

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

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 4: Sections 75A and 75B inserted —

Debate was interrupted after the clause had been partly considered.

Dr A.D. BUTI: When my question to the minister was curtailed before lunch, the minister made the extraordinary statement that we are concerned with this bill and not any other act. That may be the case but by having these exclusions under proposed section 75A(3), the government is allowing certain sections of the public to be exempted from the very severe punitive penalties under this bill. Also, some groups will be able to have a defence because they come under other acts for which the punitive damages or penalties are not as great. No, we are not examining the merits of other legislation; we are examining the merits of this legislation. However, in doing that, it is very appropriate for me to point out the inequality in the penalties that a party organiser will be subject to whether or not they fall within the exclusion of this legislation. The minister has not provided a legitimate rationale. The minister's rationale is that it is because other acts apply, but when I mention the difference in the penalties under the other acts, the minister says we are not referring to those other acts. If we are not referring to those acts, the minister must show justification why groups such as political organisations are excluded from the punitive penalties of this legislation but the average Joe Blow is not. The minister has not provided an adequate explanation of that.

Mrs L.M. HARVEY: The reason for these exclusions is that they are covered by other regulations and legislation. If the member is seeking to alter the penalties of other legislation, I suggest he raise that as a separate issue. I understand what the member is saying. The member's assertion is that the penalties prescribed in this legislation are not consistent with the penalties in the acts for the activities that are excluded under this proposed subsection. Is that the member's assertion?

Dr A.D. Buti: I am not concerned about the penalties in other legislation; I am concerned about the groups that are excluded from the punitive nature of this legislation. It seems to be unfair that groups that come together for a political purpose but then become an out-of-control gathering are excluded from the punitive measures under this legislation but the average Joe Blow who comes together for an eighteenth birthday party is not excluded. Why will the average Joe Blow be subject to the punitive nature of this legislation but the Young Libs, Young Labor or Young Nats will not be if they come together for a political purpose but it then becomes an out-of-control situation?

Mrs L.M. HARVEY: If the purpose of the political gathering is for political advocacy, protest or industrial action, it is covered under other legislation. If that gathering goes on to form another form of gathering and becomes out of control and fits the definition under this legislation, it would be covered under this legislation.

Mr M.P. WHITELEY: I will help out the minister. I asked a question about whether two parties of six coming together could be considered a gathering and the minister indicated that it could. Having read the bill further, I do not think it can. My concerns cannot be assuaged by reading proposed paragraph 75B(1), the key element of which is the word "organise". It is disturbing that the minister could not point this out to me. I have to do the minister's job for her. That proposed section states —

organise, in relation to a gathering, means to have a substantial involvement in arranging, managing, advertising or promoting the gathering ...

Had the minister been across her portfolio, I guess her defence might have been that two casual meetings do not involve the necessary degree of organisation —

Mrs L.M. Harvey: That is what I said.

Mr M.P. WHITELEY: No, the minister did not say that. The minister did not have a clue, frankly. We can check *Hansard*. I am helping the minister out.

Nonetheless, I want to understand what degree of organisation is sufficient to come under the ambit of this bill. I will explain to members what I am talking about. I am referring to a casual meeting between two groups of six people, some of whom are strangers. They decide to go back to someone's place and organise a spontaneous party. Would that be covered under this legislation? They meet each other and say, "Come back to our place and we'll have a party." It is a spontaneous gathering. Is that covered under this legislation? Does the legislation cover people who casually run into each other spontaneously? What if some people run into each other at a pub and decide to go back to someone's house for a party? Some of them know each other and others do not and someone walks around and invites them back to a house for a party after the pub shuts. Is that sufficient to cross

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the threshold of organising an out-of-control gathering? I want some clarity because it is a very key question. Are we effectively saying that it is perilous to have a spontaneous party? I will listen to what the minister has to say and elaborate further if I need to.

Mrs L.M. HARVEY: This bill creates an offence for a lack of responsible organisation of a gathering to the point at which it becomes by definition an out-of-control gathering. The scenario the member put to me of people who go to a pub and then a group from the pub go to someone's house and continue their social activity and that social activity morphs into the kind of behaviour and type of situation described in the legislation, as per the definition —

Mr M.P. Whitely: Two people litter.

Mrs L.M. HARVEY: No; 12 or more people gather together and two or more of them are engaged in the activities described and cause fear or alarm that substantially interferes with the quiet enjoyment and lawful activities of the other people in the neighbourhood. If all those things are present, the group of people who left the licensed premises and went to another place and continued to gather together could potentially become an out-of-control gathering if it fits this definition and criteria. The licensed premises, however, is excluded because it is covered under other regulations and legislation.

Mr M.P. WHITELEY: My wife is Irish. I do not have a great social life but there is a great tradition in Ireland of going to the pub and meeting people and making friends and possibly going back to someone's place for a party. That is part of what makes Ireland such a great social culture. One of the reasons people go there is because of the social interaction. I love going there. I love the spontaneity of going to a pub and meeting people of all ages, some of whom are strangers, and going back to someone's place for a drink afterwards. It is the spontaneity of it and the fact that strangers are involved and unexpected things happen that makes it fun. That happens across all age groups in Ireland. It does not happen as regularly here but it does happen. It is good for people to socialise and meet people they do not know. A group of people might go down to the pub and know half a dozen other people there and perhaps another 10 people are loosely hanging around that group and they decide to go back to someone's house to continue the fun. Perhaps 16 will go to the house and two of them will litter outside, urinate in the street or have sex in a public place. In the real world, these are things that happen. But we seem to have this puritanical definition of what is normal behaviour. In my view, the person who has organised that party and has said, "Come back to my place, and you're welcome to do this sort of stuff" is not a criminal. But the minister has said, in the answer that she has just given, and in other answers about what is involved in this bill, that such a person would be engaging in criminal behaviour.

I go back to the point that I made earlier. In what legislation in this jurisdiction or any other Australian jurisdiction, or in any other comparable jurisdiction, is this level of responsibility placed on an individual—not for their own actions, but for the actions of other people outside of their view and outside of their property? A person might be the organiser of a party, and 16 people might come to his property, and he might not like two of them and might encourage them to leave, and on their way out of the property they might do something that, according to this legislation, is unpleasant or creates a nuisance or creates fear or alarm to any person who is not associated with the gathering. We are human beings. We have been gathering around the fire informally and having social interaction since we started to walk on two legs. But somehow, now in Western Australia—mega Dullsville, if this legislation is passed—not only spontaneous parties, but any party, will be dangerous. People are not always able to plan a party. I guess that if a person was of that ilk, he could try to plan a party. He could contact the police—if he could get the phone answered, as the member for Forrestfield pointed out earlier—and register the party. But people who have active social lives do not necessarily know what is going to happen. Some parties happen spontaneously. What is wrong with that? How is it reasonable to expect a person who happens to be hosting some people in his home to take full responsibility for the actions of those people? I can understand that we would want to crack down on a situation in which there was an open invitation to people from all places to come to a party, and there was a mass movement of people onto the street, and there was riotous behaviour, and when the police attended, the person in control of the house, or the owners of the premises, went outside and encouraged that sort of behaviour. I can understand that we would want to crack down on people who are throwing bottles and rioting and doing things that are illegal. I can also understand that we would want to crack down on people who are littering outside a party. But I do not get why a person who organises a party, or even an informal gathering, can be given a criminal record, with all the consequences that flow from that, simply because they are being hospitable and simply because somebody else outside of their control and outside of their view, and without their knowledge, does something as serious as fighting or committing an assault, or something as little as littering. So unless the minister has something to add in terms of what is related to "organise", I will resume my seat.

