

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

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Western Australia

LEGISLATIVE ASSEMBLY

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

A Bill for

An Act to amend *The Criminal Code* and the *Criminal Investigation Act 2006* and for related purposes.

The Parliament of Western Australia enacts as follows:

1

Part 1 — Preliminary

2

1. Short title

3

This is the *Criminal Law Amendment (Out-of-Control Gatherings) Act 2012*.

4

5

2. Commencement

6

This Act comes into operation as follows —

7

(a) Part 1 — on the day on which this Act receives the Royal Assent;

8

9

(b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

10

Part 2 — *The Criminal Code* amended

3. Act amended

This Part amends *The Criminal Code*.

4. Sections 75A and 75B inserted

At the end of Part II Chapter IX insert:

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

(1) For the purposes of section 75B, a gathering of persons in a place or vehicle is an ***out-of-control gathering*** if —

- (a) the gathering is a gathering of 12 or more persons; and
- (b) 2 or more persons associated with the gathering engage in conduct of any of the following kinds —
 - (i) trespassing on a place (as defined in section 70A(1));
 - (ii) behaving in a disorderly manner (as defined in section 74A(1));
 - (iii) unlawfully destroying or damaging property or threatening to do so;
 - (iv) assaulting or threatening to assault another person or taking part in a fight;
 - (v) doing an obscene act or indecent act in a public place or in the sight of any person who is in a public place;
 - (vi) emitting, or causing to be emitted, unreasonable noise (as defined in the *Environmental Protection Act 1986* section 3(1));

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- 1 (vii) driving a motor vehicle so as to cause
2 excessive noise or smoke in
3 contravention of the *Road Traffic*
4 *Act 1974* section 62A;
- 5 (viii) unlawfully lighting fires or unlawfully
6 using fireworks;
- 7 (ix) throwing any object or releasing any
8 material or thing in a manner that is
9 likely to endanger the life, health or
10 safety of any person;
- 11 (x) causing an obstruction to traffic or to
12 the movement of pedestrians;
- 13 (xi) depositing litter or breaking glass or
14 other material;
- 15 (xii) contravening the *Liquor Control*
16 *Act 1988* or the *Misuse of Drugs*
17 *Act 1981*;
- 18 (xiii) being intoxicated by liquor or an
19 intoxicant (as defined in section 206(1))
20 in a public place;
- 21 (xiv) any other conduct prescribed by the
22 regulations;
- 23 and
- 24 (c) the gathering, or the conduct of persons
25 associated with the gathering (taken together),
26 causes or is likely to cause —
- 27 (i) fear or alarm to any person who is not
28 associated with the gathering; or
- 29 (ii) a substantial interference with the
30 lawful activities of any person; or
- 31 (iii) a substantial interference with the
32 peaceful passage through, or enjoyment
33 of, a place by any person who has
34 lawful access to that place;

(1) In this section —

organise, in relation to a gathering, means to have a substantial involvement in arranging, managing, advertising or promoting the gathering (whether or not

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- 1 any other organisers of the gathering know of or
2 consent to that involvement);
- 3 **responsible adult**, in relation to a child, means a
4 parent, guardian or other person having responsibility
5 for the day-to-day care of the child but does not include
6 a person who the regulations provide is not a
7 responsible adult.
- 8 (2) A person —
- 9 (a) who organises a gathering that becomes an
10 out-of-control gathering; or
- 11 (b) who —
- 12 (i) is a responsible adult in relation to a
13 child who organises a gathering that
14 becomes an out-of-control gathering;
15 and
- 16 (ii) gives the child permission to organise
17 the gathering or permits the gathering to
18 occur,
- 19 is guilty of an offence and is liable to imprisonment for
20 12 months and a fine of \$12 000.
- 21 (3) It is a defence to a charge under subsection (2) to prove
22 the accused person took such steps (if any) as were
23 reasonable in the circumstances to ensure that the
24 gathering did not become an out-of-control gathering.
- 25 (4) Without limiting subsection (3), the following are
26 examples of steps that could be taken to ensure that a
27 gathering does not become an out-of-control
28 gathering —
- 29 (a) engaging persons to provide security services at
30 the gathering;
- 31 (b) organising the gathering in a manner that
32 indicates that only persons invited to the
33 gathering may attend;

