tractor is parked at the gate? He could be on the way out to a field but the tractor is blocking the gate. What if a company wanting to access that land saw the tractor parked there and rang the police? What would the police do? Could the police decide, "Yes, this farmer is unlawfully obstructing this company"? Could the farmer be arrested because his tractor is parked at the front of his gate, blocking the road? Could the farmer find himself having to prove that he was not trying to obstruct, but that the tractor had simply been parked there for minutes—half an hour, an hour or whatever amount of time—because the farmer intended to bring it out to the paddock? Could he fall foul of this bill?

Hon Michael Mischin interjected.

Hon STEPHEN DAWSON: I am asking the Attorney General a question. I hope that in his response to this debate he will answer some of those questions and allay our fears. I do not think he will, because I think he will have to point out that these things will fall foul of the bill and that if farmers, in this case, take these actions, they could face jail terms.

The other issue I want to touch on is about the people who marched up the road today so that they could gather outside the Parliament to protest about the government's plans to close down remote Aboriginal communities. Theoretically, the 1 000 people may not have sought any permits to have a march and close down St Georges Terrace or whatever roads they came on, and therefore could well have been impeding cars. Normally, cars would drive up and down the road undertaking lawful activity. Theoretically, the 1 000 people could potentially fall foul of this bill. That is only my reading of it. I hope again that when the Attorney General finally gets to make his reply, he will advise us that that will not be the case and they could not potentially fall foul of this bill, because I have concerns about the provisions.

The other people I have not mentioned who have concerns with the bill are some members of the legal fraternity in this state. I believe the Law Society of Western Australia has commented publicly and may well have signed statements as part of a broad coalition of groups who have concerns about the bill. I understand that some of their concerns relate to the reversal of the onus of proof. If a person has a "thing" and in the police officers' view there is reasonable suspicion of the relevant intent, people will be guilty unless they can prove otherwise. In correspondence from the Law Society, it said that this is contrary to our system of criminal justice whereby, at this stage, the obligation is on the prosecution to prove beyond reasonable doubt that a person has committed a particular crime. The Law Society certainly believes, as do I, that there is never any justification for such a provision. The Law Society has said that, clearly, onuses or thresholds are reduced for things like detaining

someone without charge for terrorism, or issuing a move-on notice, but we should not insert such provisions into the criminal law.

Hon Michael Mischin: Do you agree with that proposition?

Hon STEPHEN DAWSON: In relation to terrorism or move-on notices?

Hon Michael Mischin: No, generally—that it should never be introduced into the criminal law?

Hon STEPHEN DAWSON: I certainly believe that it should not be introduced into this bill.

Hon Michael Mischin: So you do not agree with the Law Society?

Hon STEPHEN DAWSON: I am talking about the bill before us. I would hate for members on the government side to seek the Acting President to call me to order because I am canvassing all sorts of other pieces of legislation and other issues that do not fit within the parameters of the bill before us.

Hon Michael Mischin: So you do not agree with the Law Society?

Hon STEPHEN DAWSON: I am saying that I do not believe that in this bill we should be reversing the onus of proof.

Hon Michael Mischin: So you do not agree with the Law Society generally?

Hon STEPHEN DAWSON: I am saying that this bill is absolutely deficient, because it includes this provision. I look forward to the Attorney General telling us later why the government has felt the need to include this provision in the bill. I think the Attorney General will be on his own on this bill; or perhaps he will not be on his own, because there are probably colleagues on his side of the house and other ministers who are happy to support such a thing being in the bill—there is that controversial word again—but certainly members on this side have a concern about this bill. Certainly members of those 40 community groups—that broad coalition—also have a concern about this bill.

There was a good article in *Farm Weekly* today about why farmers are concerned about the anti-protest laws. I should place on the record that one group—the Pastoralists and Graziers Association of Western Australia—has come out and said that it is okay with this bill. The article states, in part —

> Pastoralists and Graziers Association vice President Digby Stretch said people have the right to go about their lawful business without being impeded by people doing ridiculous things, and that is what this bill is about.
>
> "Too many times people are going over the line of free speech and their right to protest and impeding people's legal business," Mr Stretch said.
>
> Mr Stretch said people were trying to make a living and protestors were interfering with that and stepping over the line of a peaceful protest.
>
> "We respect their right to protest," he said.
>
> "But it must be done legally, and it must not impinge on others while doing it."

That is one group that certainly is in favour of—I probably should not put words in its mouth—and is happy with the bill. That is very different from the views that have been put on the record by the WA Farmers Federation. There is no doubt about that.

I now want to move on quickly to the forest protests that have taken place in this state. A number of famous Western Australians have been involved in forest protests over the years. One of those is former West Coast Eagles footballer Craig Turley, who joined in the protests at the Giblett forest block in the south west of the state. Mr Turley, who at the time was a prominent public personality, believed that block should not be logged and that the government should be protecting that block. He joined that protest because he knew that as a famous person and a public personality, he could help the campaign by enabling it to gain greater media attention. He spent a weekend on the tree platform in that block to demonstrate his support, and he certainly enabled the protest to gain greater media attention. Craig Turley added value to that campaign. Other people who joined in that protest were Mick Malthouse, who was mentioned earlier by a member on this side, and Luc Longley, who at that time was playing for the Chicago Bulls. It is because of those sorts of protest actions that many old-growth forests in the south west of the state have been spared from logging. I do not have a problem with public personalities standing up and adding their voice to community concerns and protesting. That is a democratic right, and it has been a democratic right to this day. However, should this bill pass this place, it will no longer be a democratic right.

