

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

Second Reading

Resumed from 16 October.

MRS L.M. HARVEY (Scarborough — Minister for Police) [1.26 pm] — in reply: I thank members for their contributions to debate on the Criminal Law Amendment (Out-of-Control Gatherings) Bill 2012. I will canvass some of the broad range of issues that were raised by members last night during debate on this bill. Many of the issues related to some of the bill's definitions. I am sure we will go further into this during the consideration in detail stage. I can probably cover some of the issues now, in response to some members' comments. A lot of members commented about the ability of police to manage general operations. I would like to put on the record that we have resourced police well to manage out-of-control parties. Out of the tools and resources we have given police, one of the most notable improvements has been the new police helicopter. I was privileged to have an opportunity to fly in that helicopter to see from the air the ability of police officers to manage large groups of people and to keep track of events involving large groups of people. That incredible piece of equipment has greatly enhanced the capabilities of police. I am very pleased that helicopter is up and running. Pilots are available, and engineers are being trained, to ensure that the helicopter stays in the air for the maximum time possible. In addition, we have put over \$1 million worth of additional resources towards assisting police to manage out-of-control parties. Earlier this year we talked about enhancing funding to train additional dogs to help with crowd control. We are also providing additional buses to give police the opportunity to take 14 people at any one time away from out-of-control parties. That, combined with this legislation, will provide easier powers of arrest to police officers through the failure to disperse mechanism of this bill. That will go a long way to assist police in managing these events and to remove the key troublemakers in a very short space of time.

There was much discussion about how we arrived at the number 12 as being one of the trigger points for police to declare a gathering out of control. Twelve is the number and the point at which police powers to disperse set in through other mechanisms in other pieces of legislation. Twelve is also based on a point at which, if 12 people are behaving in an antisocial manner, it is difficult for two police officers to manage 12 people or more. This is one of the reasons we have settled on 12 as being the starting point. It was evident from a lot of the debate last night that members did not understand that it is 12 or more people at a gathering and two or more of those people had to be engaged in a range of criminal or antisocial activity that was listed in the bill. It is important that members understand why we have been quite prescriptive. While the acts that have been detailed as being among the trigger points for a senior officer to declare a gathering to be out of control and for these other powers to disperse kick in are themselves criminal activities, this legislation then says that the gathering at which that criminal activity is occurring could also be an offence and that the powers for police to disperse kick in, and failure to disperse from a gathering at which that illegal activity is occurring is also an offence. So, the bill does give police additional tools and it is required for police to manage these events.

There are some other issues that I can cover very quickly. We talked about specific events that will be excluded, and a number of members referred to industrial action as a key point. Action and behaviour that could be potentially criminal or violent that is part of industrial action is covered under the Industrial Relations Act. The definition of industrial action is an act done or brought about by organisations, employees or employers for the purpose of compelling an employer, employee or organisation to accept terms and conditions et cetera related to employment. I thought I would get that definition out there for members as the context for the definition of industrial action as it pertains to that act. In addition to that, there was a lot of debate around clause 4, proposed section 75A(1)(b)(xiv) in which other conduct could be prescribed by regulations as forming part of an assessment by senior officers to declare a gathering to be out of control, and also proposed section 75A(3)(d) of the bill. Those two sections have been put in the bill to allow the legislation to remain contemporary. It is not, as the member for Forrestfield purported in his contribution, to allow police officers to potentially outlaw macramé parties; it is more likely to be linked to the review of the Liquor Control Act, which Minister Waldron flagged earlier this year. Under that review, it is quite likely that the secondary supply of alcohol to minors would be considered and by the inclusion of these sections of the bill, the secondary supply of alcohol to minors could be included as one of the criteria for a senior police officer to declare a gathering to be an out-of-control gathering.

The member for Cannington requested other examples of law referring to regulation rather than specifying particular items in legislation. The areas of legislation in which this has been done, which are probably more relevant to this particular bill, include section 44 of the Road Traffic Act 1974, which allows for certain actions to be prescribed by regulation; for instance, the director general of the department can issue a permit to drive for somebody for a specified purpose who would not otherwise be authorised to drive a motor vehicle. Also, in the Criminal Investigation Act the description of serious and organised crime is prescribed by regulation. That allows that piece of legislation to remain contemporary as serious and organised crime evolves, rather than having to be brought back to the house for debate as crime evolves on its course. It is important for members

