

EXPLANATORY MEMORANDUM

Criminal Law Amendment (Out-of-Control Gatherings) Bill 2012

OUTLINE

The Bill will amend the *Criminal Code* to introduce a new offence for a person who organises a gathering that becomes out of control, and a defence if the person can prove they took reasonable measures to prevent such gatherings from becoming out of control. The amendments to the *Criminal Code* give a clear statement to party organisers that they will commit an offence if they do not take measures to ensure that their gatherings do not get out of control. It introduces a new concept of 'out-of-control gathering' and specifically identifies the typical forms of anti-social behaviour that occur at such gatherings.

The Bill also amends the *Criminal Investigation Act 2006* to provide Western Australia Police with powers to effectively control an out-of-control gathering which, by reason of the size of the gathering or the conduct of the persons associated with the gathering, results in fear or alarm, or substantial interference to persons in the vicinity. Failure to comply with police orders will commit a serious offence for the purposes of the *Criminal Investigation Act 2006*, with higher penalties applying when that failure is accompanied by other wrongful conduct.

PART 1 PRELIMINARY

Clause 1. Short title

Clause 1 cites the short title of the Act as the *Criminal Law Amendment (Out-of-Control Gatherings) Act 2012*.

Clause 2. Commencement

Clause 2 provides for the Act to come into operation in two parts. Sections 1 and 2 of the Act are to come into operation on the day the Act receives Royal Assent. The remainder of the Act will come into operation by proclamation.

PART 2 THE CRIMINAL CODE AMENDED

Clause 3. Act amended

Clause 3 notifies that Part 2 provides for amendments to *The Criminal Code*.

Clause 4. Sections 75A and 75B inserted

Clause 4 inserts two new sections in *The Criminal Code*, at the end of Part II Chapter IX, as follows:

EXPLANATORY MEMORANDUM

Criminal Law Amendment (Out-of-Control Gatherings) Bill 2012

75A. Term used: out-of-control gathering

75A(1) - provides a definition of an “*out-of-control gathering*” for the purposes of section 75B, also to be inserted in Part II Chapter IX, which sets out the offence of organising an out-of-control gathering.

Paragraph (a) – requires an out-of-control gathering in a place or vehicle to be a gathering of 12 or more persons. The minimum number of 12 persons makes it clear that this legislation is not directed at all gatherings.

Twelve persons is generally the minimum number of persons required in most Australian jurisdictions before an order to disperse a riot may be given. When three to twelve persons behave in a disorderly manner, it is not an unreasonable number for police to manage. However, where there are more than twelve persons involved, the number of persons and the anti-social conduct of those persons are such that they require a more significant police response and enhanced powers to restore peace and order.

Paragraph (b) – requires 2 or more of the 12 or more persons associated with the gathering to be engaged in some form of antisocial or unlawful conduct as listed in subparagraphs (i) to (xiii). The conduct which is specified in these subparagraphs are the typical types of conduct that occur at out-of-control gatherings.

Subparagraph (xiv) allows for additional forms of conduct to be prescribed in regulations. An example of conduct which could be prescribed would be the supply of alcohol to juveniles without parental consent.

Paragraph (c) – sets out the harm that the gathering or the conduct of persons associated with the gathering must cause, or be likely to cause, before the gathering can be deemed to be an out-of-control gathering.

There are three resultant harms listed under paragraph (c), with any one of those resultant harms being sufficient, when taken with paragraphs (a), (b) and (d), to constitute an out-of-control gathering.

Subparagraph (i) provides for any person who is not associated with the gathering to feel fear or alarm. For example, a neighbour may fear for the safety of themselves and/or their children.

EXPLANATORY MEMORANDUM

Criminal Law Amendment (Out-of-Control Gatherings) Bill 2012

Subparagraph (ii) refers to a substantial interference with any person's lawful activities. An example would be a person being unable to leave their house because of the presence of a gathering in the vicinity.

Subparagraph (iii) refers to a substantial interference to any person's peaceful passage through, or use of, a place to which they have rightful access. An example would be a person who was unable to safely walk down a connecting footpath or enjoy their backyard because of the presence of a gathering in the vicinity.

Paragraph (d) provides that the gathering concerned must not be a gathering excluded under subsection (3).

Paragraphs (a), (b), (c) and (d) must be read together.

75A(2) - provides that, for the purposes of subsection (1), the term "*vehicle*" has the meaning given in the *Criminal Investigation Act 2006* section 3(1). As the police powers in relation to the offence of an out-of-control gathering will be contained in that Act, it will make it easier for police to use the legislation if the definition is consistent.