People have sought legal means to stop the logging of old-growth forests. In the case of Mowen Forest, a number of environmentalists and concerned citizens in the Margaret River region have written to the government and offered initially $90 000, and then $100 000, to buy forest blocks that are earmarked for logging by the Forest Products Commission. However, the government is refusing to meet with these people, and the government has not responded to their letter. Those concerned citizens have sought to use what I think would be quite a smart solution and offered to buy those forest blocks, but the government is refusing to listen to them. The only other option that is available to them at this stage is to take direct action. However, if this bill goes through this place, they will not be able to do that, and if they are protesting and blocking other people from undertaking lawful activity, they too may well face our courts and end up clogging up our court system.

This is a retrograde and backward piece of legislation. As I said when I commenced my comments this afternoon, some of the activities that take place in some of these protests are not nice. I do not support people spitting at police officers or workers. I do not condone protesters chaining themselves to the Premier's house and causing grief and discomfort to his family. I do not support that, and nobody should. Although public figures can certainly be lampooned or derided, our families should not be scrutinised to the same degree that we are. But I believe we should all support non-violent, direct action. We should support the right of people to speak out against these issues. There should not be this threat of massive fines or jail time. I think the existing legislation is sufficient. I could perhaps be persuaded that other pieces of legislation could be amended or strengthened. Certainly in the case of move-on notices, that power already exists, and, if there are real concerns, perhaps the government should consider strengthening that legislation.

I do not support the bill that is before us. It takes us back to bygone days. I do not think this house should support it. With those comments, I conclude my remarks on the bill.

HON ROBIN CHAPPLE (Mining and Pastoral) [3.00 pm]: I do not want to go over what has been said by my honourable colleague Hon Lynn MacLaren or others. I want to deal with the fundamentals: this legislation reverses the onus of proof. It means that a person who is charged is required to prove the contrary to overturn the presumption of guilty intent or purpose. Certainly, proposed section 68AB refers to the possession of a thing. I will deal with that a bit more shortly. Section 68AA(3) of the Criminal Code requires the prosecution to prove only —

> (a) the person prevents a lawful activity in circumstances that give reasonable grounds for suspecting that the person had that intention;

Many people in this chamber will remember the Noonkanbah event when a number of years ago—in 1980, I think—a large number of people were arrested and detained for inhibiting progress. The matter was dealt with that way. Noonkanbah was eventually drilled. Nothing was found and the Aboriginal people of Noonkanbah were left in peace. Interestingly, Noonkanbah was the first station that was sold under the Aboriginal Land Fund Commission in 1976. The Yungngora and Kadjina people agreed to share Noonkanbah and to reject a non-Aboriginal manager offered to them by the Department of Aboriginal Affairs. They took over the station only to find there were 497 mining leases on the station. As we know, the then Premier Sir Charles Court decided that he wanted to help Amax Iron Ore Corporation get onto that property. From my research and what I can ascertain, at 1.00 am on 7 August a convoy of 49 vehicles set out from Perth. Near Karratha, six picketing union officials were arrested for impeding, in essence, lawful activity. However, if this bill had been in place, they would have had bigger problems. In Roebourne, 40 Aboriginal people protested as the convoy passed, and nobody was arrested. Two more union officials were arrested in Port Hedland. Just north of the town, 160 Indigenous people blocked the bridge and the police had to push them back. Those 160 people could have been arrested under the provisions of this legislation. Another 200 protesters greeted the convoy near Broome. At Noonkanbah the community also decided to oppose the convoy; 60 men established a blockade at Mickey's Pool where the road dipped into a sandy creek and no passage could be taken either side of that. Eventually, police and Aboriginal aides cleared the blockade and arrested a number of people. They got the drill rigs up there—it is not relevant to this bit of the debate—and the drillers on the drill rigs all pulled the pin as well, so the drill rigs sat up there for a long while until they could get scab labour. All those protesters at Noonkanbah, which is fairly famous, could have been arrested under the provisions of this bill. I think that now everybody would agree that the heavy-handed approach of the Court government at that stage was really over the top in much the same way as this bill is over the top.

It has not been mentioned much, but it was touched on a couple of times—protests over illegal activity. It would be really interesting to find out how this bill would be interpreted if a protester were to be arrested for impeding, locking on or lying down on the road against an illegal act. The bill does not mention in any way, shape or form whether a protester standing in the way of an illegal act has any recourse. Clearly, if we read the bill, we see that they do not. Much has been made of James Price Point and I really want to touch on some of the aspects around that. Much has been made of the notion of protesters being some rabble, some paid-for group or whatever. The

majority of people who were arrested over the James Price Point issue were local business people. There were some people who were not, but the majority were. We have to remember that on Black Tuesday approximately 26 residents of the Roebourne community were arrested. All those people would have fallen foul of this legislation. We are talking about business people.

Hon Simon O'Brien: They got arrested anyway, so what has that got to do with this legislation?

Hon ROBIN CHAPPLE: That is exactly the point; I thank the honourable member for his interjection. I do not usually hear interjections, but Hon Simon O'Brien has raised the salient point. They got arrested and the problem is resolved. If they had been —

Hon Simon O'Brien: They probably set out deliberately to get arrested, didn't they?

Hon ROBIN CHAPPLE: No, they did not; I can assure the honourable member. I have spoken to some of the small business people there who for the first time ever had to go to court and were suddenly criminals. However, they were passionate about their town and their issue in much the same way as the farmers around Greenough are passionate about locking the gates on the fracking industry. We will come to that in a minute. Let us come back to James Price Point. People were being arrested for protesting to stop illegal activities because even though the Department of Indigenous Affairs had written to Woodside advising it to cease its operations—it cannot tell them to stop, but advising Woodside that it was most probably breaching the act—it continued to work. Protesters in that situation were trying to stop what was deemed an illegal activity under the Aboriginal Heritage Act. We know that from looking at the paper trail. Two bits of correspondence between Julieta Abella and Rebecca Baimsfather-Scott on June 2011 discussed that they already sent the Department of State Development a list of sites that were in the area that should not be impacted upon. Subject to that, people protested—not least of all Joe Roe, who was the traditional Goolarabooloo man—that those activities should not be taking place. They were arrested for protesting and they were fined, but the action was illegal; they were trying to stop an illegal act.