also to be conscious that in a senior's officer's assessment of a gathering being declared an out-of-control gathering for the purposes of this bill, there has to be a reasonable suspicion for an officer to believe that a gathering is going to become out of control or is out of control. There was an assertion made that we are removing the tenet of law that people are innocent until proven guilty. It is very important for members to realise that police officers are not judge and jury at the scene of a gathering or, indeed, at any event at which they lay charges; the police can bring charges to bear against a person, but the court determines if the steps in the process of those charges being laid will then convert to convictions. An officer may declare a gathering to be an out-of-control gathering under this bill and then proceed with charges against people for failing to disperse and charges against hosts and, indeed, further down the track should the court choose to convict that person the court would then be looking at the restitution order requested by the police for their time involved in managing the crowd that was brought together irresponsibly by hosts. The court would be ordering the costs. We have put in train steps whereby the senior officer has to apply the test of reasonableness in declaring a gathering to be an out-of-control gathering. Further in the bill there is a defence for hosts who have been charged with the offence of holding an out-of-control gathering; there are reasonable steps criteria for defence. All of these will be covered by the courts once the charges have been brought to bear. It is important that we keep that separate.

The member for Armadale mentioned an opinion piece by Amanda Banks in *The West Australian* a few weeks ago; he described a party that was covered in that article quite well. I would like to put on the record that the circumstances described in that opinion piece by Amanda Banks, in my assessment from my understanding of this bill, is that it would be highly unlikely that her situation would have been declared an out-of-control gathering. It is not simply because people are gathered together having a noisy party; they need to be causing fear or alarm. By that I mean that their behaviour is upsetting and distressing for people in the surrounding houses. It is the behaviour of the people who have come to that party; for example, they are impeding access of people to undertake their lawful activity. The circumstances described by Amanda Banks in her article did not cover in any way, shape or form the sorts of activities and the type of criminal actions that would need to occur for that particular circumstance she described to be declared an out-of-control gathering.

I would also like to get on the record that the reason I brought this legislation to the house is that I believe it is needed and it is going to assist police officers in going about their duty. Much has been made about police officers not laying charges at the gatherings that have occurred to date, but we need to get this in perspective and to understand what happens at these out-of-control gatherings when police officers attend. They have large crowds of people acting in antisocial behaviour who are engaged in criminal activity damaging property. The first priority of the police is always to disperse the crowd, to settle things down and to try to determine who are the main perpetrators of the illegal activity. This is why the powers to disperse are so important as part of this bill. The police need dispersal powers and the ability to arrest people more easily in these circumstances, so indeed they can take those people away and they can bring charges against them. This is why the buses are an essential component of the resourcing for police as part of this legislation.

I need to address the noise abatement issues raised by the member for Gosnells in his contribution to the second reading debate. He talked about moving from subjective to objective criteria and having police officers carry noise measuring equipment to determine whether a party really is noisy enough to be declared an out-of-control gathering. I put it to the member that it would be incredibly expensive and unnecessary for police officers to carry decibel measuring equipment around with them as part of their kit. Indeed, within the criteria that we have put together to determine whether a gathering is out of control for the purposes of this legislation, noise is going to be a moot point. It is quite likely that a helicopter would be in attendance at such a gathering, and I would suggest that police would be unable in such circumstances to determine whether the noise was coming from the party or from the helicopter sent by the police in response to the out-of-control gathering.

Mr C.J. Tallentire: So what you're effectively saying there is that police are not in a position to really deal with noise problems, yet that is one of the biggest causes of concern that I get from my constituents.

Mrs L.M. HARVEY: No, police are equipped under the Environmental Protection Act to go to —

Mr C.J. Tallentire: Yes, technically and legally, but —

Mrs L.M. HARVEY: Let me finish my sentence in response to the member's interjection. As part of their duties, police regularly and routinely attend to noise complaints, particularly in the evenings over weekends. Generally speaking, when police attend to noise complaints, they will usually knock on the door and ask to speak to the person who lives there. They are usually invited in, they have a discussion about the noise, and the people turn the music down so that everybody can go back to quiet enjoyment of their activities. That is not the sort of situation we are talking about with an out-of-control gathering; we are talking about big crowds of people, many of them engaged in serious antisocial and criminal activities such as throwing bottles at passing vehicles, impeding the access of neighbours to their properties and throwing projectiles over the fence—the sort of footage that we have seen on television. These gatherings are not just noisy; they are gatherings of large crowds

of people who, through their conduct, behaviour and activities, are causing concern and alarm to neighbouring properties. Not only are they making life difficult for their neighbours, they are causing fear, alarm and distress to the point where an extraordinary police response is required to manage and disperse the crowd that has gathered. We are not talking about normal Australian parties here; we are talking about parties that become out of control specifically because they have been irresponsibly managed by the hosts.