75A(3) - sets out the kinds of gatherings that are excluded from the legislation and makes allowance for the addition of other types of gatherings to be excluded by regulations.

The kinds of gatherings listed at paragraphs (a), (b) and (c) are those which are covered by existing legislation and, as such, are not the target of this legislation.

Paragraph (a) – excludes gatherings on licensed premises because there are sufficient penalties and powers under the *Liquor Control Act 1988* to deal with out of control gatherings on such premises.

Paragraph (b) – excludes public meetings or processions for which a permit has been issued under the *Public Order in Streets Act 1984*.

Paragraph (c) – excludes gatherings which are primarily for the purposes of political advocacy, protest or industrial action.

Paragraph (d) – makes allowance for the exclusion of additional types of gatherings to be prescribed in regulations.

EXPLANATORY MEMORANDUM

Criminal Law Amendment (Out-of-Control Gatherings) Bill 2012

75A(4) - limits the definition of “*licensed premises*” for the purposes of subsection (3)(a) to licensed premises which do not include an occasional licence granted under section 59 of the *Liquor Control Act 1988*. Occasional licences are granted for short term events where liquor is supplied or sold. For example, an occasional licence is required where liquor is served at a gathering held in a community hall. These are typically the types of gatherings that can get out of control and which the legislation is targeting.

Currently, under the *Liquor Control Act 1988*, police may require the licensee to close the premises and issue notices to ‘move on’ under section 27 of the *Criminal Investigation Act 2006*. However, a problem arises where the licensee cannot be located or where it is impracticable to issue notices to a large number of people.

By exempting occasional licences from the exclusion under subsection (3), police will be able respond effectively and efficiently to out-of-control gatherings by using the powers to disperse contained in new section 38B to be inserted in the *Criminal Investigation Act 2006*.

75A(5) - defines the circumstances under which a person is considered to be “associated with” the gathering for the purposes of subsection (1). This subclause applies equally to a person who is lingering in the vicinity because they have attended the gathering or because they are proposing to attend the gathering as it does to a person who is actively attending the gathering. It does not apply to persons who are in the vicinity for other reasons.

75B Organising out-of-control gathering

75B(1) - provides definitions for “*organise*” and “*responsible adult*” for the purposes of this section.

75B(2) – creates two new offences as follows –

Paragraph (a) – a person who organises a gathering that becomes an out-of-control gathering is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

Paragraph (b) – a person who is a parent, guardian or other ‘responsible adult’ in relation to a child who organises a gathering that becomes an out-of-control gathering, and gives the child permission to organise the gathering or permits the gathering to occur, commits an offence. A person found guilty of

EXPLANATORY MEMORANDUM

Criminal Law Amendment (Out-of-Control Gatherings) Bill 2012

this offence is liable to imprisonment for 12 months and a fine of \$12 000.

75B(3) - provides a 'reasonable steps' defence to a charge which may be taken by the accused person to prove that, in the circumstances, they took such steps as were reasonable to prevent the gathering becoming an out-of-control gathering. In some circumstances, the character of a gathering would have so little risk that it may not be necessary to have taken any steps.

75B(4) - provides examples of 'reasonable steps' which may be considered by the court when convicting a person of an offence under subsection (2). The examples given are:

Paragraph (a) – engaging persons to provide security services at the gathering. The provision of security services is governed by the *Security and Related Activities (Control) Act 1996*.

Paragraph (b) – organising the gathering in a manner that indicates that only persons invited to the gathering may attend.

Paragraph (c) – giving notice of the gathering to the Commissioner of Police in a manner approved by the Commissioner of Police.

Paragraph (d) – taking steps to request the attendance of police officers at the gathering as soon as practicable after becoming aware that:- (i) the gathering is likely to become an out-of-control gathering; or (ii) a person is trespassing on a place where the gathering is occurring.

These examples are not exhaustive or prescriptive, as what amounts to appropriate steps will vary depending on the nature of the proposed gathering.

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.

75B(5) - makes provision for a court convicting a person of an offence under subsection (2) to order the person to pay all or some of the reasonable expenses incurred by police in responding to the out-of-control gathering.

EXPLANATORY MEMORANDUM

Criminal Law Amendment (Out-of-Control Gatherings) Bill 2012

75B(6) - states that the order for payment of reasonable expenses must specify that the amount is to be paid to the Commissioner of Police.

