CRIMINAL LAW AMENDMENT (OUT-OF-CONTROL GATHERINGS) BILL 2012

Consideration in Detail

Resumed from 17 October.

Clause 4: Sections 75A and 75B inserted —

Debate was adjourned after the clause had been partly considered.

Mr C.J. TALLENTIRE: Clause 4, of course, is critical to the operation of this bill. I acknowledge that the minister attempted to respond to the points I raised in her response to the second reading debate, but there was one point that I do not think received the clarification it needed. That is in relation to the issue of a gathering being an assembly of 12 or more people. I raised the point that in some cases people at out-of-control gatherings would be out of sight, and it would therefore be impossible for police officers to do that headcount to know whether 12 people are there. In many cases I think the minister's assumption is correct that an out-of-control gathering would be out on the street and would therefore be highly visible. However, we are seeing a growing trend of parties being held in warehouses and other empty buildings and even community centres being hired. After all, the issue is about police officers having the right to gain access to those properties. How can we get proof that 12 or more people are involved if those people are behind solid walls? It would be impossible for a headcount to take place and, therefore, impossible for it to be determined whether the gathering meets the provisions of proposed section 75A and is something upon which a senior officer could make the judgement call that it is an out-of-control gathering. I seek the minister's clarification on what we would use as a means of determining whether something is an out-of-control gathering of 12 or more people when it is impossible to count those people.

Mrs L.M. HARVEY: I thank the member for the question. All the criteria need to be present in some form or other for a party or a gathering to be declared an out-of-control gathering. There may be 12 or more people who are not necessarily in view from the road, but the whole basis of this legislation is that the activities of the gathering of people is spilling out into neighbouring properties and having an impact on other people in the surrounding areas, such as causing fear and alarm and substantial interference with other people. Also, the officer has to form a reasonable suspicion that there is a gathering that is out of control or is likely to become out of control. It is a matter of the officer forming a reasonable suspicion and making the assessment based on what they can see, what they can hear, what the neighbours are telling them and what they can see when they arrive at the scene; on those bases, they will decide whether they need to undertake further investigation. The number 12 is where the Riot Act comes in; it is not a prescriptive number, but a minimum number of people to be gathered together for this legislation to kick in.

Mr C.J. TALLENTIRE: I thank the minister for that response. I suppose the minister is saying that if there was some form of out-of-control gathering in a gymnasium, for example, or in a private home, the senior officer would not be able to do this headcount and therefore they would not be able to authorise for police officers to enter that property.

Mrs L.M. HARVEY: The rationale for the entire offence is that it is spilling out and impeding the lawful activities of other people. The member is quite right. It would be difficult for officers to determine whether 12 or more people are in a property, in the backyard of a house for instance, when they cannot view them from the street. However, the police would be guided by the impact that that gathering is having on neighbouring properties and the lawful activities of other people in the vicinity. Bear in mind that police officers in responding to disturbances, generally speaking, front up at a door of a property of some sort. The officer witnessing the kinds of activities in proposed section 75A(1)(b)(i) to (xiv) in conjunction with the officer's assessment that the gathering is causing fear and alarm and substantially interfering with the lawful activities of other people, would form the basis of the officer making the determination that the gathering was an out-of-control gathering.

Dr A.D. BUTI: I want to return to the question I asked yesterday before we ran out of time. I refer to proposed section 75(1)(c) containing the elements of the offence; I am not asking whether the police officer has a reasonable determination of whether it is out of control. My issue here is that one of the elements of the offence is that there has to be "fear or alarm to any person who is not associated with the gathering". My question is whether that is subjective or objective. In racial or sexual discrimination legislation, unless the law has changed in recent times, it used to be a subjective test. If someone thought that I was being sexist to them, whether that was necessarily reasonable, that was an element of the offence. Is this offence going down the line of the discrimination legislation or the reasonable bystander legislation?

Mrs L.M. HARVEY: It is a combination of both. "Fear or alarm" is a term that is used in criminal law legislation. Section 74B of the Criminal Code refers to causing fear or alarm to people in conveyances.

Section 71 of the Criminal Code refers to fighting in public so as to cause fear. Section 68 of the Criminal Code refers to being armed in a way that may cause fear. I am provided with Curran v Champion. A brief fistfight might not be likely to cause fear to onlookers where two men out the front of a licensed premises in Kalgoorlie engaged in a relatively brief fight. Several punches were thrown, leading to one man suffering a serious head injury when his head struck the pavement. In that case the judge's view was —

> … the facts do not disclose circumstances that would have rendered it likely that the fight would cause fear to any person.

It is more than simply a surprise or a shock or a general dissatisfaction with the actions that are happening at an out-of-control gathering. An officer is in a very good position to judge whether the phone call that they have had reporting an out-of-control gathering is substantial and whether the out-of-control gathering is causing substantial interference with the neighbours and fear or alarm. In addition, the way we envisage this working is that a senior officer would need to notate whether they have declared an out-of-control gathering. The criteria that we see here will form part of the officer's electronic checklist and the forms that they need to fill in as part of an evidentiary requirement. They will be making an assessment and they can quickly go through and tick off and say, "Yes, one, two, three, four of these items are present. Yes, it is substantially interfering with other people's activity." That would form part of the evidence trail to be taken to court should charges be laid against a host of one of these out-of-control gatherings.

Dr A.D. BUTI: I thank the minister. That was quite substantial response. Maybe I am reading it wrong, but nowhere in clause 4 is the role for the police to determine it established. The role for the police comes under part 3, which amends the Criminal Investigation Act 2006. It refers to whether a senior officer has the authorisation and so forth and so on. I may be reading it wrong, but I cannot see anywhere in clause 4, especially regarding "fear or alarm" and "substantial interference" et cetera, where it refers to the determination being made by the police officer. It reads "fear or alarm of any person not associated with the gathering". As I said, I may be a very timid person and I may be very, very alarmed by the behaviour that is occurring at the party. Is the minister saying that this legislation will not allow me, as a person who is feeling fear, to have the protection of this legislation if the police officer believes that my fear is not reasonable because I should be made of harder constitution?

Mrs L.M. HARVEY: I guess the answer to the member's question is that it is both subjective and objective. Subjective would be the assessment of a person on whether they were afraid and if the actions of these people had caused fear or alarm. An objective assessment is whether the behaviour is likely to cause fear or alarm. Certainly police officers are in a very good place to determine whether the activities of a large gathering of people behaving in the manner prescribed —

Mr M.P. Whitely: It is not; it is two people. It is not a large gathering; it is two people.

Mrs L.M. HARVEY: It is a gathering of 12 or more people, and two or more of those people as part of the crowd are engaged in the activity. To answer the member's question, it is both a subjective and an objective test. The important part of this is that we need to take all of these things in context. At a gathering of 12 or more people, two or more people are engaged in this sort of conduct and, when all of this behaviour is taken together, the conduct causes or is likely to cause fear or alarm, substantial interference et cetera.

Dr A.D. BUTI: Just to clarify, am I right in assuming, therefore, that under proposed section 75A(1)(c), that element is subjective, and whether police, which is another part of the legislation, will move forward with this is an objective test?

Mrs L.M. HARVEY: It is both the subjective and objective test in which a police officer could make the determination of whether the behaviour was likely to cause fear or alarm; it is both. Further along in the evidence trail, when prosecutions are brought to court, that is when the assessment of the officer and the behaviour of the officer in bringing the charges will be assessed objectively by a court as to whether the officer has indeed informed his or her reasonable suspicion that all the elements and the criteria that we have prescribed for declaring a gathering to be an out-of-control gathering are present and that the declaration was appropriate at the time.