Dr E. CONSTABLE: I draw the minister's attention to a short sentence in proposed section 75A(1)(b)(xiv), "any other conduct prescribed by the regulations". Proposed section 75A provides a pretty exhaustive list of

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behaviours and conduct, all of which are covered by other acts of Parliament. We then get this catchall, “any other conduct prescribed by the regulations”. I find it extraordinary that in this legislation, which may cause innocent people to face terrible consequences—they can be charged with a criminal offence when they have not organised the party but happen to get caught up in it in some way—would have this catchall. I imagine that the minister knows what the regulations will be for this part of the bill, because they are probably being drafted at the moment. I would like to know what conduct the minister intends to include in the regulations, and why that is not listed in this legislation so that it will be clear to everyone what that conduct will be.

I draw the minister’s attention also to proposed section 75A(3)(d), “a gathering of a kind prescribed by the regulations”. Subsection (3) refers to a gathering on licensed premises, a public meeting or procession, and a protest, and we then have, again, this catchall, “a gathering of a kind prescribed by the regulations”. What types of gatherings will be prescribed by the regulations? Once again, in this legislation, as in all pieces of legislation, everything should be spelt out so that we are absolutely clear and there are no surprises about what might turn up in the regulations.

Mrs L.M. HARVEY: Mr Deputy Speaker, I understand that my policy adviser has been found, and I seek leave to have him brought to the table.

In answer to the member for Churchlands’ question, proposed section 75A(1)(b)(xiv) has been put in to allow us to keep the legislation contemporary. We envisage that when the review of the Liquor Control Act is conducted, secondary supply of alcohol to juveniles may be another criterion that will be included in the definition of an out-of-control gathering. That is one example of a form of conduct that may be prescribed by the regulations. With regard to proposed section 75A(3)(d), “a gathering of a kind prescribed by the regulations”, this has also been put in to allow us to keep the legislation contemporary and to avoid the need to bring back the entire piece of legislation should another form of gathering be prescribed. There are certain kinds of events that might be excluded via regulation depending on what might happen in the future.

Dr E. Constable: What sorts of things?

Mrs L.M. HARVEY: It is for unforeseen events—that is why it has been put in there. I have been advised that it could be a sporting event. We do not actually have in mind any specific kind of gathering that might be prescribed.

Dr E. Constable: A soccer match.

Mrs L.M. HARVEY: I hardly think that a soccer match is what we have in mind. What we have in mind here is events that potentially emerge as fitting the definition of an out-of-control gathering.

To address the member for Bassendean’s concerns, this is not designed around trying to make parties punitive. Thousands of people hold parties in Western Australia that do not become out-of-control gatherings. I think we all concur with that assessment. What this legislation is seeking to do is create an offence for the irresponsible hosting of out-of-control gatherings. We have made it very clear in the second reading speech and in the explanatory memorandum what kinds of activities and what kinds of gatherings we intend this legislation to be used for. I have confidence that a senior officer of the police will use this legislation with that intent, and we will have training for police officers to ensure that they are following the act —

Mr M.P. Whitely: Following the act?

Mrs L.M. HARVEY: That they are able to enforce this legislation with the intent with which we have brought it to this place.

Dr A.D. BUTI: I refer the minister to proposed section 75A(5), which reads —

For the purposes of subsection (1), a person is associated with a gathering if the person —

- (a) is attending the gathering; or
- (b) is in the vicinity of the gathering and has attended or is proposing to attend the gathering

We need a more specific definition of “the vicinity”. Is it 10, 20 or 50 metres? Will it depend on the venue, and if the venue is big, will the vicinity around the venue be larger? What is meant by “proposing to attend the gathering”? Obviously a person thinks they might go to the gathering. But what happens when a person proposes to go to the gathering, but does not go to the gathering? Does a person have to get within a certain vicinity of a party; and, if so, where is that prescribed? How will that be determined? That could be an obvious weakness in a prosecution case, because the defence could easily argue that the vicinity is not prescribed and that the defendant was 100 metres away and surely that was not in the vicinity. It is incredibly poorly drafted. There is no prescribing of a distance. Does “proposing to attend” mean that the person proposed to attend and it does not matter where that person is or does “proposing to attend” only kick in if a person is in the vicinity of a gathering?

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Mrs L.M. HARVEY: It is not an offence to just be in the vicinity of a gathering unless the gathering has been declared an out-of-control gathering and an officer has given an order to disperse, in which case the offence of failing to disperse from the gathering would come into play. The word “vicinity” is defined as a concept in law in various acts, such as the Liquor Control Act, the Gaming and Wagering Commission Act and the Rail Safety Act. Case law suggests that the meaning of “in the vicinity” is somewhat elastic and determined with reference to a statutory intent rather than to a specific measurement of distance. In this legislation, the intent of vicinity is to cover individuals who are sufficiently near a gathering or related to it; for example, in the same street or the surrounds.

Mr A.J. WADDELL: I refer to proposed section 75B(5), which reads —

A court convicting a person of an offence under subsection (2) may order the person to pay some or all of the reasonable expenses of or incidental to any action that was reasonably taken by police officers in responding to the out-of-control gathering

In addition to the potential \$12 000 fine that an organiser of an out-of-control party might face, this is a massive punitive imposition. Does the minister have data that indicates, given Western Australia Police’s experience with dealing with out-of-control events as they have occurred to date, what the quantum of those expenses may be and whether any consideration has been given to reasonable expenses of or incidental to any action? Does the minister expect that the gathering organise to pay for a fraction of the Commissioner of Police’s salary when he goes on media that evening to talk about what happened on that particular day? How far does it go? I am mostly interested to know whether the minister has an indication of what that likely expense might be. Given that there have been previous incidents, there must be some sense from the Western Australia Police as to what they cost.

Mrs L.M. HARVEY: After a charge has been laid and a court has convicted a person, as part of that process the police would use this part of the legislation to make application to the courts to recover costs—it is important to note that it is the courts that will award some or all of the costs put forward in these circumstances. The Piara Waters incident, for example, was attended by 94 officers, four horses, two dogs and a helicopter. The estimated costing for the 94 officers was three hours of inspector time at a total cost of \$177; six hours for the rank of senior sergeant at \$288; 59.5 hours’ worth of senior constable time at \$2 261; 72 hours’ worth of first-class constable time at \$2 520; and 86.5 hours’ worth of constable time at \$2 681.50. There were probationary constables present. They put in 41.5 hours trying to manage that incident. That cost \$1 245. The approximate total for the 94 officers is \$9 571. The above estimated cost includes the cost of four mounted police attending on site at \$692 for 3.5 hours. They were included in the three first-class constables and one senior constable in attendance. It also included the cost of two dog handlers who attended on site. The dog handling component was \$380. The average cost per mounted police officer was \$179 an hour for this event. The estimated cost of the helicopter was \$6 475 for 3.5 hours. The total approximate cost for the police in that instance that they can potentially ask the court for is \$16 000. The court determines whether a portion or all those costs would be awarded in the successful prosecution of a charge.