- 1 (c) giving notice of the gathering to the
2 Commissioner of Police in a manner approved
3 by the Commissioner of Police;
- 4 (d) taking steps to request the attendance of police
5 officers at the gathering as soon as practicable
6 after becoming aware that —
- 7 (i) the gathering is likely to become an
8 out-of-control gathering; or
- 9 (ii) any person is trespassing on a place
10 where the gathering is occurring.
- 11 (5) A court convicting a person of an offence under
12 subsection (2) may order the person to pay some or all
13 of the reasonable expenses of or incidental to any
14 action that was reasonably taken by police officers in
15 responding to the out-of-control gathering.
- 16 (6) The order must specify that the amount is to be paid to
17 the Commissioner of Police.
- 18 (7) The *Sentencing Act 1995* Part 16 applies to and in
19 respect of an order made under subsection (5) as if it
20 were a compensation order made under that Part.
21

1 **Part 3 — *Criminal Investigation Act 2006* amended**

2 **5. Act amended**

3 This Part amends the *Criminal Investigation Act 2006*.

4 **6. Section 32A inserted**

5 At the beginning of Part 5 Division 2 insert:

6

7 **32A. Terms used**

8 In this Division —

9 ***out-of-control gathering*** has the meaning given in *The*
10 *Criminal Code* section 75A;

11 ***person in authority*** means —

12 (a) in relation to a place — an owner or occupier
13 of, or person who has the control and
14 management of, the place; or

15 (b) in relation to a vehicle — an owner of, or
16 person in charge of, the vehicle.
17

18 **7. Sections 38A, 38B and 38C inserted**

19 After section 37 insert:

20

21 **38A. Authorisation to enter place or vehicle to prevent or**
22 **disperse out-of-control gathering**

23 (1) In this section —

24 ***senior officer*** means a police officer who is, or is
25 acting as, a sergeant or an officer of a rank more senior
26 than a sergeant.

- 1 (2) If a senior officer reasonably suspects that —
2 (a) there is an out-of-control gathering occurring in
3 a place or vehicle; or
4 (b) a gathering of persons occurring in a place or
5 vehicle is likely to become an out-of-control
6 gathering,
7 the officer may authorise the exercise of powers under
8 section 38B.
- 9 (3) A senior officer's authorisation under subsection (2) —
10 (a) may be applied for and given by remote
11 communication; and
12 (b) must specify the place or vehicle to which it
13 applies; and
14 (c) has effect for 24 hours, or for any lesser period
15 specified by the officer, after it is given.
- 16 (4) A senior officer who under subsection (2) gives an
17 authorisation must make a written record of it, the date
18 and time it was given, and the reasons for giving it.
- 19 (5) Powers under section 38B may be exercised by the
20 senior officer who gave the authorisation under
21 subsection (2) or by any other police officer.
- 22 **38B. Entry of place or vehicle to prevent or disperse**
23 **out-of-control gathering**
- 24 (1) Under an authorisation given under section 38A(2) in
25 relation to a gathering and a place or vehicle, as the
26 case requires, a police officer may do one or more of
27 the following —
28 (a) enter the place, or stop and enter the vehicle,
29 for any of the purposes mentioned in
30 paragraphs (b) to (g);