75B(7) - confirms that an order made under subsection (5) is made as if it were a compensation order under Part 16 of the *Sentencing Act 1995*. This means that the offender must pay the amount set by the court to WA Police. If the offender does not pay within 28 days, WA Police may enforce it as a debt in a civil court. The order is not a fine under *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 28.

PART 3 CRIMINAL INVESTIGATION ACT 2006 AMENDED

Clause 5. Act amended

Clause 5 states that Part 3 amends the *Criminal Investigation Act 2006*.

Clause 6. Section 32A inserted

Clause 6 inserts a new section in the *Criminal Investigation Act 2006*, at the beginning of Part 5 Division 2, as follows:

32A Terms used

Proposed section 32A defines the terms “*out-of-control gathering*” and “*person in authority*”, in relation to a place and in relation to a vehicle, for the purposes of Division 2.

Clause 7. Sections 38A, 38B and 38C inserted

Clause 7 inserts three new sections in the *Criminal Investigation Act 2006*, after section 37, as follows:

38A Authorisation to enter place or vehicle to prevent or disperse out-of-control gathering

38A(1) - defines “*senior officer*” for the purpose of this section to mean a police officer who is, or is acting as, a sergeant or an officer of a rank more senior than a sergeant. A sergeant is usually the most senior officer likely to be present at the scene of a gathering which has become or is likely to become an out-of-control gathering.

38A(2) - sets out what a senior officer must reasonably suspect before authorising the exercise of powers under section 38B, namely that there is an out-of-control gathering occurring in a place or vehicle, or that a gathering of persons occurring in a place or vehicle is likely to become an out-of-control gathering.

EXPLANATORY MEMORANDUM

Criminal Law Amendment (Out-of-Control Gatherings) Bill 2012

38A(3) - specifies the means by which a senior officer's authorisation under subsection (2) may be applied for and given, the need to specify the place or vehicle to which it applies, and the period for which the authorisation is in effect, which may be 24 hours or any lesser period specified by the officer.

38A(4) - specifies that a senior officer who gives an authorisation under subsection (2) must make a written record of it, the date and time it was given, and the reasons for giving it.

38A(5) - provides for the powers under section 38B to be exercised by the senior officer who gave the authorisation under subsection (2) or by any other police officer.

38B Entry of place or vehicle to prevent or disperse out-of-control gathering

38B(1) - sets out the specific powers that may be exercised under an authorisation given under section 38A(2) in relation to a gathering and a place or vehicle.

A police officer may do one or more of:

Paragraph (a) – enter the place, or stop and enter the vehicle, for any of the purposes mentioned in paragraphs (b) to (g).

Paragraph (b) – locate or attempt to locate, a person in authority.

Paragraph (c) – order any person or group of persons in or in the vicinity of the place or vehicle to leave the place or vehicle immediately.

Paragraph (d) – order any person or group of persons in or in the vicinity of the place or vehicle to cease any conduct of a kind described in *The Criminal Code* section 75A(1)(b)(i) to (xiv) or any other conduct that is unlawful.

Paragraph (e) – order any person or group of persons to do anything that is reasonably necessary to enable or assist any other person to comply with an order under paragraph (c) or (d) or subsection (2).

Paragraph (f) – take, or order any person or group of persons to take, any reasonable measure that the officer considers necessary – (i) to prevent an out-of-control gathering from continuing, to restore peace and good order, to protect the safety of any person or to prevent damage to property; or (ii) to

EXPLANATORY MEMORANDUM

Criminal Law Amendment (Out-of-Control Gatherings) Bill 2012

prevent a gathering that is likely to become an out-of-control gathering from becoming an out-of control gathering.

Paragraph (g) – ascertain or attempt to ascertain whether any offence has been committed under section 38C or another written law.

38B(2) - allows a police officer giving an order under subsection (1)(c) to further order any person or group of persons to do either or both of two things, as follows:

Paragraph (a) – go beyond a reasonable distance from the place or vehicle, as set by the officer;

Paragraph (b) – obey the order or orders for a reasonable period set by the officer, but the period must not be longer than 24 hours.

These requirements are consistent with the requirements imposed in relation to ‘move-on’ orders in section 27 of the *Criminal Investigation Act 2006*.

38B(3) - provides that an order given under subsection (1) or (2) is to be given orally and makes allowance for circumstances where there is a significant group of persons to whom the order needs to be given by requiring that the order be given in a manner that is likely to be capable of being heard by all persons in that group, or to as many of them as is practicable.