Mr M.P. WHITELEY: I am trying to reconcile three things the minister said. Earlier I gave an example of 12 people, two of whom go outside and trespass on a neighbour’s property. That neighbour has a low threshold for alarm and becomes alarmed. The minister acknowledged that that would pass the test in terms of 12 people or more, two of them breaching the section that relates to trespassing, and the neighbour being caused to be alarmed. The minister accepted that such a situation will fall under the legislation. The reassurance she gave—I characterised it as the vibe, but the minister took offence to that so I will use her language, not mine—was that the officer would apply commonsense. Effectively, the officer would not apply the legislation; he or she would apply the test of commonsense. Then the minister said in our previous exchange that officers would receive training on how to follow the act. Those two things are inconsistent. Either they apply commonsense by not applying the act, or they apply the act. The minister also said most parties do not end up becoming out-of-control gatherings. That assumes that we have perfect foresight as to what will become an out-of-control gathering. This assumes that we know in advance what is likely to be an out-of-control gathering. The bar is set so low. I can go through it again.

Another issue I need clarified relates to proposed section 75A(1)(b)(vii), which refers to driving a motor vehicle so as to cause excessive noise. Does that mean someone who drives to a gathering in a motor vehicle that has an excessively noisy muffler? There might be a hole in the muffler and it is belching out smoke everywhere. Does that mean an old vehicle or not? I am trying to reconcile the two statements that are completely inconsistent. The first is the statement the minister made recently after question time when she said they would receive training to follow the act. But then I gave the seemingly absurd incident, that is nonetheless covered by the legislation, of 12 people being at a party, with two of them going outside and standing half a metre inside the neighbour’s fence. They are big blokes with tattoos and they scare the elderly neighbour who becomes alarmed and rings the police.

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Technically, they are guilty of trespass. The minister said the police will not apply that because they will use commonsense. Will they apply the provisions of the act or will they apply commonsense?

Secondly, that technical question was about driving a motor vehicle so as to cause excessive noise or smoke in contravention of the Road Traffic Act. How does that relate to the concept of a gathering? Is it two people on the way to a gathering? If they are in an old, smoky, banged-up car with a hole in the muffler and with fumes coming out of the exhaust, or if they are on a Harley-Davidson —

Dr E. Constable: Or do you need two separate cars?

Mr M.P. WHITELY: Yes. Do there need to be two separate cars or is it two or more people in the one car with a hole in —

Dr E. Constable: Exactly.

Mr M.P. WHITELY: Yes. So, there are a few things for the minister to deal with. I do not think she can deal with the inconsistencies because what she has said is obviously inconsistent, but certainly the questions about the smoky and noisy motor vehicle need to be answered.

Mrs L.M. HARVEY: The defence of the offence to be prosecuted is that the host of the party took reasonable steps in the circumstances. That test of reasonableness is an established test in, first of all, levying charges against a host who has held an out-of-control gathering, and also in any other charges that police bring against people for any kind of offence. In addition, there is a public interest test in pushing forward with any prosecution in any event for any legislation. So, those would be the tests. When I said that the commonsense test would prevail, I was talking about a gathering being declared an out-of-control gathering at the point of management for the senior officer and the officers trying to manage a crowd, at which point in time the powers to disperse would kick in. Does the member understand what I am saying because he is looking as though he does not? He is giving me a very blank look.

Mr M.P. Whitely: No, I don't, because I think you are talking about —

Mrs L.M. HARVEY: Okay. What I am —

Mr M.P. Whitely: By interjection—if you want me to answer —

Mrs L.M. HARVEY: Yes.

Mr M.P. Whitely: — I think you are talking about something different. Aren't you talking about the actions of the officers in dispersing the crowd when they get there? But what constitutes an out-of-control gathering is an entirely different question. It is actually defined in that early part of the bill, and it is those circumstances; it is the 12 people, and two go outside and trespass, and a neighbour takes offence. You've already acknowledged that.

Mrs L.M. HARVEY: What constitutes an out-of-control gathering is present here in the definition.

Mr M.P. Whitely: Yes.

Mrs L.M. HARVEY: We need to do two things here. First of all, we have a definition of an out-of-control gathering for the purposes of management at the scene, in which case a senior officer would be able to declare a gathering that fits these criteria to be an out-of-control gathering, at which point the police have the immediate powers to disperse the crowd; they can order a crowd to disperse. Failure to disperse can result in an arrest.

Mr M.P. Whitely: Of the organiser.

Mrs L.M. HARVEY: There is certainly some —

Mr M.P. Whitely: How does the organiser get the crowd to disperse when the organiser —

Mrs L.M. HARVEY: Can I finish my sentence? The member is interjecting on me and then he does not understand what I am trying to say because he is not allowing me to finish my sentence.

Mr M.P. Whitely: Okay; go on. Sorry.

Mrs L.M. HARVEY: We have the situation occurring at the gathering at which police officers are trying to manage that crowd. It can be declared an out-of-control gathering and then the powers to disperse kick in, which is the management tool of police. We envisage that a senior officer, as part of their kit, would have a form with a checklist of these things. Somebody would be calling in or they would be at the scene. They would be able to look around and say, "Yes, I think this fits the criteria." Bang, bang, bang. "There are definitely 12 or more people here. We've got all of this activity. It's definitely causing fear and alarm and is substantially interfering with the activities of other people." That would form part of the evidentiary trail when charges are laid against the host of that event further down the track and the matter is taken to court for prosecution. We have two

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different tools here. We have the declaration of an out-of-control party at the scene to assist police officers with the management of the scene, and we also have charges that will be brought to bear against the hosts, who may have acted irresponsibly in the management of that event that has become out of control. That is not to say that every gathering that gets out of control is necessarily going to have an irresponsible host. Some gatherings are hosted quite responsibly, and gatecrashers come along and wreak havoc. In certain circumstances, if that host has taken reasonable steps to manage their event, to contain the promotion of their event and to manage their guests, this legislation says that they have a defence of taking reasonable steps, which would then make it highly unlikely that they could be charged for hosting an out-of-control gathering.

Mr J.R. QUIGLEY: I refer to clause 4 and just wonder whether, in the test for an out-of-control party, the bar has been set too low having regard to the noise and unreasonable noise aspects. Proposed section 75A(1)(b)(vi) states —

emitting, or causing to be emitted, unreasonable noise (as defined in the *Environmental Protection Act 1986* ...

Then the third trigger—the conjunctive in paragraph (c)—is causing “a substantial interference with the peaceful passage through, or enjoyment of, a place by any person who has lawful access to that place”; that is, a neighbour who has an unlawful interference with his or her quiet enjoyment at night of their place of rest from the noise coming from the party next door. Does the minister see what I mean?

Mrs L.M. Harvey: Yes.

Mr J.R. QUIGLEY: If that noise was unreasonable, concerning the Environmental Protection Act, that could give rise to the triggers if there were more than 12 people. Does the minister agree with that?

Mrs L.M. Harvey: If there are 12 or more people, two or more of them need to be engaged in any one of the range of activities that have been listed in the bill, and their activities need to be causing fear or alarm to any person not at the gathering. It is “the gathering, or the conduct of persons associated with the gathering” together.

Mr J.R. QUIGLEY: No. If we go down past “fear or alarm” in paragraph (c)(i) to paragraph (c)(iii), it states —

... or is likely to cause —

... a substantial interference with the ... enjoyment of, a place ...

Mrs L.M. Harvey: Yes.

Mr J.R. QUIGLEY: That can be the third trigger, can it not?

Mrs L.M. Harvey: Member, one person emitting unreasonable noise would not constitute an out-of-control gathering.