It is also important to note that I asked several questions in this place prior to those arrests. I asked whether the Department of Indigenous Affairs had been notified of an Aboriginal heritage site in Woodside's proposed clearing area and the answer was no. But the department had already sent the Department of State Development a list of the known sites, telling the department to beware, it should not go there. Clearly, from reading some of the internal memos that we have under the Freedom of Information Act, I note that a memo was sent from James Cook, the senior compliance officer in relation to the activities. It states, in part —

> Woodside has been advised of the report and DIA concerns regarding the possible impact on this location. At this stage the obligation is on Woodside as to whether they continue ground clearing works in the area and risk a possible breach of Section 17 of the AHA.
>
> Broome Police have been advised that officers from DIA will be on the ground conducting a heritage assessment and investigating any possible impacts to the heritage values …

We know, as I have already said in this place, that eventually an officer within the DIA acquiesced to a request in a letter from Woodside Petroleum to please lift the site registration on that area. Those protesters were arrested and got records against their names, but they were protesting to stop an illegal activity. We also know that a number of the protesters had contacted the police during that time. The police said that they knew it was illegal under the Aboriginal Heritage Act, and the act states that once the police have been informed, they need to be aware of the issue and deal with it. However—this is quoting and I cannot verify this—the police said that unfortunately they had been told by their superiors that their job was to clear the way for Woodside, so they could not take any action even though, under that part of the Aboriginal Heritage Act, they were obliged to.

We need to remember that at the same time as those issues were occurring, the planning approval for that area was deemed to be invalid and was subject to a court case in Perth. Richard Hunter, a Goolarabooloo man, was taking the government to court over the fact that it did not have planning permission. Meanwhile, people were being arrested for activities that were not permitted under the Planning and Development Act. All those people who were arrested would have been subject to this piece of legislation. That is part of the concern I have about that. I want to know from the minister and his advisers: if people are protesting against an illegal activity, do they have recourse; and, if not, why not?

I want to go on to something quite humorous, which was actually an illegal activity. Back in April 1980, the Woodside development on the Dampier Islands on the Burrup Peninsula had started. That meant that approximately 4 000 pieces of rock art were destroyed, and I think about 1 800 pieces were removed. The WA Museum was not involved in this process at that time, but it suddenly became aware of this massive land clearing. Members of the museum put together a team, including Jim Rhoades, Patricia Vinnicombe, Ken Mulvaney, John Patterson, or "Patto" as he is known, to try to get ahead of the bulldozers to rescue as much

of the rock art as they could. They managed to salvage 1 800 pieces of rock art, but to do so they had to slow down the bulldozers so that they had time to remove the rocks. In one case there was a particularly important archaic face on a rock. John Patterson, a New Zealand powerlifter, with his hands on his hips, stood in front of the rock and stared down the bulldozer driver. They were trying to save some of the world's most important heritage, and did so. The WA Museum was trying to defend heritage artefacts, but under this act, they would have been prosecuted. I find those components interesting. How do we deal with genuine, legitimate protest against things that may be illegal?

I would love to know how the Premier is going to deal with the proposals over his property in Toodyay to mine the area for bauxite. We know that the area is represented by the Avon and Hills Mining Awareness Group, which is a community network of farmers and landowners from the region who are all determined to stop the Bauxite Resources Limited and Bauxite Alumina Joint Venture, including Felicitas and Fortuna Resources, in the Shires of Toodyay, Mundaring and Northam, from accessing that land. Unfortunately, the Premier has a tenement over his property. The Premier has probably got a gate on his property and most probably has some chains somewhere on his property. The Premier may even have a welder—I am not sure whether he does welding, but he might have a welder. All those instruments —

A member interjected.

Hon ROBIN CHAPPLE: The member thinks he does have a welder; that is good. With all those instruments, he could fall foul of this piece of legislation. With all those instruments, it could be determined that the Premier may or may not be taking some form of thought process that might constitute an illegal thought process, which, in essence, is what this bill is about.

Hon Lynn MacLaren: Indeed.

Hon ROBIN CHAPPLE: It is about thought processes. Who knows what is on the Premier's mind? He might be really upset about the idea of somebody wanting to mine his property for bauxite, as, I point out, are all his neighbours. Unfortunately, this is a giant catch-all, which could catch many people unawares. I would hate to see—I know Hon Colin Barnett reasonably well; I have done some bushwalking with him in the past—Hon Colin Barnett being arrested for something that he did not really intend to do. But how would we know? The legislation is silent. He could have to prove that the chains on his gates are not there to impede the lawful progress of the bauxite mining corporations.

This piece of legislation is very dangerous because, unfortunately, we see from this government that this sort of legislation will be put in the hands of people who, in my view, are less than competent to administer these sorts of activities. What will happen if during a protest, somebody pays some other people to impede the lawful right to protest? I will refer to an event that sounds like a really nice hypothetical but it actually happened. There is a group in Western Australia called the Friends of Australian Rock Art. Those people who have met them would know that the members of the group are mainly made up of academics, people of scientific qualification, anthropologists, archaeologists and members of the arts community. I do not want to belittle them in any way, but they are in the latter years of their life. They are by and large members of the seniors community. Part of the Friends of Australian Rock Art method of protesting is for members to wear T-shirts saying, in essence, "We protest" and to stand very silently in front of a venue. They did this at Pankaj Oswal's ashram event on the Perth foreshore. On day one, Mr Oswal came out and instructed—not asked—the police to beat the protesters and/or move them on. The police were quite right when they said, "We don't do that in Western Australia." The next day, Mr Oswal hired a large number of students at $500 a day each to wear T-shirts saying, "We're protesting about those protesters", and actually impeded a lawful access along the footpath. Who are the protesters in a situation like that? Do we arrest both of them or arrest one for impeding the other? These are the sorts of things that this legislation—no matter how simplistic it is—does not address in any way, shape or form. It was interesting ultimately to note that the mere fact that they got paid and it became public meant that they had to front the university professors and explain why they had participated in a protest as a paid-for rent-a-crowd. So, who gets prosecuted there? Is it the silent protesters or the people who impeded the silent protest?