Dr A.D. BUTI: Minister, I am worried by that interpretation of proposed section 75A(1)(c), because my reading of that paragraph does not in any way allow me to arrive at an interpretation that the police have any role in determining whether the fear or alarm has taken place. I can understand the actual mechanics of how it may work. I am not trying to be funny or anything; I understand the mechanics, but I cannot see in the legislation how it has been considered to be objective and subjective and that the police are involved. Where in that paragraph does it refer to police determining that fear and alarm are reasonable for that part of the offence to be met? To me, it does not, especially with regard to fear or alarm—"fear or alarm to any person who is not associated with

the gathering". There does not seem to be any wording there or in any other paragraph of that proposed section that tells me that the police have a right to determine whether the fear or alarm that someone has is reasonable.

Mrs L.M. HARVEY: The definition here is not in the police officer being able to make the distinction of whether a person has been caused fear; it is whether the police officer in their assessment can reasonably suspect that the person would be afraid or alarmed at the behaviour around them. Bear in mind, too, that there are two distinctions to be made. There is the declaration that a gathering is out of control, at which point in time, if all of the criteria are present, police officers at the scene will have the power to disperse, the power of entry and those sorts of things. There are also the charges that will be brought to bear against the people who have held the gathering irresponsibly. That is a separate matter that we will deal with in clause 7.

Mr W.J. JOHNSTON: This is where we were yesterday, and I was just about to ask a question when debate was interrupted. The minister has raised the words that are used in clause 7 of the bill. Clause 7 makes amendments to the Criminal Investigation Act, but at the moment we are dealing with a different issue, which is the amendment to the Criminal Code. I took the words that the minister just used to mean that a charge cannot arise under proposed section 75A unless the police officer has made a declaration under these other issues that we are going to deal with later in the bill. Is that what the minister is saying?

Mrs L.M. Harvey: No.

Mr W.J. JOHNSTON: Then I do not know what the minister is talking about when she talks about a police officer's reasonable opinion. As I understand, we are dealing with an amendment to the Criminal Code, and I cannot even find the word "police officer" mentioned in any part of the clause, so I am not quite sure why the minister is raising "the opinion of a police officer" when that has absolutely nothing to do with the words that we are looking at. If the minister could perhaps direct me to the words "police officer" anywhere in proposed section 75A, that would be of great assistance, because then I could understand the argument the minister is making. But, at the moment, given that she is talking about the opinion of a police officer, so far as I can see, the words "police officer" or "opinion of a police officer" do not actually come into play at all. In fact, what we are dealing with is not the opinion of a police officer but creating an offence in the Criminal Code, which would then be judged by a magistrate or judge or whomever when the prosecuting authority takes the matter to court.

By standing up and talking about the opinion of a police officer, it appears to me that either the minister is trying to confuse the opposition or she is herself confused. It does not seem to me that discussing the opinion of a police officer will make any difference at all with the words in proposed section 75A, when we are not dealing with what happens later in the bill—namely, the criminal investigation; we are actually dealing with amendments to the Criminal Code to create an offence. What we need—everybody needs to know this; this is the fundamental purpose of what we are doing—is a clear explanation of the words on the piece of paper. Every time the minister says "the opinion of a police officer", it confuses us, because "police officer" and "opinion of a police officer" do not appear in proposed section 75A. If I have that wrong—I am no specialist in these matters—I ask the minister to draw my attention to what she is getting at. But at the moment we are asking a very, very simple question, and at this stage it appears that we are not getting a simple answer, because the minister has raised this thing about the opinion of a police officer. She said by interjection that someone can be prosecuted under proposed section 75A of the Criminal Code without the need for a declaration by a police officer under proposed section 38A of the Criminal Investigation Act—and that is fine. But why is the minister therefore raising the question of the opinion of a police officer?

Mrs L.M. HARVEY: The opinion of the police officer is important in this, because the police officer is the person who will decide whether to charge a person with an offence. The police officer can make a determination on whether someone is afraid and therefore a charge can be laid; and, secondly, whether it is likely that person would be afraid and they will make a decision to charge. There are two separate issues in the bill. Firstly, in declaring an out-of-control gathering the powers to disperse come in. That is when police are in attendance.

Mr W.J. Johnston: But that has nothing to do with this clause.

Mrs L.M. HARVEY: Can I finish my sentence? When the police officers are making that declaration, this bill enables them to have the powers to better deal with that gathering. That is once it has been declared an out-of-control gathering.

Mr W.J. Johnston: We are dealing with clause 4, not clause 7.

Mrs L.M. HARVEY: I understand that we are dealing with clause 4.

Mr W.J. Johnston: Where in clause 4 is what you are referring to?

Mrs L.M. HARVEY: In clause 4 we are dealing with the description of an out-of-control gathering and all of elements that need to be present for a gathering to be determined to be an out-of-control gathering.

Mr W.J. Johnston: But who will determine that it is an out-of-control gathering?

Mrs L.M. HARVEY: It is a senior police of the rank of sergeant or above.

Dr A.D. Buti: It does not say that.

Mr W.J. Johnston: Just tell me where it says that.

Mrs L.M. HARVEY: It is linked together in the bill; it is cross-referenced.

Mr M.P. Whitely interjected.

Mr W.J. JOHNSTON: I would appreciate the assistance of the member for Bassendean, but I want to go to this point. This is the problem: the minister is talking about two completely separate pieces of legislation. The minister has been referring to clause 7 on page 8, which is headed "Criminal Investigation Act 2006 amended". I draw the minister's attention back to page 3, which we are dealing with. At the top of page 3 it says "The Criminal Code amended". We are dealing with clause 4 —

> **Sections 75A and 75B inserted**
>
> At the end of Part II Chapter IX insert:

We are inserting those sections in the Criminal Code. We are not dealing with the matter of police powers; that will be dealt with later on when we get to part 3. This is the point I am trying to get to. I seriously do not understand why the minister continually raises this issue of the opinion of a police officer. It would be of great assistance if the minister could just explain, based on any word that appears in clause 4, where that is and direct the Parliament to it. It seems to me that we are actually dealing with an amendment to the Criminal Code that is about the decisions of magistrates and judges, who are the people who deal with the prosecutions. What happens is that the police or the Director of Public Prosecutions will bring a charge and it will go to court, and the judge or the magistrate will make a decision. I do not understand why "in the opinion of a police officer" has even been raised. This is the exact issue about which the learned member for Armadale, with his extensive experience as a law lecturer, has raised the question of the test with the minister, and the minister has continually come back about the opinion of a police officer. If the minister could direct me to anywhere in clause 4 where the words "police officer" appear, it would be of great assistance to me, because then we could perhaps understand the answers the minister is giving. It may be that I am 100 per cent wrong, but all the minister has to do is to explain why I am misunderstanding this and why I cannot find the words "police officer" anywhere in proposed section 75A. If I am right, then please explain how it does work because we then go back to the question raised by my learned college about whether it is an objective or a subjective test. When the minister says that is the opinion of the police officer, we are confused further because we still need to know whether it is an objective or subjective test.

Mrs L.M. HARVEY: I believe that I understand where the member is coming from, and where the confusion has come in. Clause 4 contains the definition of the offence, which is the offence of organising an out-of-control gathering and the exercise of police powers. The elements of this definition need to be present and need to be satisfied, and every element of this definition needs to be met for the offence to then be prosecuted, which we will get to in the next clause of the bill. This clause contains the definition of the offence. Basically, we are defining a set of circumstances that gives the definition of an offence, which is what we are up to. This is the definition of that.