Mr J.R. QUIGLEY: No. Let us just take it through in steps then. We have 12 people —

Mrs L.M. Harvey: If there was a gathering of 12 people and one person was emitting noise?

Mr J.R. QUIGLEY: No. Look at the criteria. We have 12 people —

Mrs L.M. Harvey: Twelve or more people.

Mr J.R. QUIGLEY: Twelve or more people. Let us just say there are 15 people. The noise being emitted from two or more of those people is unreasonable vis-a-vis the Environmental Protection Act; it is too loud at three or four o'clock in the morning. That would be the second trigger, would it not?

Mrs L.M. Harvey: Yes.

Mr J.R. QUIGLEY: If that noise is causing substantial interference with the enjoyment of the next-door neighbour's place, that would be the third trigger, would it not?

Mrs L.M. Harvey: Is that your question?

Mr J.R. QUIGLEY: Yes. That would be the third trigger, and it could therefore be regarded as an out-of-control party.

Mrs L.M. Harvey: Unless it is excluded, it could be.

Mr J.R. QUIGLEY: Unless it is excluded. I wanted to test that and see whether the minister agrees, therefore, with the legal writer for *The West Australian* newspaper, Amanda Banks —

Mrs L.M. Harvey: No, I disagree with her.

Mr J.R. QUIGLEY: The minister disagrees with her?

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Mrs L.M. Harvey: Yes.

Mr J.R. QUIGLEY: Let me first put to the minister what Amanda Banks wrote. She had an article published under her by-line on 3 October 2012. The minister has already disagreed with her, but she does not know what she said, or those aspects of what she said that I am going to refer the minister to.

Mrs L.M. Harvey: I read the article.

Mr J.R. QUIGLEY: On 3 October 2012, under her by-line, Amanda Banks published an article that was critical of the low threshold, and she said that she had a party at her house in June this year, which was attended by more than 12 people. That was our first criteria, was it not, attended by more than 12 people?

Ms L.L. BAKER: May I hear some more from the member for Mindarie?

The DEPUTY SPEAKER: Yes.

Mr J.R. QUIGLEY: It was attended by more than 12 people in their 30s and 40s—I can imagine Robert Taylor with his guitar and Colleen Egan with her raucous laughter at Amanda’s house—and they were playing songs from the 1960s, The Beatles, and the 1980s, Madonna, but at four o’clock in the morning police attended because of the unreasonable noise level, which she admits to. The minister agreed that that was the second trigger, did she not?

Mrs L.M. Harvey: You finish your questions, and I will answer at the end.

Mr J.R. QUIGLEY: I understood the minister to say that she agreed that if there were 12 or more people, and that under clause 4—proposed section 75A(1)(b)(vi)—unreasonable noise comprised the second trigger, and then thirdly, if that noise was interfering with the neighbours’ quiet enjoyment of their place next door, that comprised the third trigger for an unlawful gathering, did it not?

Mrs L.M. HARVEY: The scenario that the member has described, although it may fall under the new legislation, I would say would more likely be dealt with by the police at that scene under the Environmental Protection Act, where they would give a noise abatement order. Now, the police are very good —

Mr J.R. Quigley: That’s your supposition?

Mrs L.M. HARVEY: That is my answer.

Mr J.R. QUIGLEY: That is your supposition—that it is more likely that they might do that under the noise abatement act. But under this legislation, that conduct as described by Miss Banks falls within the definition of an out-of-control gathering in that, firstly, it comprised more than 12 people; secondly, noise was emitted by two or more of them of an unreasonable volume; and, thirdly, it interfered with the peaceful enjoyment of the next-door neighbour’s house. They are the three triggers for a definition of an unlawful gathering as described by Miss Banks in her article, are they not?

Mrs L.M. HARVEY: First of all, my belief is that in the scenario that Amanda Banks described, the police would use the Environmental Protection Act.

Mr J.R. Quigley: That is your supposition.

Mrs L.M. HARVEY: Well, it would just be sensible to do that. But the other thing is that in the circumstances that Amanda —

Mr J.R. Quigley: But that is not a question though —

Mrs L.M. HARVEY: Can I finish? Does the member for Mindarie think he will let me finish a sentence? I would actually appreciate that.

In the Amanda Banks article and the circumstances she described, the organiser of that party had taken reasonable steps to manage the activities of those people. There was a noise issue at that gathering that was dealt with by the police, and in response to the police, reasonable steps were taken to manage the people at that gathering. So it would be highly unlikely that the host of that event would fit the criteria to be charged with holding an out-of-control gathering.

Mr J.R. QUIGLEY: What reasonable steps did the hostess take to control that? I do not follow that.

Mrs L.M. Harvey: She turned the noise down upon request.

Mr J.R. QUIGLEY: That is not the test, though, is it? The test is, firstly, whether there are 12 or more people; secondly, whether there was unreasonable noise; and, thirdly, whether that noise interfered with anybody else. That is the test at law now, is it not? The minister is relying upon police discretion and saying what police commonsense would do; we have read in the paper recently that the police issued a traffic infringement to a man

who answered his phone while driving a horse and buggy at a slow pace in Middle Swan, and the assistant commissioner himself said that that was not commonsense.

Mrs M.H. Roberts: It was West Swan, but there you go!

Mr J.R. QUIGLEY: West Swan; I am sorry, member.

But that was not commonsense. So leaving aside the minister's assumptions for the purposes of this legal examination of her law—it requires legal examination—why is it that the minister says that if there are 12 people at a gathering, two or more of whom emit unreasonable noise that had, because of the interference to the next-door neighbour's enjoyment of their property, resulted in the police being called, that does not fit the definition in the bill; and is the definition not, therefore, too low? Has the minister not set the bar too low?

Mrs L.M. HARVEY: From what the member is saying, the Environmental Protection Act may be set perhaps too low in its discretion to charge, but as to the declaration within the criteria of an out-of-control gathering I will say to the member—I have said it once and I will say it again—in the circumstances that Amanda Banks described, although, technically, potentially it could fit the criteria for an out-of-control gathering, I have to question whether police would actually need the powers of dispersal for a gathering like that. From what I can gather, there was a noise issue, but the remaining people were not causing fear and alarm to other people, and they were not substantially interfering with peaceful passage through or enjoyment of the place by another person. It was a noisy party and they were asked to turn the music down; it was turned down and everybody just got on with what they were doing. We are talking about the kinds of gatherings that we have all seen. I mentioned earlier the costs involved in police attendance at these gatherings, and I think the member needs to take these in context. It is when 12 or more people are assembled at an out-of-control gathering, two or more of those people are engaged in a range of different conduct that we have discussed at length today, and the gathering or the conduct is causing fear or alarm to people—substantial interference. They are quite specific criteria.

Mr W.J. Johnston: Minister, could I ask you while you are on your feet: you have, on a number of occasions in answering these types of questions, referred to the subsequent amendments we are going to be moving to the Criminal Investigation Act. Why would only this provision be able to come into play—a charge under this provision—if the police have declared the party under the other provision? Would all these issues not then disappear?

Mrs L.M. HARVEY: Because the police may not need to be in attendance. They could potentially prosecute someone for hosting an out-of-control gathering in a place where they were unable to attend, based on evidence they collected from people who were at the scene that would help them to determine if that gathering was indeed an out-of-control gathering for the sake of charging a host.

Mr W.J. Johnston: But the problem is, which is the reason everybody is raising it, that you have set the bar so low that the Amanda Banks party, as you say, meets the criteria; they are your own words—her party meets the criteria. And you are saying it should not, because you're saying that commonsense says that it does not meet the criteria, and yet you have already said it does. It does not make any sense.