In talking about draconian pieces of legislation, I am mindful of a piece by Larry Graham about the bushranging act that was published in the newspaper the other day and has been mentioned a couple of times. Unfortunately, although I really liked the article from Mr Graham, there was no such thing as the bushranging act; that is what it was colloquially referred to. The New South Wales Robbers and Housebreakers Act was introduced on 21 April 1830 to suppress robbery and housebreaking and the harbouring of robbers and housebreakers. It is interesting to note that the act, in part, states —

> That every suspected person who shall be taken before any Justice of the Peace as aforesaid shall be obliged to prove to the reasonable satisfaction of such Justice that he is not a felon under sentence of

> transportation and in default of such proof such Justice of the Peace may cause such person to be detained in safe custody until it can be proved whether he is a transported felon or free and in every such case the proof of being free shall be upon the person alleging himself to be free Provided always that every such Justice of the Peace may in his discretion cause every such suspected person to be securely removed to Sydney to be there examined and dealt with in like manner as aforesaid.

Does this not sound extremely similar to this bill? The really interesting thing about that act is that the government of Western Australia wrote to the New South Wales government and said, "This is a bridge too far. This breaches the basic premises of law in the commonwealth, and please don't do it." However, the law was retained, because interestingly enough, it had a sunset clause that meant it expired every two years; therefore, every two years, the law was reviewed and then re-enacted. From what I understand of the law, it was re-enacted about three or four times before eventually being removed from the statute on 27 July 1898 as unconstitutional.

One wonders whether this law, if passed, will be removed. I listened to Hon Stephen Dawson in his contribution when he said that when the Labor Party comes back into power, it will remove this legislation; so I thank him for that commitment. I say that because it is extremely bad law. It should not exist because it alters the onus of proof.

I thought it important to identify that the bushranging act was a parallel act to this bill. It stated basically that anyone roaming around the bush who was seen in the bush was automatically regarded as a bushranger. It was then that person's job to disprove the allegation in Sydney once they were taken there. I note in one example that it took about six months for the person to get there and eventually get home after he was proved innocent. Unfortunately, a number of people were hanged as a result of that act because it was a hanging offence. I forgot to mention that. That was the important point of mentioning this little piece of legislation.

Hon Michael Mischin: Which piece of ancient history are you talking about?

Hon ROBIN CHAPPLE: It is ancient history, but I am afraid it is revisiting this chamber today.

Hon Michael Mischin: Are we hanging someone under this legislation?

Hon ROBIN CHAPPLE: No, but the Attorney General is going about the same process.

Hon Michael Mischin: This is all very interesting, but what does it have to do with this bill?

The ACTING PRESIDENT (Hon Liz Behjat): Order!

Hon ROBIN CHAPPLE: Let us get back on to the midwest shires. We know that the midwest shires have agreed to ban fracking in their areas and that 96.2 per cent of all the farmers in that area have agreed to lock their gates. Will their agreement to lock their gates be caught by this legislation or only when they lock their gates?

Hon Michael Mischin: No.

Hon ROBIN CHAPPLE: No. If they lock their gates and impede lawful protest from a fracking company, then they will be in breach of the bill; is that correct?

Hon Michael Mischin: If they fall within the scope of the legislation, that may be the case but there are other remedies currently in place.

Hon ROBIN CHAPPLE: I think we really need to clarify that, so we will deal with it in committee.

The ACTING PRESIDENT: Order! I think that is a point that can be clarified in committee.

Hon ROBIN CHAPPLE: Thank you, Madam Acting President. As I said, 96.2 per cent of the farmers in the midwest area have said that they will lock their gate.

Another interesting example from the people in that area is the graffiti campaign that they have started. It is actually a visual graffiti campaign. They project on buildings in Geraldton and Greenough signs advising people to divest from these individual companies. I wonder whether that activity would be caught by this bill too.

Hon Michael Mischin: How?

Hon ROBIN CHAPPLE: I am just wondering because they would be then impeding lawful activity.

Hon Michael Mischin: You could wonder if the sky is going to fall on your head, but how is it relevant?

Hon ROBIN CHAPPLE: I do not know, so let us wait until we get into committee and we will find out.

Hon Michael Mischin: Come on! How does it possibly come within the scope of this bill?

Hon ROBIN CHAPPLE: Madam Acting President, I think I have the floor and I would like to continue having the floor for a little while. I will certainly talk to the honourable member when we get to the committee stage, if we ever get there.

Several members interjected.

The ACTING PRESIDENT: Order! Hon Robin Chapple has the call at the moment, and one person should speak at a time.

Hon ROBIN CHAPPLE: Surprise, surprise! I think my colleague has already mentioned that we oppose the legislation, and we think that it needs certainly much more scrutiny. It most probably needs more scrutiny, in essence, because of the fundamentals that it breaches in terms of the statement in the Universal Declaration of Human Rights. Article 11 states —

> (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
>
> (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

This legislation makes it an offence to have an object that may or may not be used or may be assumed to be used in the pursuit of a criminal offence.

Hon Michael Mischin: How does that fit in with the section you have just read out?