Mr W.J. Johnston: Do the words "police officer" appear in clause 4?

Mrs L.M. HARVEY: They do not need to because this is the definition of the offence. The police powers to prosecute the offence kick in further down the track.

Mr W.J. Johnston: That is right; it is not relevant to this debate.

Mrs L.M. HARVEY: That is right. We are at the definition.

Mr W.J. Johnston: That is what I am trying to get to. What is the minister saying about the opinion of a police officer? Where in these words is the opinion of a police officer relevant? That is all I am asking.

Mrs L.M. HARVEY: I was getting ahead of myself. We deal with the opinion of the police officer as to whether to charge or not further down in other clauses of the bill. This is the definition.

Mr W.J. Johnston: So what is the answer to the member for Armadale's question: is this a subjective or objective test?

Mrs L.M. HARVEY: It is both.

Mr A.J. WADDELL: As well as defining the nature of an out-of-control gathering, clause 4 spells out clearly the offence and the penalty to someone who is the organiser of an event that becomes an out-of-control gathering. It is quite clear that is all contained in clause 4, and that this is an amendment to the Criminal Code; the Criminal Code stands on its own. I put this scenario to the minister: an event occurs somewhere out in regional WA, let us say Kununurra; it is videotaped. It clearly meets all the definitions that we have here. There is on the videotape quite clearly somebody who is distressed by the events that are occurring. So we have more than 12 people and perhaps there is brawling, which clearly meets the criteria in the bill; and there is clear evidence of somebody being afraid. All of the elements are met. That videotape is quite capable of being submitted as evidence in a matter. The police did not attend. Can a prosecution be brought against the organisers of that gathering under this bill because it is an offence under the Criminal Code?

Mrs L.M. HARVEY: Yes.

Mr A.J. WADDELL: In that scenario, the police are entirely irrelevant to the question; this is an offence of its own. We then go back to the member for Armadale's question: is it merely somebody saying they were afraid as those events were occurring around them and that is evidence; or is the test that a person who may have been subjected to those images—they do not necessarily have to be present for them—would have been fearful of those events. Does the person who, theoretically, is fearful of those events even need to be in the vicinity? Is it merely that if a reasonable person had been subjected to those events they would have found themselves in a state of fear or alarm?

Mrs L.M. HARVEY: In response to the circumstances the member described, if all of these elements were present and the police were presented with evidence of that, regardless of whether a police officer was in attendance at that scene or not the charges could be brought to bear in response to the evidence presented to police; the police are the people who charge under the Criminal Code.

Mr A.J. WADDELL: The minister has not answered my question, which is: does a person have to be there? Proposed section 75A(1)(c) reads in part —

> … is likely to cause —
>
> (i) fear or alarm to any person who is not associated with the gathering …

People such as my 75-year-old grandmother who watches the events broadcast on *A Current Affair* are, quite clearly, likely to feel fear and alarm about events they see broadcast on their television. Is that enough to get across the third element of it being an out-of-control gathering?

Mrs L.M. HARVEY: We need to go back to the definition of "fear or alarm". People need to be present at the event where the out-of-control gathering is happening —

Mr M.P. Whitely: Where does it say that?

Mrs L.M. HARVEY: It is commonsense.

Mr A.J. Waddell: It says "likely".

Mr F.M. LOGAN: I take the minister to proposed section 75A(3), which contains four paragraphs dealing with the type of gatherings that are excluded from this legislation. Paragraph (c) reads —

> a gathering that is primarily for the purposes of political advocacy, protest or industrial action;

Yesterday in the minister's reply to the second reading debate she read from "industrial action", in section 7, "Terms Used" of the Industrial Relations Act 1979.

Mrs L.M. Harvey: I am listening.

Mr F.M. LOGAN: Thank you. I will say it again so that the minister understands what I am saying. Yesterday she read out section 7, "Terms used", of the Industrial Relations Act 1979 to define what industrial action is. It reads —

> … means any act, omission, or circumstance done, effected, or brought about by an organisation or employer or employee or by any other person for the purpose, or in the opinion of the Commission for the purpose, of compelling an employer or an employee or an organisation to accept any terms or conditions of employment or to enforce compliance with any demand relating to employment not including an application made under this Act

The industrial action specifically relates to a claim of dispute in the workplace usually to do with pay, conditions or whatever. That is the definition the minister indicated would apply to the term "industrial action" in this bill. I refer the minister to the Fair Work Act 2009, which covers all other people in Western Australia. Section 7 of the

Industrial Relations Act 1979 applies to only those people who are not covered by the Corporations Act or who work for the public sector of Western Australia. The definition in section 19, "Meaning of industrial action", of the Fair Work Act 2009 applies to everyone else in Western Australia. I presume that is included as a reference to industrial action in this legislation, even though it is not in the *Hansard*. In that section of the Fair Work Act there is reference to the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union v The Age Company Limited, PR946290, where the Full Bench of the Australian Industrial Relations Commission considered the nature of industrial action and noted —

> … action will not be industrial in character if it stands completely outside the area of disputation and bargaining.

In their definition of industrial action, both the federal Fair Work Act and the Western Australian act, which the minister referred to yesterday, deal with disputes effectively about the workplace, wages and conditions. The issue is that not all disputes are about those issues. Some actions that may not fall into the definition of "protest" because they could be political protests, are about other matters. I will give the minister two examples. The first is the local content rally held outside Parliament only a couple of months ago, when thousands of people, employers and workers walked off the job with the support of their employers.

Mr W.J. JOHNSTON: I am very interested in what the member for Cockburn is saying.

Mr F.M. LOGAN: Thank you, member for Cannington. The type of action that was taken then would not fall into the definition of industrial action. It was a gathering of thousands of people and it had the full support of employers and employees. It would probably not fall under the terms of "protest". If any issue arose out of that gathering of people that could not fall into any of the definitions the minister referred to in proposed section 75A(3), how can it be excluded? The other example is the public sector. If the public sector unions are taking action, it will not be industrial action under the terms of the Fair Work Act or under the Western Australian Industrial Relations Act, but they would be taking action over public sector cuts. They would be holding rallies and gatherings and there would be disputation. Neither of those examples is covered by the definition that goes to exclusion from the conditions of this bill that fall into the definition of "political advocacy, protest or industrial action". Given this action is outside the clear definition of "industrial action" in the bill, would "industrial protest"—I think we can probably define those actions as industrial protest—also be excluded?

Mrs L.M. HARVEY: The comments I made in my response to the second reading debate were to provide an illustration of "industrial action". Proposed section 75A(3)(c) reads —

> a gathering that is primarily for the purposes of political advocacy, protest or industrial action;

We have deliberately left a definition of industrial action out of this bill because we have covered political advocacy, protest and industrial action. I put to the member that the circumstances he has just described will be covered and be excluded from this definition under proposed subsection (3)(c). However, should a breakaway group of those people who were assembled for political advocacy choose to convene at another place and end up drinking, unlawfully destroying property et cetera, they could be declared an out-of-control gathering. If it is primarily convened for the purposes of political advocacy, protests or industrial action, they will be excluded from being declared an out-of-control gathering.

Mr F.M. LOGAN: Yesterday, in defining what industrial action was the minister drew the attention of the house to section 7 of the Industrial Relations Act.