Mrs L.M. HARVEY: That is the member's opinion. I think the definition is tight enough and specific enough to give enough of an adequate direction to the police and the prosecution as to what constitutes the definition of an out-of-control gathering. I am confident this definition is sufficient to suit the needs and the purposes we have brought it to this place for.

Mr M.P. WHITELY: I asked the minister about driving a motor vehicle so as to cause excessive noise or smoke in contravention of the Road Traffic Act, and the obligation on the host of a party to make sure that their guests or people who attend the party do not do that.

Mrs L.M. Harvey: I did say that the host of the party is not responsible for the actions of other people at the party that might be unlawful. I am saying the host of the party could be held accountable for irresponsible management of their event.

Mr M.P. WHITELY: The whole point is the host of the party is held responsible for the actions of other people. I specifically verified this before lunch and the minister conceded—we can check *Hansard* tomorrow—that the host of the party, for want of a better term, or the organiser, does not even have to know what the two people who are in contravention of the rule are doing. I gave an example, which I know was absurd—but that is how absurd this legislation is—two people trespassing by standing half a metre inside the neighbour's property. The host of the party does not even know. Another example is two people going outside and having sex on the neighbour's front lawn. The host of the party may not know that that is happening, but they are responsible for the indecent acts of two people. Potentially, if we want to get really absurd about this, somebody's partner could

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be outside having sex with their best friend. Not only is there the distress of having to deal with that but also they are the subject of a criminal offence. This is how absurd this legislation is. The government is making people responsible for the actions of other people.

I want to go back to the issue of driving a motor vehicle. How does it relate to organising an out-of-control gathering? Are we talking about gatherings inside the motor vehicle, or are we talking about people driving to and from a gathering—that is, “driving a motor vehicle so as to cause excessive noise or smoke in contravention of the Road Traffic Act”? The minister clearly does not understand her own legislation if she can say the organising party is not responsible for the actions of others. The whole purpose of this legislation is to make the organisers of the party responsible for the actions of others. How does clause 4—proposed section 75A(1)(b)(vii), “driving a motor vehicle so as to cause excessive noise or smoke in contravention of the Road Traffic Act”—relate to an out-of-control gathering? Is it because we are talking about an out-of-control gathering in a minibus that is excessively noisy, is it that it has more than 12 people in it, or are we talking about people driving to or from a gathering in a vehicle that creates excessive noise or smoke? Is it that the driver performs a burn-out driving away from the party? I asked the minister this before but she did not answer it at all. I would like to hear what the minister has to say about proposed subparagraph (vii), which makes somebody else criminally responsible for another person’s offence under the Road Traffic Act. They do not lose their own licence; they potentially lose their own liberty with a year in jail. What are the circumstances in which this will operate?

Mrs L.M. HARVEY: The offence of hosting an out-of-control gathering is for the person who has organised a group of people to come together, which is beyond their reasonable expectation to be able to manage, and has become out of control and is declared an out-of-control gathering. That is the offence for the host. The offence for the host, or the organiser, of the out-of-control gathering is whether they should have gathered a crowd of people together that they have no reasonable way of managing if it subsequently becomes out of control. The offence would be against the host should they do that. The organiser is somebody who is substantially involved in the management, promotion or advertising of the event. As for other people who contravene the Road Traffic Act in the vicinity of the party, if there were two or more people engaged in any of the activities and there was a gathering that pooled together, and the host had been irresponsible in the management of it, the host could be charged with hosting an out-of-control gathering. The people driving the motor vehicle would be responsible for their actions and could be charged under the Road Traffic Act.

Mr M.P. WHITELEY: It is all as clear as mud! I understand that the people who commit the offence under the Road Traffic Act are liable under the Road Traffic Act, and are liable—depending on what they do—to lose a few demerit points or their driver’s licence or whatever, but the point I am making is: how does a transportation issue relate to the organiser of a party? Is the minister saying that the organiser of the gathering needs to take reasonable steps to ensure that people coming to and from a gathering are not driving a motor vehicle so as to cause excessive noise or smoke in contravention of the Road Traffic Act? If the minister is saying that, as the member for Churchlands asked: does it involve two cars, given the test is two people, or is it two people in a car? If it is two people in a car, why is it different from having a sole occupant of a car? Surely the driving of a car —

Mrs L.M. Harvey: There is generally only one driver in a motor vehicle.

Mr M.P. WHITELEY: I agree with that, but the bill says —

- (b) 2 or more persons associated with the gathering engage in conduct of any of the following ...
- (vii) driving a motor vehicle ...

Is the minister telling me that it has to be two vehicles? Are we getting to an answer on that small aspect of it?

Mrs L.M. Harvey: Finish the question and I will answer what you have raised.

Mr M.P. WHITELEY: I think this might be part of the answer, but there is a lot more to it than I have asked. The bill states —

- (b) 2 or more persons associated with the gathering engage in conduct of any of the following ...
- (vii) driving a motor vehicle so as to cause excessive noise or smoke in contravention of the *Road Traffic Act* ...

Two people would have to be driving a motor vehicle, so it would have to be two separate motor vehicles.

Mrs L.M. Harvey: Have you finished the question?

Mr M.P. WHITELEY: I can sit down and the minister can answer that question now, and then I will move on to the other stuff. Is it two vehicles—is that what it means?

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Mrs L.M. Harvey: If there were two or more people driving motor vehicles so as to cause excessive noise or smoke in contravention of section 62A of the Road Traffic Act 1974—yes, that could mean that. In conjunction with other criteria within the definition of an out-of-control gathering, that could indicate that there was an out-of-control gathering.

Mr M.P. WHITELEY: Not “indicated”; it is a sufficient step. It is not an “indicator of”. It is not as though these things accumulate. It is not as though there is a 100-point test and there are two points for rowdy people and 15 for drunks et cetera. These are not sufficient steps in and of themselves. I think I understood from the minister’s reading of it that there needs to be two vehicles involved.

Mrs L.M. Harvey: Two or more.

Mr M.P. WHITELEY: This is the bit that is not clear in my head: is it that the organiser of the gathering is responsible for how people get to the gathering? We are not talking about them driving around at the gathering. We are not talking about them driving around the lounge room at the gathering or the backyard of the gathering; presumably we are talking about them driving to the gathering. Is that the intention of how this clause will operate? Is it to control the mode of transport that people attending the gathering use?

Mrs L.M. Harvey: No.

Mr M.P. WHITELEY: Can the minister answer, by way of interjection, what is it to control? How does the motor vehicle relate to the gathering? Is the gathering in the motor vehicle?

Mrs L.M. Harvey: It is the behaviour of the person driving the motor vehicle in conjunction with the other tests listed under the definition of an “out-of-control gathering” in the company of an event which has been organised irresponsibly by a host and which is causing a substantial interference with the lawful activities of any person, fear or alarm and substantial interference with the peaceful passage through, or enjoyment of, a place by any person.

Mr M.P. WHITELEY: The minister keeps saying contradictory things.

Mrs L.M. Harvey: No; I am quite consistent. The member needs to get these things in context.

Mr M.P. WHITELEY: The minister keeps —

Mrs L.M. Harvey: Go on; you’re on your feet. I will wait for the call.

