

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

*Receipt and First Reading*

Bill received from the Assembly; and, on motion by **Hon Simon O'Brien (Minister for Finance)** on behalf of the Attorney General, read a first time.

*Second Reading*

**HON SIMON O'BRIEN (South Metropolitan — Minister for Finance)** [6.10 pm]: I move —

That the bill be now read a second time.

The government is introducing this bill to assist police in tackling out-of-control gatherings in this state.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

Out-of-control gatherings are characterised by large numbers of attendees and criminal or antisocial conduct. Gatherings of this nature are a relatively modern social phenomenon. In some cases, it is the organisers themselves who act in an irresponsible manner, which leads to the gathering becoming out of control. In other cases, social gatherings attract the attention of persons who are intent on causing mayhem. In many cases, attendance at these gatherings is fuelled by reports or invitations in social media. The task of responding to such gatherings falls upon the police force of this state, because it is the police who bear primary responsibility for maintaining public order. Out-of-control gatherings impose a heavy burden on police resources. This is because large numbers of police officers, together with police vehicles, police dogs, police horses and the police air wing, are being utilised to quell unruly disturbances in suburbs across the metropolitan area. In many cases, police officers who are called to respond to out-of-control gatherings are attacked by persons associated with the out-of-control gathering. Unfortunately, it is not uncommon for glass bottles and other missiles to be launched at police officers and other police assets.

There are a number of offences currently contained in the Criminal Code that apply to public order-type offences; for example, disorderly behaviour, fighting in public, participating in an unlawful assembly and riot. However, none of these offences is targeted towards the organiser of a gathering that becomes an out-of-control gathering.

[Quorum formed.]

**Hon SIMON O'BRIEN:** Police officers also have powers under the Criminal Code to order the dispersal of persons taking part in an unlawful assembly or a riot. A person who fails to disperse commits an offence. However, the conduct of persons at an out-of-control gathering may not amount to an unlawful assembly or riot.

Under the Criminal Investigation Act 2006, police officers have various powers to enter places or vehicles without a warrant. However, these powers are not adequate to deal with all aspects of an out-of-control gathering. The same is true of common law powers conferred on police officers to deal with breaches of the peace. The Environmental Protection Act 1986 gives police officers the power to enter premises, give noise abatement directions and seize noisy equipment. However, these powers are of limited assistance in the context of an out-of-control gathering because they are solely directed towards unreasonable noise.

The purpose of the bill is twofold: first, to create new offences relating to out-of-control gatherings; and, second, to confer the necessary powers on police officers to enable them to effectively respond to out-of-control gatherings by shutting them down. It is important to note that not all social gatherings are covered by the bill. The definition of an out-of-control gathering is central to the operation of the bill. There are a number of requirements that must be met before a gathering in a place or vehicle falls within the definition of an out-of-control gathering.

The first requirement is that the gathering must be a gathering of at least 12 persons. The second requirement is that at least two or more persons associated with the gathering must engage in specified conduct, which is set out in the definition. There is no requirement that those persons engage in conduct with a common purpose. The specified conduct is conduct that is typically seen at out-of-control gatherings, such as trespassing on a place, behaving in a disorderly manner, or being intoxicated in a public place. It is important to note that not all of the conduct constitutes a criminal offence. The third requirement is that the gathering or the conduct of persons associated with the gathering causes or is likely to cause particular harm. That harm is divided into three categories: fear or alarm to any person not associated with the gathering; a substantial interference with the lawful activities of any person; and a substantial interference with the peaceful passage through, or enjoyment of, a place by any person who has lawful access to that place. The fourth requirement is that the gathering must not

be a gathering that is excluded from the operation of the bill. Excluded gatherings are those that are regulated by other means, such as gatherings on licensed premises, or gatherings that are not intended to fall within the scope of the bill, such as gatherings primarily for the purposes of political advocacy, protest or industrial action.

The bill will insert a new provision in the Criminal Code to provide that any person who organises a gathering that becomes an out-of-control gathering commits an offence. In addition, a person who is a responsible adult in relation to a child who organises a gathering that becomes an out-of-control gathering, and who gives that child permission to organise such a gathering or who permits the gathering to occur, will also commit an offence. In each case, the person will be liable to imprisonment for 12 months and a fine of \$12 000. A court convicting a person of such an offence will also have the discretion to order the offender to pay some, or all, of the reasonable expenses incurred by police in responding to the out-of-control gathering. It is a defence to a charge for the accused person to prove that they took such steps, if any, as were reasonable in the circumstances to ensure that the gathering did not become an out-of-control gathering. Examples of reasonable steps are contained in the bill and include engaging persons to provide security services at the gathering.

The bill will also insert new provisions in the Criminal Investigation Act 2006 conferring new powers on police officers to deal with out-of-control gatherings and gatherings that are likely to become an out-of-control gathering. The powers that police officers need to exercise in relation to such gatherings are required in both public and private places. A power of entry is required to ensure that police officers will have the same ability to exercise the powers irrespective of the location of the out-of-control gathering. Police officers will be required to comply with the provisions regarding occupiers' rights under section 31 of the Criminal Investigation Act 2006. Police will have the power to enter a place, or stop and enter a vehicle, for a specified purpose, including, for example, entry to locate a person in authority.

Police will also have the power to issue various orders to persons in or in the vicinity of a place or vehicle. Persons may be ordered to leave the place or vehicle immediately. A police officer may take, or may order another person or persons to take, any reasonable measures that the police officer considers necessary to prevent the out-of-control gathering from continuing, or to prevent the gathering from becoming an out-of-control gathering—for example, turning off music or locking doors to prevent gatecrashers from entering. The powers conferred on police officers will be able to be exercised by police officers only when a senior officer has given his or her authorisation for the powers to be used.

It will also be an offence contrary to the Criminal Investigation Act 2006 to fail to comply with an order given by a police officer relating to an out-of-control gathering. A person who fails to comply with an order is liable to a fine of \$12 000, or imprisonment for 12 months. A person who fails to comply with an order in circumstances of aggravation, such as by throwing missiles, will be liable to a penalty of \$18 000, or imprisonment for three years. These offences are classed as serious offences for the purposes of the Criminal Investigation Act 2006 to ensure ease of arrest when breaches of orders occur.

The Criminal Law (Out-of-Control Gatherings) Bill 2012 seeks to strike a balance between the rights of members of the community to hold social gatherings, and the need to maintain public order and protect the wider community from gatherings that get out of control. The introduction of the bill will give police more flexibility when responding to gatherings that are, or are likely to become, out-of-control gatherings.

I commend the bill to the house and table the explanatory memorandum.

[See paper 5222.]

Debate adjourned, pursuant to standing orders.