Mrs L.M. Harvey: My purpose was to provide an illustration of industrial action but not a definition for the purpose of this bill. If we wanted to be more prescriptive and define industrial action, we would have included it in the bill. We think we have excluded gatherings that are primarily for the purpose of political advocacy, protest or industrial action. We have done that because they are covered under other legislation and are subject to other requirements.

Mr F.M. LOGAN: For the purposes of the house and the record, industrial action is not controlled and defined by the wording used in either section 7 of the Western Australian Industrial Relations Act or section 19 of the federal Fair Work Act.

The ACTING SPEAKER (**Mr I.M. Britza**): Member for Cockburn, you need to speak up; we are not hearing you clearly.

Mr F.M. LOGAN: I will just say it again. For the purposes of the record, where this bill refers to industrial action, it is not industrial action as defined by section 7 of the Western Australian Industrial Relations Act or section 19 of the Fair Work Act, and could and would include other forms of industrial protest.

Mrs L.M. HARVEY: Yes, it is.

Mr M.P. WHITELY: I have a series of very short questions, so hopefully we will move through this reasonably quickly. I want to pick up the issue raised by the members for Cannington and Armadale about what constitutes an offence in this clause under proposed section 75A(1)(c)(i), which refers to "fear or alarm". I accept at face value the minister's assurance that somehow the police will be involved in this, although I do not think she made a terribly compelling argument with the member for Cannington. I will accept it at face value, but I want to get an understanding of how there is discretion when the proposed subsection states that the gathering, or the conduct of persons associated with the gathering, causes fear or alarm. As highlighted by the member for Armadale, people have different attitudes to what might constitute fear. Someone who is more robust might not be fearful of two people fighting on their front verge. Someone else could be quite fearful of two people standing on their front verge, or trespassing one metre inside their property. The wording here is "causes"; it is not "what a reasonable person thinks". The wording is "causes". For instance, somebody with a particularly timid disposition might become alarmed at two people trespassing and standing half a metre inside their boundary. Trespassing is one of those 13 different criteria recognised under proposed section 75A(1)(b). That person may have a very low threshold for alarm and may be upset by two people trespassing half a metre inside their property. Given that proposed subsection (1)(c) says that the gathering causes "alarm", where is the discretion? I cannot see that there is any discretion there. If it said "is likely to cause", it would bring in the test of reasonableness. It says "causes". If a particularly timid person feels completely alarmed because two young people with tattoos are standing half a metre inside their property, that is causing alarm; so there is no discretion. On my reading, there is absolutely no discretion in that test. If it did not have the word "causes" and simply said "is likely to cause", it could be argued that there was the reasonableness test; that is, what would a reasonable person think? But this is not a reasonableness test; this is "causes". As I said, somebody with a very low threshold level for alarm could take alarm simply because two people are trespassing and having a conversation just inside their property.

If I accept the minister's argument—I do not—in debate with the member for Cannington that police have discretion, where is the discretion when it says the gathering "causes"? The gathering could cause alarm to people with a low tolerance for alarm. People could be frightened on their front veranda or they may think there was a bit of entertainment for the night but not be alarmed or fearful at all; some people might have a more overly robust perception of what creates fear and alarm, whereas two people simply standing and having a conversation could cause fear and alarm to particularly timid people. Where is the discretion when the provision uses "causes", because in that case it would have caused fear or alarm for that particular person?

Mrs L.M. HARVEY: It needs to be taken in context. A police officer, I think, would be highly unlikely to declare a gathering an out-of-control gathering based on just one person's interpretation or declaration that they were afraid. It needs to be a gathering of 12 or more people. It needs to satisfy the elements in the clause: a gathering of 12 or more people, and two or more persons associated with the gathering engaged in the conduct we have described —

Mr M.P. Whitely: Yes; trespassing.

Mrs L.M. HARVEY: — and the gathering causes or is likely to cause fear or alarm or substantial interference.

Mr M.P. Whitely: Yes, alarm.

Mrs L.M. HARVEY: The police officer would be declaring an out-of-control gathering based on all of those criteria.

Mr M.P. Whitely: Okay.

Mrs L.M. HARVEY: They will not be basing it just on the fact that somebody said they are afraid and calls them up and says they are afraid because —

Mr M.P. Whitely: Because it's causing fear or alarm. They're trespassing, which is illegal under —

Mrs L.M. HARVEY: But all of these elements need to be present.

Mr M.P. Whitely: They are present. I'll go through the example with you, and I explained how the examples are present.

Mrs L.M. HARVEY: To give the member an example, if a person entered this chamber with a machine gun, some people would be afraid.

Mr M.P. Whitely: I think we'd all be afraid.

Mrs L.M. HARVEY: Some people would run out of the room. If those circumstances were then viewed after the event, we could view them objectively and say, "Yes, that was likely to cause fear or alarm." There are two different distinctions there, but the member needs to be taking this in context. Police officers have to satisfy

themselves that a number of elements of those criteria are met in order for a gathering to be declared an out-of-control gathering. They would not be basing their assessment just on proposed section 75A(1)(c)(i). They would need to be satisfied of a bunch of other criteria as well.

Mr M.P. WHITELY: I will go through those for the minister, if she likes. Trespassing is in the very first paragraph, if the minister would go through this with me. The minister is saying that all the elements need to be there. Let us say there are 12 people at a gathering at someone's house. Two or more persons associated with the gathering go outside and trespass on a neighbour's property—that satisfies proposed subparagraph (i), and we have the 12 people, which satisfies proposed paragraph (a). Two of them go outside and stand half a metre inside the boundary of a neighbour's property so that they are trespassing. We then go to proposed paragraph (c)—that causes alarm to the neighbour. The elements are met then. It is not proposed paragraph (c) plus proposed paragraph (c)(i) plus proposed paragraph (c)(ii) plus proposed paragraph (c)(iii). The word that links them is "or". The minimum standard therefore is "causes or is likely to cause". In this case, someone with a very low threshold for alarm is caused alarm because two big burly people with tattoos are standing half a metre inside their front lawn, and the person quivers in fear. They are trespassing because they were not allowed onto the property. There is no discretion in that. All the tests are met. Will the minister tell me where, in that scenario I have just painted, those tests are not met?

Mrs L.M. HARVEY: Although what the member has described may technically speaking fit a definition, it does not fit the intent. This is all based on the premise that an out-of-control gathering is spilling out into a neighbourhood. It is causing fear and alarm substantially —

Mr M.P. Whitely: So, it is in the vibe!

Mrs L.M. HARVEY: Let me finish. It is causing substantial interference with the lawful activities of any person's substantial enjoyment—substantial interference with the peaceful passage through, or enjoyment of, a place by a person who has lawful access.

Mr M.P. Whitely: You don't have to meet all of those. It is "or", "or", "or".

Mrs L.M. HARVEY: I put to the member that a senior officer, in making a declaration to declare an out-of-control gathering —

Mr M.P. Whitely: It's nothing to do with it. You can put that to me all you like. You're telling me it's in the vibe. I feel like I'm watching a re-run of *The Castle* here! This is legislation. It's what we tell them to do. We are telling them to do exactly what I've just outlined.

Mrs L.M. HARVEY: Member, I have to say that this is commonsense. For the purposes of an out-of-control gathering, all the criteria need to be met.

Mr M.P. Whitely: I just explained that they were, and you said that they were technically. That's the legislation.

Mrs L.M. HARVEY: But it is the commonsense test of a senior officer viewing that. I put to the member that a senior officer would not declare a gathering to be an out-of-control gathering on the basis of two people trespassing unless all the other elements were met.

Mr M.P. WHITELY: We have just heard that it is the vibe.