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- 1 (b) locate, or attempt to locate, a person in
2 authority;
- 3 (c) order any person or group of persons in or in
4 the vicinity of the place or vehicle to leave the
5 place or vehicle immediately;
- 6 (d) order any person or group of persons in or in
7 the vicinity of the place or vehicle to cease any
8 conduct of a kind described in *The Criminal*
9 *Code* section 75A(1)(b)(i) to (xiv) or any other
10 conduct that is unlawful;
- 11 (e) order any person or group of persons to do
12 anything that is reasonably necessary to enable
13 or assist any other person to comply with an
14 order under paragraph (c) or (d) or
15 subsection (2);
- 16 (f) take, or order any person or group of persons to
17 take, any reasonable measures that the officer
18 considers necessary —
- 19 (i) if an out-of-control gathering is
20 occurring — to prevent the
21 out-of-control gathering from
22 continuing, to restore peace and good
23 order, to protect the safety of any person
24 or to prevent damage to property; or
- 25 (ii) if a gathering is occurring that is likely
26 to become an out-of-control
27 gathering — to prevent the gathering
28 from becoming an out-of-control
29 gathering;
- 30 (g) ascertain or attempt to ascertain whether any
31 offence has been committed under section 38C
32 or another written law.

- 1 (2) A police officer giving an order under subsection (1)(c)
2 may in addition do either or both of the following —
- 3 (a) order the person or group of persons to go
4 beyond a reasonable distance from the place or
5 vehicle, set by the officer;
- 6 (b) order the person or group of persons to obey the
7 order or orders for a reasonable period set by
8 the officer, but the period must not be longer
9 than 24 hours.
- 10 (3) An order under subsection (1) or (2) is to be given
11 orally and, if given to a group of persons, it is to be
12 given in a manner that is likely to be audible to all
13 persons in that group, or as many of them as
14 practicable.
- 15 (4) If an order under subsection (1) or (2) is given to a
16 group of persons, it is not necessary to repeat the order
17 to each person in the group.
- 18 (5) However, the fact that the police officer is not required
19 to repeat the order does not in itself give rise to any
20 presumption that each person in the group has received
21 the order.
- 22 (6) A police officer may exempt a person or group of
23 persons from the effect of an order given under
24 subsection (1) or (2).
- 25 (7) An exemption under subsection (6) is to be given
26 orally.
- 27 (8) A person is not failing to comply with an order under
28 subsection (1) or (2) if the person is taking reasonable
29 steps to comply with the order.
- 30 (9) This section does not prevent a police officer from
31 charging a person with an offence without having
32 exercised a power in this section.

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- 1 (10) Without limiting section 6(1)(b), the powers conferred
2 by this section on a police officer are in addition to and
3 do not derogate from any powers conferred on the
4 police officer by another provision of this Act.

5 **38C. Offence not to comply with order relating to**
6 **out-of-control gathering**

- 7 (1) In this section —
8 **assault** has the meaning given in *The Criminal Code*
9 section 222;
10 **behave in a disorderly manner** has the meaning given
11 in *The Criminal Code* section 74A(1);
12 **circumstances of aggravation** means circumstances in
13 which, during the commission of the offence, the
14 offender —

- 15 (a) behaves in a disorderly manner; or
16 (b) destroys or damages the property of another
17 person or threatens to do so; or
18 (c) assaults or threatens to assault any person; or
19 (d) throws any object or releases any material or
20 thing —
21 (i) in a manner that is likely to endanger
22 the life, health or safety of any person;
23 or
24 (ii) in circumstances that are likely to cause
25 fear or alarm to any person.

- 26 (2) A person commits an offence if the person fails to
27 comply with an order given under section 38B(1)
28 or (2).

29 Penalty:

- 30 (a) if the offence is committed in circumstances
31 of aggravation, a fine of \$18 000 or
32 imprisonment for 3 years;

- 1 (b) in any other case, a fine of \$12 000 or
2 imprisonment for 12 months.
3

4 **8. Section 128 amended**

5 In section 128(1) in the definition of *serious offence*:

- 6 (a) in paragraph (c) delete “section 6(1).” and insert:

7
8 section 6(1); or
9

- 10 (b) after paragraph (c) insert:

- 11
12 (d) under section 38C(2).
13

14 **9. Section 153 amended**

15 After section 153(1) insert:
16

- 17 (2A) Subsection (1) does not apply to an order given under
18 section 38B(1) or (2).
19

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