We discussed powers of entry under the Environmental Protection Act. Section 31 of the Criminal Investigation Act in respect of occupiers' rights still applies. Generally speaking, when police attend these events, they will often be invited in. Sometimes police are called by people who have discovered that their party has become out of control and who require the assistance of police to eject people from their premises. In respect of another important issue, one of the more high-profile out-of-control parties that we saw footage of on TV was convened illegally on someone's property without their consent. Part of the reason that police need powers of entry in such circumstances is that in many cases the owner is not on the premises to give police consent to enter. In such cases, police need powers of entry to be able to go onto a property that has been trespassed upon by other people for the purposes of holding one of these parties.

The member for Armadale and the member for Pilbara asked why gatherings for religious purposes are not specifically covered or excluded in the legislation. It is because gatherings convened for religious purposes are covered under the Public Order in Streets Act 1984. If a public meeting includes divine worship, it is covered under that legislation. Should the religious gathering breach the peace and the people convened for religious purposes engage in the behaviour we have described as being captured by the criteria for an out-of-control gathering, police will indeed prosecute those people under the Public Order in Streets Act 1984. I will also note that the member for Armadale during his contribution to the second reading debate invited my interjections and asked me questions. The second reading debate is usually an opportunity for members to put their points of view on legislation; questions, answers and detailed interrogation, clause by clause, are usually done during consideration in detail, which is why I have withheld my responses to the member's questions until we get to consideration in detail. I know that the member will interrogate me on those points during that process.

Another issue that needs to be rounded off is the exemption for political parties. The circumstance was put by a member of a political gathering of Young Labor, Young Liberal, Young Nationals or Young Greens, for example, becoming an out-of-control gathering. Members of those organisations would not be exempt under this legislation if they just happened to belong to the organisation and held a gathering that was hosted irresponsibly and became out of control such that the criteria under the legislation were met for the gathering to be declared out of control by a senior police officer. The exemption for political parties is for political gatherings that are primarily for the purpose of political advocacy, protest or industrial action. If it were a social gathering of people who happen to belong to a political party that became out of control, then yes, it could be covered under this legislation. One could not hold an out-of-control party and then claim exemption from the legislation as a member of a political party. However, if the purpose was political advocacy, protest or industrial action and the gathering came to the attention of police and needed police resources to manage, it would be covered under different legislation.

The member for Girrawheen asked whether the costs of attendance by police officers would be made available; that information will certainly be made available during consideration in detail, should the member choose to ask that question. We have done some detailed costings on how much an hour of an officer's time is worth, the value of police helicopter time and the cost of deployment of police horses and dogs.

Another issue that was raised was how juveniles would be treated. Juveniles who are arrested for failure to disperse at an out-of-control gathering will still be subject to the Young Offenders Act. All the protections that are presently in place for managing juveniles when they come into the custody of police will still be in place.

The member for Willagee was quite concerned about whether a senior officer would be available in such circumstances. In this legislation, we have defined "senior officer" as an officer with the rank of sergeant or above, and they do not have to be present at the scene. Usually, in legislation pertaining to police officers, a senior officer is defined as an officer with the rank of inspector or above. We have made the definition sergeant or above in this legislation because a sergeant is more generally likely to be deployed to a situation like this to make an assessment. Also, should this legislation need to be enforced in some of the smaller regional areas, it is unlikely that an inspector would be available, so we have lowered the definitional bar for "senior officer" because we believe it provides a level of practicality for police to operate under this legislation. Just to be very clear, the senior officer will need to demonstrate that the grounds for declaring an out-of-control party were reasonable at the time.

In closing, once again I thank members for their contributions and, indeed, for their support of this legislation. I would like to say that there were some fairly jaundiced and cynical views put in respect of the willingness, capability and intentions of police officers in being given these additional powers, and about the way that they

will go about executing and possibly exploiting those powers. I would like to put it very clearly and firmly on the record that I believe police officers will use this legislation appropriately, in the manner that it is intended, to help manage out-of-control parties, to disperse unruly crowds and to keep our community safe. I do not believe that we are giving them too much power under this legislation. I believe that it is required and that is why I have brought it to this house. I am very pleased to hear that the opposition has said it will support it.

Question put and passed.

Bill read a second time.