Mrs L.M. Harvey: How ridiculous! Those are your words; don't put words in my mouth.

Mr M.P. WHITELY: The minister said it is a commonsense issue. The minister said that technically what I said is correct. In other words, the minister conceded that the point I made is correct. The minister conceded that at a gathering of 12 people, if two people go outside and stand half a metre inside a property that causes alarm to a neighbour, technically, that is correct. The police's job is to enforce the laws that we pass. This is the law that we are going to pass. That is their job and it is the police minister's job to make the police enforce the laws that we pass. The minister can hardly say, "I drafted this law and, yes, technically, you're supposed to do this, but don't do it because, hey, we've all got to have a bit of commonsense here." The minister cannot do that. This is a serious business. I do not think that there is any point pursuing that, but I will pursue another thing. I think the minister has actually answered it, but I am going to —

Mrs L.M. Harvey: Member, what you need to ask yourself is: in levelling that charge, would there be a prima facie case that the definition has been met, and would the prosecution of a case like that be in the public interest? When people call the police to complain about an incident, the operators will interrogate the caller to determine how many people, what they are doing and what kind of police response is required. That also forms part of the response to police and would form part of the management of determining whether the definition of an out-of-control gathering is present.

Mr M.P. WHITELY: This is what we are legislating; we are saying it is in the public interest to do this. We are the people's representatives saying it is in the public interest to charge people under the exact same circumstances that I just outlined. In fact, we are not charging those people; we are actually charging the organiser of the party. Therefore, somebody who was responsible for organising a gathering at which two people stand half a metre inside a neighbour's boundary could, under this legislation, be subject to a one-year jail term.

The minister cannot smile and just flip this away; it is her job to get this right. It is our job to get this right. This is the worst legislation. I have had 12 years in this Parliament and it took my last three sitting weeks to see the worst piece of legislation in my parliamentary career. Check the record; I have never said that. This is the worst piece of legislation. Someone has told the minister to have a default position of smiling; when the minister does not know what to do, she should smile, because a smile will disarm the place and she will get through it. This is disgusting! It is unbelievable.

I want to go back to a second point. Earlier when the minister was explaining a matter to the member for Armadale, I think she said "a gathering spills out into the street". Proposed section 75A(1)(a) and (b) taken together state that an out-of-control gathering comprises a gathering of 12 or more persons and two or more persons associated with the gathering—so, they do not have to be in the gathering; they could have left the gathering and gone outside—engage in the prescribed conduct. That does not imply that the organiser of the party even has to know what they are doing. Therefore, the organiser of the party is held responsible for actions taken by two other people and the organiser does not even know what those actions are. If I have Christmas lunch at my place this year and a couple of strangers come along, because a friend invited them, and then two or more people go outside and stand half a metre inside the neighbour's boundary, I would have committed a criminal offence that could see me locked up for a year. Has the minister thought this through? This is extraordinary legislation. I am glad that the member for Kalgoorlie is in the chamber, and I wish the other Independents were taking some interest in this legislation because it is extraordinary legislation.

Mr D.A. Templeman interjected.

Mr M.P. WHITELY: I imagine that he would have been to some slightly more robust parties than the ones that I am describing!

Dr A.D. BUTI: I would like to hear a bit more from the member for Bassendean, please.

Mr M.P. WHITELY: I will frame it as a question. There are two elements to this question. If there are 12 people, 10 of whom stay inside the house and two go outside, and the organiser of the party does not even know that two people have gone outside, does that preclude—not through the vibe, not through the commonsense test, but as this legislation is written—the organiser of the party from being prosecuted? The organiser does not know the whereabouts of the two people; they do not know that these two people associated with the gathering have gone outside and performed whatever act, be it minor or serious. Does the organiser of the party have to know that they have gone? Does the organiser have to be conscious of the fact that they have gone? Does the organiser have to know what actions have been taken? This is not the vibe or the commonsense test but it is as this legislation is written and in the form that the government proposes that this Parliament pass.

Mrs L.M. HARVEY: The answer is no.

Mr M.P. WHITELY: I want to get this completely straight. So, the organiser of the party does not have to know?

Mrs L.M. Harvey: No.

Mr M.P. WHITELY: Therefore, we are passing legislation that will see an individual responsible for the actions of two other people outside their presence and the individual does not even know that those people are outside doing an act. Can the minister think of any other legislation that holds me, or any person, responsible for the actions of two other people? Are there any other equivalent actions? I am not talking about children; I am talking about —

Mrs M.H. Roberts: As a publican.

Mr M.P. WHITELY: Okay, if someone runs a licensed premises. But, say, as an individual going about their lawful business, having some friends around for a Bible studies class, and two outrageous individuals leave the class and run outside and stand half a metre inside a neighbour's property. Can the minister think of any equivalent legislation that puts that degree of onus on people to be responsible for the actions of other people when they do not know what those people are doing and where they are? We are not talking about the parents of children; we are talking about three independent autonomous adults. Can the minister give me a precedent in this jurisdiction or anywhere else in Australia or the developed world in which this sort of responsibility falls upon a person? Here we go—the minister is looking for one now!

Mrs L.M. HARVEY: For starters, the organiser of an out-of-control gathering would be responsible for organising a gathering that became out of control. The people associated with that gathering who fail to disperse, trespass or cause property damage are responsible for their actions. The organiser of the party would be responsible for organising an out-of-control gathering that fitted the definition of an out-of-control gathering under this legislation. But let me be very clear: the organiser or host of an out-of-control party, if being charged with that offence, would not then be charged for the trespass offence of somebody else who happened to be associated with the gathering —

Mr M.P. Whitely: But they have committed a criminal —

Mrs L.M. HARVEY: If they committed their own criminal offence, they would be charged under the relevant parts of the Criminal Code.

Mr M.P. WHITELY: Let us be absolutely clear about this: if two people invited to my Bible studies class that I organised in my home, went outside and stood half a metre inside my neighbour's property so as to cause alarm to my neighbour, who has a particularly low threshold for alarm, I am responsible for that. I bear criminal responsibility for that and I could potentially spend up to a year in jail as a result. That is what the minister is saying. Can we make it any more unclear? I have actually been to some more robust parties than that—not recently, I might add; I am open to invitations—where people have gone outside and committed acts that are somewhat more improper than trespassing, possibly even what is covered by proposed section 75A(1)(b)(v). I do not think I bear responsibility for that as the host of a party. In fact, I remember hosting parties in my parents' place when I was a young man living in Salter Point, growing up in Manning. People came to my parties and some of them were strangers. Some of them went to the bush across the road and did certain acts that might contravene proposed section 75A(1)(b)(v). I did not know they had done it; I was not responsible for it. But if the legislation had been passed at that stage, I would have been committing a criminal act!

Mr A.J. Waddell: Without any of the fun!

Mr M.P. WHITELY: Without any of the accompanying benefits! As would the person who organises Bible classes. I will welcome interjections here: has anybody in their parliamentary careers come across anything more absurd than this legislation?

Mrs L.M. Harvey: The Retail Trading Hours Act.

Mr M.P. WHITELY: The Retail Trading Hours Act. I thank the minister. I am going to take my seat and gather my thoughts, because I am shocked by what is proposed.