Hon ROBIN CHAPPLE: Because this legislation alters the onus of proof.

Hon Michael Mischin interjected.

The ACTING PRESIDENT: Order!

Hon ROBIN CHAPPLE: I want to read from a bit of correspondence I have had from the Environmental Defenders Office; hopefully I have time to get it in. It states —

> The Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015 was introduced into Parliament on 25 February 2015. The Bill is intended to target protesters who physically obstruct the carrying out of lawful activities. The second reading speech indicates that the Bill is in response to the use of devices such as 'thumb locks' and 'barrel locks' which enable a protesters to lock themselves to immovable objects, often requiring specialist equipment and expertise to remove, causing delays and increasing costs. The Bill introduces sections 68AA and 688AB to the *Criminal Code* thereby creating new offences for physically preventing a lawful activity being carried out, and for making or possessing 'things' designed to prevent such activities being carried out.
>
> Section 68AA(2) of the Bill makes it an offence for a person to physically prevent a lawful activity being carried out. 'Physically" is defined to include actual or threatened physical force, the creation or maintenance of a physical barrier, or the creation or maintenance of a risk of injury to a person or damage to property as a result of carrying out the lawful activity. Subsection (3) reverses the onus of proof whereby a person is presumed to have the intention under (2) when there are 'circumstances that give reasonable grounds' for suspicion. Penalties for an offence under section 68AA are doubled in 'circumstances of aggravation' to a maximum of 24 months imprisonment and a $24,000 fine. Circumstances of aggravation encompass offences committed in a manner that cause injury to, or endangers the safety of, a person (including the person committing the offence).
>
> Section 68AB of the Bill relates to the manufacture or possession of a 'thing' for the purpose committing an offence under section 68AA or 70A (trespass). This section appears to be targeting locks and other physical barriers used by protesters to attach themselves onto immovable objects and otherwise prevent the carrying out of a lawful purpose. Similar to section 68AB, intention that a thing is made or possessed for the purpose of committing an offence under 68AA or 70A is presumed if 'the circumstances give rise to a reasonable suspicion' …
>
> There are a number of concerns with the Bill relating to its potentially broad application. Firstly, section 6BAB provides that 'a person must not make, adapt, or knowingly possess a thing for the purpose of using it in the commission of...' The Bill's second reading speech indicated that this offence is designed apply to situations 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. However, in fact, this section may apply to other articles such as banners and placards which are designed to be part of a peaceful protest. Articles 19 and 21 of the *International Covenant on*

> *Civil and Political Rights* relate to the right to freedom of expression and peaceful assembly and may only be limited so far as 'reasonable, necessary and proportionate'.

Hon Michael Mischin: Where does it say that?

Hon ROBIN CHAPPLE: I am just reading from the International Covenant on Civil and Political Rights.

Hon Michael Mischin: Are you?

Hon ROBIN CHAPPLE: Yes, I am. I do not have a lot of time, so I have to get on with this. The correspondence continues —

> Furthermore, section 6BAB may infringe the implied freedom of political communication guaranteed by the Commonwealth Constitution by applying the two-limb test in *Lange v Australian Broadcasting Commission* … Non-violent direct action has proven essential to establishing rights and protecting the environment and this freedom ensures that the Australian public is able to freely discuss exchange and publicise matters of public interest.
>
> The second reading speech also suggests that current legislation limitations prevent police from pre-emptively charging people who they suspect of intending to prevent lawful activity being carried out. However, under section 27 of the *Criminal Investigation Act 2006* police are able to issue move on notices pre-emptively should they be concerned that an offence is going to be committed. Police are also able to charge people for trespass which carries the same penalty as a non-aggravated charge under section 68AA.
>
> The Bill also introduces increased penalties in aggravated circumstances, including up to 24 months imprisonment and a $24,000 fine. Additionally, section 68AA(4) provides that a person convicted under 68AA(2) may be ordered to ordered to pay the expenses in relation to the removal of a physical barrier created or maintained by that person. These penalties appear excessive given that protesters may be involved in peaceful protests and are often motivated by the public interest. Furthermore, such penalties may have a chilling effect on persons who want to express an opinion and/ or engage in peaceful assembly.

They were the points raised by the EDO. I suppose it would come as no surprise to members opposite that, as my colleague has already identified, I will mercifully move that this piece of legislation go to committee.

I really want to touch on something Hon Kate Doust said in her contribution. She said —

> It is our job to ensure that we pump good sound legislation out of here. If that means sending the bill off to a committee to ensure that we go through it word by word and gain appropriate advice and secure the views of the community to ensure the bill is going to work, that is what we should be doing.

I would suggest that many factors have been raised by many people in this chamber that the legislation goes a step too far, it might be challenged legally and that it might not be validly used. I think it is also important to tell those members who were not in this chamber in 1995 that in that year we had the Commission on Government. The Commission on Government reviewed many aspects of legislation in this place and considered that this chamber should only have one minister who would be here merely to comply with the Constitution, and that this chamber should be a chamber of review and assessment. Recommendation 8.3.5 of part 2 of the second report of the Commission on Government states —

> **… The number of ministers permitted in the Legislative Council should be reduced to one, the minimum required at present by the *Constitution Acts Amendment Act 1899*.**

That would make this chamber's work a lot better. We would then be a proper house of review, as was eloquently put forward by Hon Norman Moore when he made comment in this place that with the split balance of power being held between One Nation and the Greens, the chamber was working the most effectively he had ever seen because just about everything was going to committee and we were resolving many, many matters.

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

HON ROBIN CHAPPLE (Mining and Pastoral) [3.40 pm]: Without further ado, Madam Deputy President, I move without notice —

> That order of the day 12, 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.