38B(4) - further clarifies subsection (3) by providing that if an order under subsection (1) or (2) is given to a group of persons, it is not necessary for the police officer to repeat the order to each person in the group.

38B(5) - makes it clear that the fact that the police officer is not required to repeat the order does not in itself give rise to any presumption that each person in the group has received the order.

38B(6) - provides that a police officer may exempt a person or group of persons from the effect of an order given under subsection (1) or (2). This subsection provides for persons who may reside at the premises, and others who may have a legitimate claim to remain on the premises, to be allowed to stay while others are ordered to leave.

38B(7) - provides that an exemption under subsection (6) is to be given orally.

EXPLANATORY MEMORANDUM

Criminal Law Amendment (Out-of-Control Gatherings) Bill 2012

38B(8) - allows a person a limited amount of scope in complying with an order issued under subsection (1) or (2) if the person is taking reasonable steps to comply with the order. A person ordered to leave the place immediately, therefore, would not be taken to be failing to comply with the order if they were collecting their vehicle and proceeding to leave the area.

38B(9) - allows a police officer to take immediate action where a person commits an offence, rather than relying on the powers which may be exercised under this section.

38B(10) - refers to section 6(1)(b) of the *Criminal Investigation Act 2006* which ensures that the legislation, as passed, does not exclude the use of other legislation which may provide police with a power additional to any other written law. This subsection confirms that provision and, without limiting section 6(1)(b), extends the scope of the provision to cover any powers conferred on the police officer by another provision of the *Criminal Investigation Act 2006*.

For example, this Bill provides police with a power to order any person or group of persons in or in the vicinity of the place or vehicle to leave the place or vehicle immediately (subsection 38B(1)(c)). However, in some circumstances the use of stronger powers provided in sections 233 and 235 of *The Criminal Code* or sections 16 and 68 of the *Criminal Investigation Act 2006* may be appropriate.

Sections 233 and 235 of *The Criminal Code* authorise, in specific circumstances, the use of force that may cause death or grievous bodily harm. Section 16 of the *Criminal Investigation Act 2006* authorises the use of any reasonably necessary force against a person or thing in certain circumstances although such force may cause damage to property. Section 68 of the *Criminal Investigation Act 2006* authorises, in specific circumstances, a basic search or strip search of a person for the purpose of retrieving things relevant to offences.

38C Offence not to comply with order relating to out-of-control gathering

38C(1) - imports the definitions of “*assault*” and “*behave in a disorderly manner*” from *The Criminal Code* and adds a definition of “*circumstances of aggravation*” for the purposes of this section.

Section 38C makes it an offence for a person to fail to comply with an order under section 38B. If the offence is committed in circumstances of aggravation, the higher penalty applies.

EXPLANATORY MEMORANDUM

Criminal Law Amendment (Out-of-Control Gatherings) Bill 2012

The circumstances of aggravation outlined in the Bill relate to offenders who, during the commission of the offence of failing to comply with an order relating to an out-of-control gathering, engage in any of the conduct specified in paragraphs (a) to (d), as follows:

Paragraph (a) – behaves in a disorderly manner; or

Paragraph (b) – destroys or damages the property of another person or threatens to do so; or

Paragraph (c) – assaults or threatens to assault any person; or

Paragraph (d) – throws any object or releases any material or thing – (i) in a manner that is likely to endanger the life, health or safety of any person; or (ii) in circumstances that are likely to cause fear or alarm to any person.

38C(2) - sets out two levels of penalty for the offence of failing to comply with an order given under section 38B(1) or (2). If the offence is committed in circumstances of aggravation, the penalty is a fine of \$18 000 or imprisonment for 3 years. In any other case, a fine of \$12 000 or imprisonment for 12 months applies.

Clause 8. Section 128 amended

Clause 8 amends section 128 of the *Criminal Investigation Act 2006* to allow the offence outlined at section 38C(2) to be included in the definition of “*serious offence*”. This means that any person who commits an offence under section 38C(2), whether it is an aggravated one or not, can be arrested at the discretion of the officer pursuant to s 128(2) of the *Criminal Investigation Act 2006*.

Clause 9. Section 153 amended

Clause 9 inserts a new subsection (2A) in section 153 of the *Criminal Investigation Act 2006* to negate the application of subsection (1) therein to an order given under section 38B(1) or (2).

A person who fails to comply with orders given under proposed new 38B(1) or (2) will be prosecuted under new section 38C rather than under the existing provisions of section 153 of the *Criminal Investigation Act 2006*.