Mr J.J.M. BOWLER: I will not speak particularly about the issues the member for Bassendean has been talking about, but I do want to indicate to the minister that I will be voting against this legislation. There are just so many areas of concern, so many possible scenarios that have been raised, that whilst I generally support the intention of the legislation, and I have no doubt everyone here in this chamber and in the other place all want to do the same thing, I just think Parliament, the minister and the legislators need more time to draft better legislation. There is no doubt that the 24-hour news cycle that we now live in creates almost a knee-jerk reaction by legislators in the western world. I do not think we are any different here. Recently—I think it was two years ago—I thought the worst legislation to come before this house was the one that involved banning smoking in cars when children were in the car. I said at the time that we were passing legislation that would be almost impossible for police to police. I have been proven right. The last I heard, no-one had been charged with that offence. I think some people had been stopped but the police found out that the young person sitting in the passenger seat was actually older than the police first thought. At the time, the proponents of the legislation said, "Look, don't worry; the police probably won't act on this anyway." My thought was that if we were going to legislate but we did not expect the authorities to enforce that legislation, why do it? Probably the opposite is the case here; I think this legislation is so complex and so ridden with possible problems that we will have unintended consequences that even members here have not thought of. I understand that both sides of this chamber support the legislation, so it is not as though both sides are really looking at it as critically as one would hope. Despite that, and having sat here in recent days and having talked to people inside and outside this chamber, there are just so many possible unintended scenarios that I believe this legislation could do with a rest and that more time should be given to the legislators and to Parliament to consider either this bill and possible amendments to it or even to come back with totally new legislation that will serve what we all want, which is to get rid of these rowdy, terrible suburban parties that cause the good people in our community a lot of angst, fear and worry. We see these parties not quite on the nightly news but seemingly almost once a month. I suppose coming into summer, it will become once a week. Modern communication methods will increasingly lead to that.

I am putting the minister on notice that I urge her to desist from this legislation. I know she will not, but I am telling her that I will vote against this bill and I will be calling for a division. I hope that at the end of the day,

this bill is not rushed through as I believe is being done, and whether in this house or in the next that it is delayed to the point that it can be given the due consideration that this legislation deserves.

Mrs M.H. ROBERTS: I want to make a couple of comments in response to the member for Kalgoorlie and I also want to ask a couple of specific questions about this clause. Firstly, the member for Kalgoorlie has suggested that this legislation is a knee-jerk reaction. Most of us understand a knee-jerk reaction to be some form of immediate response to something. There has been an ongoing problem for several years now with out-of-control parties. The police have been requesting powers to assist them to be able to disperse those parties and to deal with those people who are creating havoc in our suburbs. It has taken a considerable amount of time for government to bring this forward. The previous minister started promising legislation towards the end of last year, so this legislation has been in its formation, I can only assume, for over a year on the government side. Unfortunately, the government did not opt to take a bipartisan approach and did not attempt to include us or discuss the legislation with us. We have asked numerous questions of the government right throughout this year as to when it intended to bring the legislation forward, and it has finally brought it forward in the last few weeks. I think that is very bad management from the government, but I do not see it as a knee-jerk reaction. They have been working on it behind closed doors, according to their own claims, for well over a year. Out-of-control parties have been a problem for several years now. This is far from a knee-jerk response. This has been a very slow response by government to what is a very concerning community issue.

Where are we at now? We are in a position in which the government did not consult us and did not involve us. Yes, the member for Kalgoorlie is absolutely right that it would be better if this legislation had been subjected to more scrutiny and if other members of this place, other than executive government, were able to have more input into the legislation so that the powers that the police want could be in place before the summer season, when there is likely to be a lot more parties, particularly events outdoors. The opposition is on record as saying that we will not be opposing this legislation, but be it on the government's head. They have worked on this. They say they have got it right. They say these are the powers and the tools the police need for them to be able to deal with out-of-control parties. I am not necessarily convinced about that. The other point the member for Kalgoorlie made is probably also correct; that is, there may be unintended consequences of this legislation because it has not been able to be subjected to a longer period of scrutiny by the Assembly. However, the Labor Party will not stand by and oppose this legislation so that the government can say it is all the Labor Party's fault that the police do not have the powers they need and which would have been provided in this legislation. On that basis, I am hopeful that this legislation will pass through this house today.

I will now deal with the specific questions that I want to ask the minister. On page 4 of the legislation at line 21, it states —

> (xiv) any other conduct prescribed by the regulations;

There is a similar phrase on page 5 at line 15, where it says —

> (d) a gathering of a kind prescribed by the regulations.

I simply make this point: generally, legislation is subjected to vastly more scrutiny than is the case with regulations. Proposed section 75A(1)(b)(xiv) and (3)(d) give considerable power as to what might be prescribed in regulations. I am wondering whether the minister can explain why either of those particular prescriptions are needed—that is, "any other conduct prescribed by the regulations" and "a gathering of a kind prescribed by the regulations". Given that this legislation is seen, certainly in some quarters, as controversial, surely it would be better to just restrict the conduct and the gathering to the kinds already listed in the bill rather than reserve the right to add to the prescription by way of regulation. If there are issues with this bill, surely there will be an opportunity to bring in amending legislation.

Mrs L.M. HARVEY: I believe we need those two provisions because further down the track it may well be that the secondary supply of alcohol will form part of the review of the Liquor Control Act. I would like this legislation to have the capacity to remain contemporary and, for example, for the secondary supply of alcohol to juveniles to potentially become one of the components of the definition of an out-of-control gathering. That is the only reason for having those two particular provisions there—to allow the legislation to remain contemporary. It is also important that the prescribed conduct does not become unlawful in itself; this prescribed conduct is necessary for a determination that the conditions for meeting the definitional criteria of an out-of-control gathering are present.

Mr W.J. JOHNSTON: In my contribution to the second reading debate, I asked whether there were any other examples of this arrangement in other bills; it would be interesting to know that. I also asked about proposed section 75B(5), and whether the minister could provide another example of legislation in which that arrangement is also in place. While the minister is getting answers to those questions, I will also ask —

Mrs L.M. Harvey: The answers were in my reply to the second reading debate.

Mr W.J. JOHNSTON: I am sorry; I was paired when the minister was doing that.

Mrs L.M. Harvey: It's in the uncorrected proof of *Hansard*. Section 44 of the Road Traffic Act allows for certain actions to be prescribed by regulations. As an example, the director general of the department can authorise somebody to drive a vehicle for a specific purpose when they do not have an authorised licence. Also, under the Criminal Investigations Act, the definition of "serious and organised crime" is prescribed by regulations to allow the definition to remain contemporary, as serious and organised crime evolves.

Mr W.J. JOHNSTON: There is no other example, like in the Criminal Code, for creating an offence?

Mrs L.M. Harvey: There are a number of other examples; they are just two that I've used.

Mr W.J. JOHNSTON: So there is none that the minister is aware of that create criminal offences. Anyway, when the minister gets to the answer to the question about proposed section 75B(5), perhaps at the same time she could answer this question as well: in respect of proposed section 75B(4)(c), when notice of a gathering is given to the Commissioner of Police in "a manner approved", what is the approved manner expected to be? I understand that as long as that has occurred there cannot be a prosecution for having organised an out-of-control gathering. Could I have that confirmed?

Mrs L.M. HARVEY: Is the member referring to 75B(4)(c) in relation to giving notice of a gathering to the Commissioner of Police?

Mr W.J. Johnston: Yes.

Mrs L.M. HARVEY: People can log in to the WA Police website and register their party, and when they do that there appears a list of actions that they can take to try to make their party safe. It is envisaged that some of the advice that is given through the website, including those sorts of actions, will constitute a reasonable defence for somebody who says that they responsibly managed their gathering.