The ACTING PRESIDENT (Hon Liz Behjat): I might draw members' attention to the front of the standing orders booklet, which has a handy chamber etiquette section. It states that when members such as me with my

position are in the Chair they are to be addressed as Madam Acting President. The Deputy President is Hon Adele Farina. The other Acting Presidents we know. If I could just draw members' attention to that, sometimes it is easy to forget how we address each other.

Hon ROBIN CHAPPLE: Thank you, Madam Acting President.

The ACTING PRESIDENT: Well done.

Hon ROBIN CHAPPLE: I will get it right one day—I do apologise.

Many issues have been raised by members on this side of the chamber. Unfortunately, we have not heard from members on the other side of the chamber who have been silent on this legislation. Many issues with aspects of this legislation have been raised by many members. As we have seen and many members have quoted, a number of people oppose this bill. We owe it to the broader community and indeed this house as a place of review that we accept that this legislation needs to go to the Standing Committee on Legislation. I think it is flawed legislation. In my view, it breaches a number of international covenants and the basic principle of the onus of proof. That was articulately identified with the passage of the bill referred to as the bushrangers bill in New South Wales—we should never alter the onus of proof. I believe a committee would be able to test the validity of the bill against international law and at least allow the community, churches and many of the institutions and organisations we heard from, that want to have input into this legislation, to be heard and not have it snuck through this chamber. That would give people in the community and my constituents, largely Indigenous people, a say about their future.

One aspect of this legislation is that if a person impedes activity, whoever they are, and whether it is for lawful purposes or not, they will be caught by this legislation. We really need to test that out. An old Indigenous man who does not want his sacred site damaged, or whatever, without knowing the law, might impede progress to the point that he could end up in jail with a significant fine for trying to protect his country. In all sincerity, I believe that a committee review should be conducted of what I consider to be appalling legislation.

HON SIMON O'BRIEN (South Metropolitan) [3.45 pm]: Madam Acting President, before the house contemplates this question we really need to contemplate some other aspects of this debate. In my observation of the debate, Hon Robin Chapple's proposal is one of the few sensible and thoughtful contributions that we have actually had to this debate so far. The other thoughtful and worthwhile contribution to the debate has been the minister with carriage for the bill. The Attorney General's interjections in response to some of the things we have heard from —

Hon Sue Ellery: What about your own interjections?

Hon SIMON O'BRIEN: Modesty forbids, but thank you for the backhanded compliment!

I followed the debate so far with interest and also as an anthropological exercise in observing behaviours and reflecting on what this house is meant to do when confronted with legislation such as this introduced in this house and not the other place. That creates a slightly different dynamic. Considering the contributions of several members opposite, I was struck that they all sought to outdo each other describing their opposition to this terrible legislation. Whether or not it is terrible is something that the house will decide in due course. It was quite repetitive and the established formula is that this bill is faulty on a number of grounds. Apparently, it prohibits the long-established right to protest; it does not have a definition of "thing"; and it reverses the onus of proof, which in the minds of opposition members offends every sense of civilised activity and is an absolutely unprecedented thing for us to contemplate. The general view, when all that is examined and found wanting, as Hon Robin Chapple most recently expressed it, is: "It is all a bit over the top." Members opposed to this bill would have us believe that those are the fatal flaws that each, and certainly together, mean that we should vote against this bill and consign it to the scrap heap.

Hon Robin Chapple's interesting contradictory view is that we refer the bill to a committee for examination and report. Perhaps that means it is a bill worth salvaging in some form. I would have thought, in the first instance, we should decide the fate of the bill by a second reading vote, and the bill is either done away with or members can seek to move the bill to a committee for examination. But that has not really happened. That brings me to the point I have been contemplating and I referred to in my opening remarks. I have watched how the house, as a group of members, has dealt with this bill before us. I am disappointed by what I have seen. There has been no serious examination of the proposal and no questioning whether it has merit; and if it has some merit, how it can be improved and ultimately what we do with it.

Most of the speakers we have heard from so far have all decided, on the generalised grounds that I have just enumerated, that this bill is beyond redemption and it is, in effect, a fundamental attack on democracy and people's freedom in Western Australia. On that basis, they will fight tooth and nail and have rallies out the front

of Parliament and make all sorts of allegations by using it as a political instrument to demonstrate how awful the government is and how the Labor Party might be the salvation.

My attention was drawn to a website of Mark McGowan, the Western Australian Labor Party leader—I am not sure whether it is a permanent or a transient website. The most recent editorial that I read was dated Thursday, 12 March 2015. Under the subheading of "Fast facts"—what a decisive opposition they are!—the first fact is —

- New anti-protest laws are extreme and will cast peaceful protestors as criminals

Hon Nick Goiran: For starters, that is not a fact.

Hon SIMON O'BRIEN: It is certainly not a very temperate comment either, from someone who wants to be the leader of government in this state. The second fast fact is —

- Farmers across regional WA could be arrested for defending their property

This has been raised in debate and is the sort of consideration that a house of review ought to have a look at, if it is contemplated as an outside possibility, because this is not what is intended by the bill. The point is that the ALP knows that this is not what the government intends, but it is quite happy to put up its "fast fact" that indeed the farmers are in imminent danger of being arrested for defending their property, which is not something that will happen. It is a pity when the likes of Mr McGowan and the author of this website choose to have as one of the chief weapons in their armoury the very base tactic of blatant scaremongering, and they know they are pushing a longbow. The third fast fact is —

- The Nationals must reveal why they are supporting laws that could criminalise farmers

If that is a fast fact, they are playing a bit fast with the truth. That is the level of debate we have seen. I could go on —

Hon Kate Doust: We have not heard any debate from the Nationals.

Hon SIMON O'BRIEN: Members opposite might tempt them at this stage. I will not spend any longer going on about this —

Hon Michael Mischin: Is the word "fact" defined on that website?