Mr M.P. WHITELEY: There has to be a reason that proposed subparagraph (vii) was put there. There has to be a scenario in which (vii) would operate. It has to have been put there for a reason. I will reverse the situation: can the minister provide a scenario? I have provided scenarios about people standing in neighbours’ gardens et cetera. Can the minister provide a scenario in which proposed section 75A(1)(b)(vii), “driving a motor vehicle so as to cause excessive noise”—or driving two motor vehicles, as we have established—would be the bit that meets that element of the test? I understand that there must be 12 people at the gathering or it has to have caused alarm or whatever. I ask the minister to give me an example of the circumstances that relate to two people in a motor vehicle because it might give me something to hang my hat on.

Mrs L.M. HARVEY: This provision could potentially be used if there was a gathering of people, and cars were doing burnouts down a suburban street, with two cars racing each other causing excessive noise, fear and alarm. People may be afraid that the cars are going to crash into their houses. If a big crowd of people are gathered around and the rest of the criteria are met, that is one circumstance in which that could work.

Mr M.P. WHITELEY: This goes to the issue of foreseeability. If it could be established that someone organised a party with the intention of having their mates come to the front of their house and do burnouts in the street, I would have absolutely no problem with them being subject to criminal sanctions. The issue here is foreseeability. Except for the Premier, none of us has perfect foresight. How will we know that people are going to do burnouts in the street? It would be different if the act said “had taken action to encourage” in relation to people doing burnouts. If Fred Bloggs let people know that he was holding a burnout party at 3 Smith Street, North Fremantle, that is fair enough. That is encouraging, welcoming and inviting irresponsible action. Someone could invite a couple of people along who are unknown to that person or someone could bring a couple of friends along who end up doing burnouts down the street. I think it happened at a party I hosted. I did not know that these people were going to do burnouts in the street. Was I a criminal? I will give another example in a moment but let us deal with this one first. It relates to the issue of foreseeability. What actions can a reasonable organiser take in this context? As I read the legislation, the tests are that 12 or more people are at the gathering—they have been invited by the organiser—two or more people are doing burnouts in the street and it is causing alarm to a neighbour. They are the tests in the legislation. Where else is there a test?

Mrs L.M. HARVEY: When somebody is organising a gathering, it is very much a test of what they can reasonably expect to manage as far as hosting whatever kind of gathering it is. As an example, people organising

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a gathering may have certain areas in their houses to hold such a gathering or they may have access to properties or whatever it might be. People can take reasonable steps to ensure that the number of people that they have invited to a gathering can be managed so that the gathering does not become an out-of-control gathering.

Mr M.P. Whitely: Where is that in the act? Give me that indication.

Mrs L.M. HARVEY: It is right through the definition of the clause that we are debating. “Reasonable steps” is covered in proposed section 75B(1)(4). We seem to be going around in circles and covering the same ground here. The member has already declared that he thinks this is the worst piece of legislation that has ever been brought to Parliament. It seems to me that the member has three options: he can support it, he can support it with an amendment or he can oppose it. The member is free to do that. That is his right in this place. Arguing the same point and going around in circles does not necessarily further the debate.

Dr J.M. WOOLLARD: I need to gather some information on this issue because I have only just become aware that there is likely to be a division on this bill. I have some questions for the minister. To start with, I refer to the term “out-of-control gathering”, which is a gathering of 12 or more persons in a place or vehicle. My first question is: could that place be a beach?

Mrs L.M. Harvey: Yes.

Dr J.M. WOOLLARD: Proposed section 75A(1)(a) states —

the gathering is a gathering of 12 or more persons;

Like most large families, when we go to the beach, 14, 15 or possibly larger numbers attend. Twelve is not a large number for a gathering. Proposed section 75A(1)(b)(v) states —

doing an obscene act or indecent act in a public place ...

I am certainly not talking about my family here. We could look at the scenario of the beach. There may be a sign on the beach that says “No nude sunbathing”. I have looked in the act and I cannot find a definition for “indecent”. Therefore, if a sign on the beach includes the word “indecent”, would that apply to nude sunbathing? That is my second question.

Mrs L.M. HARVEY: “Indecent”, by definition, is likely to offend a reasonable person. “Obscene” is more filthy, lewd or disgusting.

Dr J.M. WOOLLARD: If the sign on the beach said “No nude sunbathing” and someone was sunbathing on the beach, would that not be considered indecent?

Mrs L.M. HARVEY: If there was a gathering of people on a beach and some of them were nude sunbathing in contravention of the local laws, I would suggest that they would be prosecuted under the local laws for contravening a by-law on nude sunbathing. That would be the logical conclusion in that scenario.

Dr J.M. WOOLLARD: I thank the minister. I am now putting the two together. Under proposed section 75A, the place would be a beach, the gathering would be 12 people and the indecent act might be nude sunbathing. Proposed section 75A(1)(c)(iii) states —

a substantial interference with the peaceful passage through, or enjoyment of, a place by any person who has lawful access to that place;

Although the minister has just said that she believes that someone would be prosecuted for nude sunbathing under the local by-laws, I believe this legislation leaves the door open for someone to possibly be prosecuted in that area because another person could say that it is interfering with their enjoyment of a place. Those three aspects would fall under the description in this legislation for an out-of-control gathering. I know it is very mild but I am concerned about what other scenarios might be picked up by this legislation. I would not like to see young people in particular receive a criminal record because this legislation is so broad.

Mrs L.M. HARVEY: An indecent act is an act that is offensive to common propriety. There is an authority that “indecent” requires an element of moral turpitude and is something more than a lapse in taste or good manners. The accused must have acted in a base or shameful manner. The key is whether the act is indecent as judged by prevailing community standards. I put it to the member that if there was a gathering of people on a beach and two of them were nude sunbathing, it would probably not fit that test of an indecent act and would be highly unlikely to be declared an out-of-control gathering for the purposes of this act.

Dr J.M. WOOLLARD: Again, if we go back to the beach, a gathering of 12 or more young people is not unusual. It is not unusual for a group of people to go surfing or wakeboarding or to participate in other sports during the day and then stay on into the evening and maybe have a few drinks. They may well know that 16 or more people are going. If the weather is great, certain people who wakeboard or who surf would all go to that

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one spot, so there could easily be 16 or 20 people. They certainly would not have organised security, because they would have been going with the intent of having a pleasurable day on the beach, but then later in the evening there may be one or two of the people still there. Someone may have sent a message saying, “We’re going to the beach.” Later on in the evening, one or two people from the crowd may get into some trouble or argument with another group also on the beach. Neither group would have organised security, trouble arises and, again, my reading of this legislation would be that the person who first organised that gathering would be the person who would be responsible and could end up with a criminal record under this legislation.

Mrs L.M. HARVEY: I am glad the member for Alfred Cove mentioned the beach, because obviously as with some of the things that have happened at my local beach in Scarborough, there is the potential for gatherings on the beach, convened sometimes in an impromptu fashion, ending up escalating into what could well be declared an out-of-control gathering for the purposes of this bill, at which point in time the police would then be able to use the powers to disperse and break up those gatherings, and to get people to immediately disperse from the scene should that be required. As for whether the offence of hosting the out-of-control gathering could be brought to bear against a person in the circumstances, I think it would need to go through a further test.

As far as whether we expect a large group of people going to the beach to enjoy a day of quiet enjoyment to need security or whether they should get security to ensure their grouping does not become out of control, if a person is organising an event and it is reasonable to expect that security might be needed to manage the crowd of people brought to that event as a gathering, it would be a reasonable step that would be taken, which would then be used as a defence against the charge of hosting an out-of-control gathering. However, if we are talking about a gathering of the beach that then morphs into a drinking affair into the evening and turns into an out-of-control gathering, as per the definition in this legislation, yes, the police could definitely use the powers under this legislation to more rapidly disperse those crowds, and failing to disperse from that gathering would be an offence.