Mr W.J. Johnston: So what you're saying is: if I've gone and clicked that website, that's a defence—that gives you a defence under proposed subsection (3), because I've acted under proposed subsection (4)(c)?

Mrs L.M. HARVEY: In the context of the circumstances, yes, it could be, but if someone is hosting an out-of-control gathering and had decided five hours earlier to click on the website and register their party, it would not necessarily constitute a defence. These are examples of things that people could do to demonstrate that they had done everything within their power to organise their gathering responsibly so that it did not become out of control, but it is not meant to be a prescriptive list; they are examples of actions that people could take to demonstrate that they had done everything within their power to manage their event responsibly.

Mr W.J. Johnston: What about proposed section 75B(5)? That was the specific question. Can you give me an example of where a provision of the same nature is in a different act?

Mrs L.M. HARVEY: Sorry, that was in my reply to the second reading debate. We looked at section 171 of the Criminal Code, which deals with creating a false belief. If, for example, somebody makes a bomb hoax call that results in a police response for no real purpose, the ability pre-exists for a court, upon conviction of the person, to order costs if the police apply for them.

Mr A.J. WADDELL: I may have misheard what the minister said earlier, because it seems stunning; I presume I must have misheard it. She gave an example of a website on which people would be able to register their party in a manner approved as provided under proposed section 75B(4)(c). She then said that if someone were to do that five hours before the party, it would not be a defence, so the example in this legislation cannot be correct. I presume I misunderstood the meaning of what the minister said. Even though it is an example of something that people could do to avoid prosecution, the minister seems to be putting some parameters around it now, and I think we need to clarify that because it is very critical.

Mrs L.M. HARVEY: I direct the member to page 5 of the explanatory memorandum. The explanation for proposed section 75B(4)(d) states, in part —

> The provision does not have the effect that a person will automatically be considered to have taken reasonable steps if the person did any or all of the things mentioned in section 75B(5). The provision also does not have the effect that the person will automatically be considered not to have taken reasonable steps if the person failed to do any of the things mentioned.

Mr A.J. WADDELL: The minister is a reasonable person; what are "reasonable steps"? Is it 10 hours, two days, three weeks? When is that barrier crossed? Let us get away for the moment from all the extreme cases that are being put out about broken glass and prosecutions et cetera. Let us talk about the real out-of-control parties that

the community is concerned about. Let us say I throw a party for a bunch of people in my street and my brother posts on Facebook that he is going to it. Next thing we know, 300 people descend upon my property. I thought I was just going to throw a casual party for some reasonable people, and it was just unfortunate that the social media thing got out of control because my brother posted something. As an ordinary citizen, then, when can I bring in the protection of this law so that I will not be unreasonably prosecuted for an event of which I had no knowledge and over which I had no control? How can I do that? At what point does my clicking on the police website provide adequate protection in that event?

Mrs L.M. HARVEY: It depends upon the nature and character of the event. The member just described a situation in which the host was not involved in the organisation, promotion or advertising, if you like, of the party that became out of control. If someone organised an event but somebody else organises a large crowd for which the host was not prepared, as a host that person has acted responsibly. The host expected and catered for a certain number of people to come. If the host was reasonable and responsible in convening that group, they would not be eligible to be charged for hosting an out-of-control gathering in those circumstances. If a whole collection of people whom the host had no part in inviting to the event—this is the gatecrasher scenario that the member has described—the host cannot be responsible or charged with hosting an out-of-control gathering unless they have been irresponsible in the management of it. In the circumstances the member has just described, the host was not irresponsible in the management and the hosting of their gathering. Other people were irresponsible in their actions, but that is beyond the host's control.

Mr W.J. JOHNSTON: I do not want to delay this, but I want to get a picture. I have read the explanatory memorandum and I understand what the minister is saying. I wonder whether there is some way to ensure that the process of giving notice could be designed to reflect the nature of the event. Therefore, if I have my daughter's 12 friends turning up on a Sunday night and I go to the website and I provide the information about the event, it thanks me for giving reasonable notice, but if I go on five hours before the event and put down that I have 1 500 people turning up to my bucks night, that is not reasonable notice. Does the minister see what I mean? Is there some way of helping ordinary citizens through that? Notice has to be given in a manner approved by the Commissioner of Police. It is a specific thing that the Commissioner of Police has total control over. A website seems like a pretty sensible idea. Why would the process of giving notice not tell the person whether the notice has been reasonable? It seems like a pretty simple feedback mechanism for the people organising the event.

Mrs L.M. HARVEY: One thing that I am confident that we have covered off is that if people are behaving responsibly and doing everything in their power to host a gathering that they can manage and control, I am confident that those people cannot be charged with an offence under this.

Mr W.J. Johnston: This is about a defence, not about whether they get charged.

Mrs L.M. HARVEY: I understand that and I am coming to that. There was talk earlier about registering parties and having some kind of licensing issue for parties. I do not think we should go there. I do not think that is appropriate. What is important to remember is that hundreds and thousands of people host parties responsibly and do not have the circumstances that this legislation has been brought to the house to manage. Clearly, it can be done. Clearly, the police website that has the information on how to be a responsible host is certainly used by people to manage their events responsibly. By all accounts every party that happens in Western Australia does not become an out-of-control gathering. I do not believe that I would be making it incumbent upon the police to provide advice to people individually on whether they have taken reasonable steps to ensure that their party will be managed responsibly. I think it depends on the event, the circumstances of each person, and the kind of people they are inviting. People need to look at the website and how they will manage the event so that they take reasonable steps to ensure it is managed correctly. I will not request the police to provide feedback to people on whether they have complied with a checklist or anything like that. That is too big a job with the thousands of parties that happen in Western Australia every weekend.

Mr M.P. WHITELY: We are assuming, in the recent discussion, that the gathering is an organised event. The bill defines "gathering" under proposed section 75A(1)(a) —

> the gathering is a gathering of 12 or more persons;

I have not searched *Hansard*, but yesterday we asked what is meant by "gathering" and the minister said it is a collection or a meeting —

Mrs L.M. Harvey: It is a gathering.

Mr M.P. WHITELY: A gathering is a gathering is a gathering. It is getting a lot clearer! This is what I want to clarify. If we take the broadest possible definition, if two groups of six people walk down the street and one

person from this group knows one person from the other group and they stand and talk, that is a gathering. That is a gathering in the dictionary definition of the word.

Mrs L.M. Harvey: However, member, the definition for the purposes of this legislation is the definition of an "out-of-control gathering", which I think we have described really effectively. We are not describing "out" and "of" and "control" and "gathering". We are describing an "out-of-control gathering".

Mr M.P. WHITELY: The minister would agree that the circumstance I describe is a gathering, though. We will build the elements of an out-of-control gathering. We will do that together, minister. The minister would agree that a collection of people is a gathering. Would the minister please record that for *Hansard*?

Mrs L.M. Harvey: A grouping of people together is a gathering of people. I challenge anybody in this room to say that they do not know what a gathering is.

Mr M.P. WHITELY: We are agreed. Six people meeting six people walking down the street is a gathering. Yes. That is what the minister has just said. I ask the minister to correct me if I am wrong. Could that gathering become out of control? We have already established only two people know each other, so there are certainly strangers there. In inviting the one person someone knows, they are inviting the rest of the collection across. We need to go through the other elements here. Two or more people need to be committing one of those 13 offences. In other words, two or more people need to be littering and somebody else who witnesses the gathering or sees it on telly —

[Member's time extended.]