Hon SIMON O'BRIEN: Any definition that might exist appears to be very loose indeed. I am sure the Attorney General would take issue with any of this being a fact or not. Let us see whether we can introduce some facts into this debate. I also noticed in a story by Stephanie Dalzell—just to show members that I know how to use the internet to access things —

Hon Nick Goiran: The member would make a good research officer.

Hon SIMON O'BRIEN: Yes, I would. I noticed an article by ABC reporter Stephanie Dalzell, who we all know as a very nice and professional journalist around Parliament, giving a balanced report of the news. The article is not a judgement on this bill but a balanced report on what people are saying, both the proponents and the opponents. The article talks about a Mr Eyers, the president of the Criminal Lawyers' Association. I always think that is such an ambiguous title, but never mind. It states —

> Mr Eyers said the wording of the legislation was so broad it could be deemed unconstitutional.

Among other things, he is quoted saying —

> The legislation prohibits the possession of "things that aid in the prevention of lawful activity".

Over the last few sitting days we have heard that said over and over again. The article goes on —

> Kate Davis from the Community Legal Centres Association of WA said the wording of the legislation was extremely vague.
>
> …
>
> Opposition Leader Mark McGowan said his party would fight the laws in Parliament.
>
> "People have a right to protest, we're a democracy, this is not a police state," he said.

That was the story updated on 12 March from Stephanie Dalzell, which set the tone for debate repeated a week later in this place from this opposition. The level of intellectual vigour that opposition members have brought to this debate is absolutely lamentable. I will give them the benefit of the doubt because they are all our friends and colleagues, but I do not think they are doing themselves any justice when they appear so bloody-mindedly stupid as to put forward some of the arguments that they have been putting forward in the course of this debate.

I will touch on some of those arguments and ask them to reflect on what it is they have been saying and what leads them to say it. It is all very well to play politics in these things. It is all right to oppose and it is all right in opposition to highlight the potential weaknesses or areas for improvement in a government policy; that is a fair and proper thing to do. What is not fair and proper is to deliberately misunderstand or "mis-describe" what the government is proposing to do and put it about that the government is up to all sorts of dreadful things that it is not proposing to do. God only knows that any government gets up to enough awful things that it can legitimately be criticised for, and I am sure this government is no exception, but there is no need for members opposite to display such an ignorance of some fundamental parts of our statute law as they have because it either displays a sense of dishonesty or a sense of ignorance that does not recommend them in any way, shape or form. I will give them the benefit of the doubt because —

Hon Kate Doust: That is terribly generous of the member!

Hon SIMON O'BRIEN: It is, and members opposite are all dear friends of mine. I would never want to think of them as dishonest. I would hate to be in a position to —

Hon Sue Ellery: Tell me what I said that was ignorant.

Hon SIMON O'BRIEN: I will, because all members opposite have said the same thing. I will not stand here and accuse any members opposite —

The ACTING PRESIDENT (Hon Liz Behjat): Order, honourable member! When I say the word "order", the house comes to order. It is not an invitation for you to start speaking more loudly; it is for you to come to order as well. I bring to your attention that you are using the word "you" and pointing across the chamber to other members. We have an agreement in here that we address our remarks through the Chair and I ask you to do the same.

Hon SIMON O'BRIEN: Thank you, Madam Acting President.

I would never accuse those opposite of originality in the approach that they have brought to the debate on this bill. No, I would not accuse them of any sense of originality. The good thing is that I do not have to repeat the same points over and again because the same remarks can be applied to each of the contributions made by members opposite.

The key arguments have been advanced several times and I have summarised them. I will come back to them in a moment. The thing that really got my interest, "you know"—if I am allowed to use that expression—in this debate, was what I heard Hon Lynn MacLaren say the other day, which seems like 100 years ago, about Emmeline Pankhurst. Hon Lynn MacLaren talked in here about one of the alleged deficiencies in this Criminal Code Amendment (Prevention of Lawful Activity) Bill in that it forbids people to, in effect, engage in protest. One of the allegations by the critics of this bill is that it effectively criminalises anyone who wants to protest, and is that not a shocking thing because many people have protested for worthy causes. I suppose the beauty is in the eye of the beholder. Many people have protested, with success in some cases, for causes that may not have been fashionable at the time. I think the honourable member clearly mentioned Mrs Pankhurst as a good person to illustrate the point that Hon Lynn MacLaren was making.

Emmeline Pankhurst, of course, founded the Women's Social and Political Union, among other things. She was a leading suffragette, and activist in pursuit of obtaining, among other things, votes for women in Britain. This is interesting because I have contrasted that with the Western Australian experience. At the turn of last century, back in 1899–1900, we had some earth-shattering experiences here that the member may or may not be aware of.

Hon Kate Doust: Do you remember it clearly?

Hon Michael Mischin: He reads history books, unlike many on the other side.

Hon SIMON O'BRIEN: I thank the honourable member for his interjection because, yes, I do learn from history. History records that in those years, Western Australia made some momentous decisions—decisions that affect us this very day. We voted to join the commonwealth, and in 1899, we gave the vote to women here in Western Australia. Thank heavens for that. How awful it would have been if we had not done those sorts of things. In Western Australia in 1920, that extended to the right of women to stand for Parliament. Oh, happy day! We go back to the Emmeline Pankhurst story, because she was active after women in Western Australia got the vote. We as a state did not have a politically male-dominated state; we did not have to be dragged kicking and screaming, chaining ourselves to railings and what have you to give women the vote. Some cynics might say that it was a desperate last-ditch attempt to get more Western Australians on the roll to offset all the othersiders who were voting for Federation. Whatever the motivation, we willingly led the world, basically, in giving women the vote.