Consideration in Detail

Clause 1: Short title —

Ms M.M. QUIRK: The short title of the bill is the Criminal Law Amendment (Out-of-Control Gatherings) Bill 2012. The minister would have noticed from the various speeches she heard yesterday that there is some confusion about the word “gatherings”. I wonder why the title is not out-of-control “parties”, which is the mischief that the legislation deals with.

Mrs L.M. HARVEY: The reason that we have called it a gathering is that this legislation can, in effect, apply to a gathering that becomes out of control, should it fit the criteria described in the bill. It may not necessarily be a gathering of people that has been brought together for a recreational purpose such as a party; it does not need to be a festive occasion. A case in point is the recent incident in Balga when a group of people were milling around the outside of a function centre. That gathering could have been declared an out-of-control gathering for the purposes of this bill.

Mr D.A. TEMPLEMAN: I was very interested in the decision to use the word “gathering” because the minister in her second reading reply referred to out-of-control parties and has waxed and waned between out-of-control parties and out-of-control gatherings. We have always been talking about out-of-control parties. When the phenomenon began to get real traction in the media and grabbed all the attention over the past few years, most people, if not all, have always referred to these types of out-of-control situations as out-of-control parties. I am interested in the legal advice the minister received when drafting this bill and in why “gatherings” was considered the best definition rather than out-of-control “parties”, which is how it has always been referred.

Mrs L.M. HARVEY: There are a couple of reasons for this. I am advised that a gathering is a term that juveniles use for a party these days.

Mr D.A. Templeman: They used to call them happenings in the 1960s.

Mrs L.M. HARVEY: Indeed. Over time, people change the terminology they use for their get-togethers or gatherings. Everyone understands what a gathering is; it is a collection of people coming together. That may not necessarily be for a party. Over time the terminology may well change as to what constitutes a party but I think that definition of “gathering” is quite distinct; it is a collection of people coming together. It is better to keep the terminology broad so that it remains contemporary.

Ms M.M. QUIRK: I am afraid that I did not hear the minister’s response earlier but one of the questions I raised during the second reading debate yesterday was whether this bill is even necessary if the Criminal Code Amendment (Infringement Notices) Bill 2010 were in force. I want to know when that legislation is likely to be in force and what is in the Criminal Law Amendment (Out-of-Control Gatherings) Bill that is additional to the Criminal Code Amendment (Infringement Notices) Bill.

Mrs L.M. HARVEY: This legislation is required. The legislation the member is talking about is due for implementation in 2014.

Ms M.M. Quirk: When were we told that, minister?

Mrs L.M. HARVEY: I have just told the member that now. It is due for implementation in 2014. We need this legislation now to allow the police to manage out-of-control gatherings.

Ms M.M. QUIRK: One of the issues with the lack of legislation is that police resources are drained. If they arrest people, the police have to take them back to the station and fill out all the paperwork. If the Criminal Code Amendment (Infringement Notices) Bill were in force, it would certainly reduce the impost on police resources. Why will that legislation not be in place until 2014? What is the hold-up?

Mrs L.M. HARVEY: The criminal penalty infringement notices system uses an involved technology system. I am happy to speak about that at another time —

Ms M.M. Quirk: It relates to this bill, minister.

Mrs L.M. HARVEY: This is the out-of-control gatherings bill.

Ms M.M. Quirk: It is relevant to this bill because it goes to the issue of whether this legislation is necessary.

Mrs L.M. HARVEY: This bill does a lot of things. An infringement notice cannot be issued for an out-of-control gathering under the CPINs legislation. An offence for an out-of-control gathering does not exist at present and would not be covered by the CPINs legislation.

Ms M.M. QUIRK: I will deal with this matter at clause 3, but can the minister tell me whether, as well as the organiser of the party committing an offence, it is contemplated that individuals will be charged with offences such as trespassing, behaving in a disorderly manner, unlawfully destroying or damaging property, assaulting or threatening to assault, doing an obscene act or emitting or causing to have emitted unreasonable noise? Is it contemplated that in addition to the organisers of the party being charged, some of the people participating in the so-called gathering may well be charged with any of those offences?

The ACTING SPEAKER (Mr A.P. O’Gorman): I remind members that when they come into the chamber and another member is on their feet, members need to acknowledge the Chair before passing in front of the Chair in case there is some reason why members cannot pass in front of the Chair—the Minister for Health in particular.

Mrs L.M. HARVEY: This bill creates a new offence for hosting an out-of-control gathering. It does not in any way affect the ability of police to charge people for those other offences.

Debate interrupted, pursuant to standing orders.

[Continued on page 7105.]