Mr M.P. WHITELY: We have established that an incidental meeting of six people plus six people is a gathering. We need to then establish that it is an out-of-control gathering. Of those 12 people, two of them might be smoking cigarettes in the street, which is not illegal, and they might dispose of their butts. They might finish their cigarettes, throw them on the ground and stub them out. Those people have deposited litter. We have established that we have a gathering of 12 and two or more persons have breached proposed section 75A(1)(b)(xi)—depositing litter. We have an out-of-control gathering. I hate litterers; they really annoy me. When I see people throw cigarette butts on the ground, it really annoys me. Someone sees the littering and it creates alarm. It creates alarm that our city is not being looked after properly. They get upset. Let us elevate it slightly. Two of the people take exception to how each other look and start fighting. They start a fistfight either within or across the two groups. We have a gathering. It is certainly out of control by this definition because two people are having a fight. The two people who walked past each other and said, "Hi Fred", "Hi Bill", and organised or convened the gathering are now responsible for an out-of-control gathering. There is a fight going on and it happens to be in a public place with little kids around. Parents get upset that their kids might be in danger and it causes alarm. Littering may not cause alarm and I appreciate that may not be the test, but two people can start a fight. All these two organisers of the gathering have done is walked down the street, said hello to each other and stopped for a chat. And it makes the test.

Mrs L.M. Harvey: It does not make the test.

Mr M.P. WHITELY: Explain to me, minister, how it does not make the test and then I will explain to you how it does.

Mrs L.M. HARVEY: The member just described two groups of people walking down the street. They would have to have organised the gathering. All of the criteria have to be present. Elements of the criteria and elements of the definition need to present for that particular gathering to be declared an out-of-control gathering. The logic here is that an out-of-control gathering is spilling outside of its boundaries and causing elements as described in the definition. What the member has just described to me does not fulfil the criteria.

Mr M.P. Whitely: I think I can actually see where there may be an answer, minister, but I would have thought you would have your head around the legislation. Can you show me where?

Mrs L.M. HARVEY: I think we have discussed the term "gathering".

Dr A.D. BUTI: I would like to but I am not going to take the minister back to the subjective and objective test. We have gone down there as far as possible. I am still not confident we have a clear answer. In regards to the contribution from the member for Bassendean, of course in proposed section 75A(1) the gathering is the gathering obviously, but the issue about the liability comes in in whether they organise it; I understand that. That of course is under proposed section 75B. Even though I would love to go back to that objective–subjective issue, I now move on to proposed section 75A(3), which is the kind of gatherings that are excluded from a possible out-of-control gathering—that is, if it is on licensed premises, if it is a public meeting and a permit is required under the Public Order in Streets Act 1984; then there are some others that I will get to in a minute. The minister kindly informed me about my initial comment during the second reading debate about the "religious" purpose

coming under the Public Order in Streets Act. I thank the minister for that. I have had a very quick look at the act itself. This legislation is about trying to create a liability for organisers of out-of-control parties; I understand that. Please forgive me if I have got this wrong, because I have only quickly looked at the Public Order in Streets Act, but is the organiser of the meeting for which a permit is required liable under the Public Order in Streets Act 1984? I presume they are. If the minister could just point me to the actual clause, I would appreciate it.

The issue I raise is about penalties. Penalties that one can be liable for under the Public Order in Streets Act 1984 are much less severe than they are under the current bill, including the point made by the member for Cannington about the costs that may be incurred by the police et cetera. I still go back to my point. I do not want to use hypothetical extreme examples about a religious purpose getting out of control. It can actually get out of control. For instance, churches such as my local Catholic church have a youth wing. They get together on a Sunday night and have a rock mass. They are young people. In the Catholic Church we enjoy drinking. We are not like the Methodists who do not enjoy drinking. It is actually not absurd to think that may get out of control.

A member interjected.

Dr A.D. BUTI: I did not say it was a church service. Listen carefully.

The purpose of the meeting is a religious purpose. They get together for a religious purpose, which may be a rock mass, but they stay on. They have a Bible discussion. That is still a religious purpose. While they are having the public discussion, they may engage in alcohol consumption. If that gets out of control, that would actually be covered by the contravening acts in the proposed legislation, but they would be exempted because they come under the Public Order in Streets Act. It just seems very unfair that the penalties that they may be liable for are much less than for other purposes.

Mrs L.M. HARVEY: The Public Order in Streets Act only applies to public meetings and processions in streets. An out-of-control gathering covers gatherings that can be on public or private property. In the circumstances the member described, if there was a gathering of people in a church building that fit the criteria and the definition for an out-of-control gathering, yes, it could be declared an out-of-control gathering for these purposes. Bear in mind, member, that there would have to be present the range of issues that have been described in the definition for it to be declared an out-of-control gathering.

To go back to the Public Order in Streets Act, I am not au fait with every subsection of that particular act but that only applies to public meetings and processions in the streets that are for the purposes of divine worship in the circumstances we are talking about.

Dr A.D. BUTI: Before I continue, the member for Churchlands said that the organiser might be God in those cases, so it might be hard to impose liability on God; I understand that.

The minister is saying that an organiser for a religious purpose could still be liable under the bill that the minister is proposing. Is that correct?

Mrs L.M. Harvey: If they were not covered under a permit under other legislation, yes.

Dr A.D. BUTI: Therefore, the flipside of that is: why are they therefore liable under this act, but people engaging in meetings for the purpose of a political nature —

Mr W.J. Johnston: Young Libs are protected.

Dr A.D. BUTI: Young Libs or Young Labor or Neo Nazis, whatever. I know the minister says they are only exempted for a political purpose, so if it was just an out-and-out party and they happened to be members of the Labor Party or Liberal Party, that would not exempt them; I understand that.

Mrs L.M. Harvey: They are exempted because a lot of those activities are covered by other legislation and permits and subject to other —

Dr A.D. BUTI: I understand they might be covered by other legislation, but the penalties imposed in this legislation are much more punitive. Therefore, for people who belong to a political party who are gathering for a political purpose but it gets out of control, why is it fair that they are exempted from liability under this legislation when religious groups are not, but, more importantly, when the average Joe Blow is not? Average Joe Blows are not exempted from the provisions of this act, which of course they would not be; otherwise, why would we have the act? But people who belong to a political party and gather for a political purpose, and it gets out of control, are exempted from this legislation. Granted, as the minister says, they may be liable under other legislation, but I challenge the minister to show me where other legislation would be more punitive for the organiser. We are looking at the organiser here; not people. Really, people engaging in unlawful activity are going to be liable under the Criminal Code; it does matter where it happens. But here we are talking about the organiser. All I am saying is that it seems to be very unfair that the organiser of the birthday party is liable, the

organiser of a religious gathering is possibly liable if they do not come under the Public Order in Streets Act, but the organiser of a political gathering that gets out of control is not liable.

Mrs L.M. HARVEY: The organiser of the political gathering is covered under other legislation.

Dr A.D. Buti: But it is not as punitive.

Mrs L.M. HARVEY: That may be so, member for Armadale, but we are talking about out-of-control gatherings in the definition of this legislation. I understand the contrast that the member is making.

Dr A.D. Buti: Don't you think it's unfair?

Mrs L.M. HARVEY: This is the legislation that we are debating. I am not going to compare and contrast this legislation with every other piece of legislation that is out there. We are debating the out-of-control gatherings bill.

Dr A.D. BUTI: Of course, we are. That is the point, minister. We are trying to debate what is in and what is out of this legislation. That is the whole idea of consideration in detail. I think I have put a very legitimate question.

Debate interrupted, pursuant to standing orders.

[Continued on page 7291.]