Emmeline Pankhurst, of course, did not found the Women's Social and Political Union until, I think, 1903, and cheerfully then went on with her colleagues, including a number of members of her family, not only chaining themselves to things, but also committing arson, breaking windows and all sorts of other forms of protest. Members opposite might think that with that sort of record, she might have come to no good end. Well, I have to tell them that, in 1927, she stood for the electorate of Stepney, as the Conservative candidate. Indeed, perhaps members opposite might think she did come to no good. In 1928, six weeks after her death, I think the Conservative government in the UK brought in universal adult franchise—there had been a limited franchise before then. Her legacy is debated now and, indeed, was hotly debated then, with one daughter, Christabel, being quite laudatory whereas another daughter from whom she was estranged, Sylvia, being quite scornful.

Let us look at the long-established right to protest. Protest is an interesting issue in this day and age because as we progress, we see different forms of protest developing to capture the agenda of the day to meet a different type of media profile. In all cases, though, protest is used as a tool to draw attention to one's cause and one's complaint, and to convince others to share the same point of view as the protester. That, I think, is a reasonable definition of what protesting is in Western Australia. Yet, we see a number of things happening that are not about necessarily capturing the hearts and minds of people, but about stopping people from going about their lawful activity. When we examine this bill in detail in Committee of the Whole, we will have a very close look, I am sure, at whether that is what this bill will actually do successfully. For now, in the course of the second reading debate, we are considering the broad policy of the bill, which is to contemplate whether extra powers are needed by the police to deal with the latest phenomenon of protesters seeking to lock themselves on, I think is the expression used, to substantial or removable objects to provide, through their physical presence, an inability for whoever they are targeting to go about their business, whether it be moving vehicles onto a mine site or whatever it might be. There are some questions to be asked there. In light of that, it probably is reasonable for Hon Robin Chapple to at least ask us to contemplate referring the bill to a standing committee to answer those questions. No doubt, the Attorney General, who is in charge of the bill, will seek to avoid that and address those questions in his reply to the second reading debate.

Specifically, I think the questions are: Are these powers necessary? Do police in this case already have the full suite of powers necessary to deal with the sorts of protests we are talking about, or do they need something more? What is specifically contained in these couple of clauses in this new bill? I do not know that a particularly good job has been done selling to anyone, including this house, the need for these powers, so I also look forward with interest to hearing what the Attorney General has to say. I now want to get onto the next fatal flaw that our opposition colleagues have identified, and that is that there is no definition of "thing"—as though they do not know what the term "thing" means. I find it hard to believe that, between the lot of them, there is not one of them who is not bamboozled by the wording of this quite simple provision in the bill.

Hon Darren West: Then de-bamboozle us, please!

Hon SIMON O'BRIEN: So, I will have to de-bamboozle them—those of them who will be de-bamboozled!

Hon Darren West: It will take a while!

Hon Simon O'Brien: But, kicking and screaming, I will drag them to de-bamboozlement, if I possibly can!

In doing that, I would draw members' attention to other places in law in which the term "thing" is used and it does not seem to cause a great deal of confusion. In the bill before us, proposed section 68AB states in part —

> (1) A person must not make, adapt or knowingly possess a thing for the purpose of using it, or enabling it to be used, in the commission of —
>
> (a) an offence under section 68AA; or
>
> (b) an offence under section 70A.

Surely members opposite must know that the proposed new law does not say "it is an offence to knowingly possess a thing", full stop. Members opposite would have us believe that is what it says. It does not say that. It says —

> (1) A person must not make, adapt or knowingly possess a thing for the purpose of using it, or enabling it to be used, in the commission of —
>
> (a) an offence under section 68AA; or
>
> (b) an offence under section 70A.

It is not just any thing; it is a thing that is used in the manner prescribed in the proposed legislation. There is nothing new or novel about that. Section 370 of the Criminal Code is headed "Things capable of being stolen", and it states in part —

> Every inanimate thing whatever which is the property of any person, and which is movable, is capable of being stolen.

Does it cause great confusion that the word "thing" is used in the Criminal Code? Is the word "thing" so foreign to members opposite that they do not understand it?

Hon Darren West: That is in reference to things capable of being stolen.

Hon SIMON O'BRIEN: Hon Darren West, by his kind interjection, says, "No, no; when we are talking about section 370, it is not just about a thing, it is about things that are capable of being stolen." So, what he is saying is that it is qualified, or prescribed—just as it is in proposed section 68AB. Members opposite do themselves no service when they pretend not to understand that, and when they go out into the public, including in this very chamber, and say that it means something that nobody can even comprehend. That is rubbish. If members opposite have legitimate questions or concerns about this bill, or any other bill, they should do what some of us in this house are doing and look at this legislation, ask questions about this legislation, and endeavour to make this a better piece of legislation; and if we discover, after we have examined the bill—I mean, after we have had a genuine examination—that the proposed law is not worthy of support, we will not support it. It is our job as a house of review to do that. That is what an upper house of Parliament is meant to do. But I do not think members opposite in their contribution so far and in the attitude they have displayed are pulling their weight in doing that.

Hon Darren West: The finest legal minds do not agree with what you have just said.

Hon SIMON O'BRIEN: I love Hon Darren West to bits and all that, and I appreciate his contribution. Hon Darren West can go out and scaremonger with some people, and he can use hyperbole and make over-the-top claims, but he cannot come in here and try that nonsense on me and expect me to fall for it. Everyone here knows that, and Hon Darren West in his heart of hearts knows that, too. So, I am confronting Hon Darren West with the truth, and I am saying that his opposition to this bill and his colleagues' opposition to this bill is over-cooked and is made up of hyperbole. If members opposite reckon they are right about this, fine. Let us act as a house of review and analyse the bill in terms of this provision.

Debate interrupted, pursuant to standing orders.

[Continued on page 1827.]

Sitting suspended from 4.15 to 4.30 pm