



CRIMINAL CODE AMENDMENT (PREVENTION OF LAWFUL ACTIVITY) BILL 2015

Concerns continue to be raised regarding the constitutional validity, if enacted, of the *Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015*.

Due to be debated in the Legislative Council of the West Australian Parliament today, the bill has faced strong opposition from the legal community.

The Human Rights Law Centre today has urged the West Australian Parliament not to pass this bill (see attached).

The Centre is concerned the proposed amendment, if enacted, may breach the implied freedom of political communication.

Members of Parliament are therefore being asked to consider referring the Bill to a committee for inquiry so that the legal and human rights risks can be properly considered.

Anna Brown from the Human Rights Law Centre is available to comment further on this matter.

For further comment:

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The Community Legal Centres Association (WA) Inc is the peak body for community legal centres. Located throughout the state, community legal centres are independent, non-profit organizations who provide legal services to disadvantaged and vulnerable people or those on low incomes who are ineligible for legal aid.

By email

3 December 2015

Dear colleagues

Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015

We are writing in relation to the above named Bill, which we understand is currently being debated by the parliament of Western Australia.

We have previously written to you expressing our concern that the Bill unreasonably limits human rights. We also informed you that we had briefed Counsel to prepare a written opinion on the Bill's constitutional validity. Since then, the High Court has handed down a significant decision on the implied freedom of political communication (*McCloy v New South Wales* [2015] HCA 34) that has required extensive consideration. However, we have received preliminary advice from Jonathon A Redwood and Danielle Tucker of Counsel that confirms our concerns regarding the constitutional validity of the proposed amendments.

The legal question considered by Counsel is whether the amendment to be effected by the Bill, if enacted, will be invalid, in part or in whole, for the reason that it breaches the implied freedom of political communication. We note that the analysis applied in determining whether the implied freedom of political communication has been infringed was comprehensively revisited by the High Court in *McCloy v New South Wales* and a new, more structured approach was adopted by a majority (French CJ, Kiefel, Bell and Keane JJ).

Applying this new approach to the Bill, Counsel have provided a preliminary view that they have significant doubt as to the validity of the Bill, if it is enacted in its current form. This is because the objective of the law is not sufficient justification for the extent of the burden on the freedom, which effectively prohibits a particular means of protesting in its entirety by the imposition of severe penalties. In summary, the Bill, if enacted, will have the effect of criminalising a wide range of activity that is not necessary to achieve a legitimate purpose that is compatible with the system of representative government. This is especially so given the means available by existing criminal laws and more targeted legislative alternatives to achieve the law's principal objectives.

We hope this information is of assistance. We will provide a copy of the finalised written opinion in due course (unless the Bill achieves passage before then). We again urge the parliament not to pass this legislation. In the short term, we urge members of parliament to consider referring the Bill to a committee for inquiry so that the legal and human rights risks can be properly considered.

Yours sincerely



Anna Brown
Director of Advocacy & Strategic Litigation
Human Rights Law Centre