Dr J.M. Woollard: What test is there when the minister says it may be open to another test to see whether the person who maybe initially sent around a text message saying, “Good weather Saturday. Let’s all meet up at two o’clock at Cottesloe” is responsible? Because if the trouble then starts at maybe nine o’clock that evening, what test would that person be able to draw on in their defence?

Mrs L.M. HARVEY: It would be under proposed section 75B(3), which states —

It is a defence to a charge under subsection (2) to prove the accused person took such steps (if any) as were reasonable in the circumstances ...

Reasonable steps in the circumstances might mean that if a person was part of a group on the beach, for instance, and other people were joining the group and that person felt it was starting to get out of control, a reasonable step would be for the person to try to break up or disperse that group themselves before it got to the point at which it was out of control. However, in order to be charged with the offence, a person would have to be substantially involved in the organisation, promotion and advertising of the gathering. I would say that in the circumstances of the beach, if somebody was at the beach and they sent a message out to 1 000 people saying that they are having a party at the beach, that person could potentially be charged with hosting an out-of-control gathering if that gathering at the beach turned into the kind of melee that fits the criteria of this definition and becomes out of control. When that gathering is happening at the beach and police officers declare it as out of control, they would be able to use the powers to disperse and break up the crowd.

Dr J.M. WOOLLARD: What if someone at two o’clock in the afternoon sees that the weather is good and goes to the beach and sends a text message to their friends saying to all meet at Cottesloe, and at six o’clock that evening that person who sent the text message decides to go home, but it was that person who organised the gathering? I am not talking about 1 000 people or 500 people, I am talking about 14 people, but those 14 people, who may have had a few drinks maybe meet another group of 14 people and there are some arguments over minor things that escalate. I think that at the moment this legislation would leave the person who organised the event open. I am very pleased that the minister’s adviser is advising the minister to the contrary and I would be pleased to hear further from the minister.

Mrs L.M. HARVEY: Really, the test of reasonableness is the commonsense test. Organising a group of people to go down to the beach is not an offence and would not be an offence, unless the organisation of that event was for the purposes of gathering people together and it became an out-of-control gathering under this definition. If a person had just sent a message telling people that they would be at the beach, and then a whole bunch of people came to the beach, and the person who sent the message was there for two hours and then left, I would say it would be very difficult to say that that person had been substantially involved in organising, advertising or promoting the gathering. It is a commonsense test and under proposed 75B(3) that person would have absolutely

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a defence if the purpose of the gathering was to just visit the beach, not another purpose. This legislation is designed around people who are trying to coordinate big groups of people for gatherings that become out of control. I doubt that somebody in the circumstances we have just described could actually be prosecuted as hosting an out-of-control gathering under this legislation.

Mr J.J.M. BOWLER: In relation to this point and others raised earlier, I earlier expressed my concern about the general thrust of this legislation and indicated my intention to vote against it and thus call a division. Sadly, I have a flight to catch, so I will not be in this place for the end of this debate. Hopefully one of the other Independents, such as the members for Alfred Cove, Churchlands or Fremantle may just do that, because I think that will demonstrate that rather than seeing this legislation go through without a vote, which would indicate the universal and total support for it, there are widespread concerns on both sides of the house and I hope that somehow or other that is reflected in the vote taken later today.

Mr M.P. WHITELEY: I follow up on the minister's earlier point when she said that the defences for those seen as responsible for organising out-of-control gatherings were outlined in proposed section 75B. I just want to go through that because the nearest thing to a defence is proposed section 75B(3), which states —

It is a defence to a charge under subsection (2) to prove the accused person took such steps (if any) as were reasonable in the circumstances to ensure that the gathering did not become an out-of-control gathering.

The minister's statement to me earlier seemed to be inconsistent with that; it is not a passive statement. It says that it is a defence when a person takes such steps to ensure that the gathering does not become an out-of-control gathering. The defence for an out-of-control gathering seems to be putting the onus upon the organiser to take such steps. I go back to the issue of the people doing burnouts in a street, which is a practical example. I agree that doing burnouts in the street is horrific and we want to put a stop to it. If someone organises a party and markets it as a burnout party, throw the book at them. How can an organiser take steps to ensure that people do not do burnouts? How can an organiser prevent someone from committing indecent acts on a neighbour's lawn or littering? The bill implies an obligation on the organiser to be active. I could support the legislation if the government could demonstrate that an organiser would be prosecuted only if they encouraged that type of behaviour but, as I read this legislation, people have to take active steps to discourage that type of behaviour. What are the necessary reasonable steps to prevent people from doing burnouts, trespassing on a neighbour's property, acting in a disorderly manner, unlawfully destroying or damaging property or assaulting or threatening to assault another person? What is reasonable for a person to do? I will use an example of contravening the Liquor Control Act or the Misuse of Drugs Act. What reasonable steps can an organiser take to ensure that people do not roll up to a party with a couple of dexamphetamine tablets or joints tucked away in their pocket that they intend to use? Under the bill, the defence has to be that the organiser took reasonable steps, or am I missing something? It seems to me that there is an obligation on the organiser to take reasonable steps because the defence is that they took reasonable steps to ensure that it did not become an out-of-control gathering. I think the point is fairly clear. What is the active obligation? As I said, I would have no problem if the test was that a person would be prosecuted if that person encouraged or facilitated out-of-control behaviour, but when the obligation is on a person to ensure that a gathering does not become out of control, what are the reasonable steps to be taken to prevent someone from driving a motor vehicle dangerously or taking drugs, for example?

Mrs L.M. HARVEY: I thank the member for the question. I notice that when reading proposed section 75B(3), the member missed two very important words. Proposed subsection (3) states —

It is a defence to a charge under subsection (2) to prove the accused person took such steps (if any) as were reasonable in the circumstances to ensure that the gathering did not become an out-of-control gathering.

It is a matter of taking reasonable steps to stop the gathering from becoming out of control. Page 5 of the explanatory memorandum refers to this proposed subsection and specifies that in some circumstances the character of a gathering would have so little risk that it may not be necessary to have taken any steps.

Dr J.M. WOOLLARD: I will take the minister back to the beach and proposed section 75A. We all agree that it is very easy to get together 12 or more people. Proposed section 75A(1)(b)(xi) refers to "depositing litter or breaking glass or other material". Again, it is very easy for that to happen at the beach. The requirements to be met under proposed section 75A(1)(c)(iii) are that a gathering is out of control if the gathering causes or is likely to cause a substantial interference with the peaceful passage through, or enjoyment of, a place. That might occur if someone stands on that broken glass. A crowd of people might turn up to play a game and someone calls the police because of the noise. I am concerned that because the number of people required for an out-of-control gathering is as low as 12, many people could be prosecuted under this legislation. If the number was

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significantly higher than 12 and was perhaps 25 or 30 people, that would be fair enough. It would then be warranted to organise security if someone was considering holding a party or even a large meeting. The numbers required to constitute a gathering is very small. According to what is required in proposed section 75A, it would be very easy to prosecute someone for being involved in an out-of-control gathering. When the police turn up, some people may not immediately move on. They are likely to say that they are not doing any harm. Under this legislation, they could end up with a criminal record. Will the minister consider amending the legislation at proposed section 75A(1)(a) to increase the number of people that is considered to be a gathering from 12 to 25?

Mrs L.M. HARVEY: I would not consider making an amendment to proposed section 75A(1)(a) to increase the number from 12 to 25. We have arrived at the figure 12 because that is an easier number to gauge the size of a group. Generally speaking, it is not difficult to count 12 or more people, but when it is 25 or more people who are moving around, it becomes more difficult. The incident at the Balga Soccer Club a couple of weekends ago involved a group of people who went to the soccer club without being engaged in the club's activities. That was a group of 12 or 15 people. Technically speaking, if this legislation were in place, it could have been used to declare that group an out-of-control gathering and upon failing to disperse, they could have been charged with failure to disperse and been arrested immediately. I would not entertain increasing the number from 12 to 25. Twelve is a standard number in legislation such as the Criminal Code and other legislation covering assemblies and gatherings.

Dr J.M. WOOLLARD: In that case, I seek the minister's guidance. I am just trying to think of the legislation that we introduced into the house last year under which a person who committed a first offence did not receive a criminal record but—the member for Armadale could probably help me —

Mrs L.M. Harvey: That was cannabis, wasn't it?

Dr J.M. WOOLLARD: So, it was a caution for cannabis use. This legislation goes straight to a criminal offence for a group of people. I do not necessarily believe a division will be taken on this clause today, unless we sit very late tonight, and this will still be on the table next week. I wonder whether the minister would consider, for a first offence, issuing a caution when the circumstances warrant. As I said before, I am very concerned at the number of young people who would have criminal convictions as a result of this legislation.

Mrs L.M. HARVEY: I understand the member's sentiments about juvenile offenders and I share her concerns in certain respects. The Young Offenders Act still applies, and police are obliged to use a caution or take no action in the first instance; that is, to use a caution in preference to a charge. In addition, when there is sufficient evidence to prefer a charge, the police officer is to consider referring the matter to the juvenile justice team instead of laying the charge. That will enable the juvenile and the JJT to come to an agreement or some kind of management order for their behaviour. I am confident that the Young Offenders Act would provide some protections for young offenders in this area, and that police would be guided in the way they would charge young offenders under that act.

Dr J.M. Woollard: That act covers minors up to the age of 18 and does not make any allowances. There are many of us who think that the drinking age should be increased, and if that occurred, we may not have the problems that we have now. If legislation was brought into the chamber to stop the secondary supply of alcohol to children, we may not have the problems we have now. If parental consent was required before alcohol was provided to children, we may not have the problems we have now. The Young Offenders Act covers young people up to the age of 18. There is still likely to be a large number of young people—they are still young people at 18, 19, 20 and 21—who can be caught by this legislation and end up with a criminal record. I wonder whether the minister might consider giving people a caution, as happens under the cannabis legislation, for their first offence, in certain circumstances. It might be that the out-of-control behaviour is mild, but certainly there should be something in this bill so that a young person does not immediately get a criminal record as a result of this legislation.

Mrs L.M. HARVEY: First of all, prosecution has to be in the public interest. There is a public interest test in preferring any charge and taking anybody to court. I would also like to say that there are thousands of parties held in Western Australia at which young people act responsibly and manage their gatherings so they do not get out of control. We should give credit to young people who have the ability and capacity to manage these events responsibly—should they choose. This legislation is designed to prosecute the people who choose to be irresponsible and organise events that, potentially, give them their 15 seconds of fame and we end up with the type of behaviour that is prescribed in the definition of an out-of-control gathering.

Mr M.P. WHITELY: I am attracted to the arguments put by the member for Alfred Cove in the sense that this legislation will give people a criminal record for the actions of others over whom they have no control. The minister has already conceded today that they could have no direct control and no direct knowledge on occasions, and I do not think we should be criminalising that behaviour at all. In fact, I do not think we should

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criminalise anybody, because that sort of thing could happen to anybody. Unlike others in this place, I do not have the imperative of the coming election; I am not viewing this through election goggles. I am viewing this through the goggles of a citizen of Western Australia and a responsible legislator. I am also viewing it through the goggles of the parent of an 18-year-old son. I have two good kids—one is 21 and one is 18. I am incredibly proud of my boys. I want to know, on behalf of my boys, what their obligations are. They often have gatherings. My youngest son and his 21-year-old brother, who is away at the moment, often have gatherings.

Mrs L.M. Harvey: Have any of them become out of control?

Mr M.P. WHITELY: No, they have not.

Mrs L.M. Harvey: There you go!

Mr M.P. WHITELY: But that is luck.

Mrs L.M. Harvey: Maybe it is good management and perhaps you should credit the intelligence of your sons.

Mr M.P. WHITELY: No, it is luck, because one day two people may come to one of their gatherings, and sometimes their friends bring friends who were not invited. They are not usually big events, and sometimes there are even fewer than 12 people, but frequently there are 20 or 30 people. There are probably not as many girls as my sons would like at the parties, but nonetheless! They have these parties in the basement of our home, sometimes when my wife and I go down south; we have a beach house down at Myalup, so we do not know it is happening. We have not had any incident so far or complaints from my neighbours, because I have good neighbours. I used to have terrible neighbours in East Fremantle. The guy who lived next door to me in East Fremantle would complain at the drop of a hat; he was a very unreasonable neighbour. I could tell the minister stories about how unreasonable he was! Let us suppose that my 18-year-old son invites some friends around and says that they can bring a couple of mates, as happens now. They drink and so on, and basically contain it within the house. However, on this occasion, two people come and they commit a criminal offence when they are leaving the party—unbeknown to my son. My son has no way of knowing who is likely to commit these offences. It is not foreseeable. I demand good behaviour from my boys, and I expect it; but I do not expect them to know with perfect foresight what all their friends and their friends' associates might do. I am confident that when my boys are in a group situation and things turn bad, they will behave well, because I know they are good kids, but I cannot guarantee, if they organise a gathering, that other people will not do things that breach the provisions of this legislation. I cannot be confident that two guys will not roll up one night and be complete idiots and go out the front and have a fight in front of the neighbour's place. I cannot guarantee that my son will not organise a function like that, and neither can my son. This comes back to the key issue of foreseeability. It is a key issue in law. I only studied the legal framework of business when I did my commerce degree, but foreseeability is a key issue in law. We are throwing away foreseeability and hundreds of years of common law and legal development because we are saying that people have to go beyond that; they have to have perfect foresight. I asked this same question on proposed section 75B(3): what steps do they have to take? The explanatory memorandum to the bill reads —

In some circumstances, the character of a gathering would have so little risk that it may not be necessary to have taken any steps.

I am not sure that is the case in my sons' circumstances. They invite some friends around, those friends bring some friends, and they have a few drinks. Thankfully, nothing has gone wrong so far. But this weekend, two idiots might come to the house and have a fight out the front, and my son is turned into a criminal, with a criminal record and all the consequences of that. I do not have my election goggles on. I do not have to be concerned about the result of the next election. But I am a legislator for another three weeks, and I am going to do the best I can to deliver decent legislation.

Clause put and passed.

Clause 5 put and passed.

Clause 6: Section 32A inserted —

Mr M.P. WHITELY: Proposed section 32A provides the following definition of “person in authority” —

person in authority means —

- (a) in relation to a place — an owner or occupier of, or person who has the control and management of, the place; or
- (b) in relation to a vehicle an owner of, or person in charge of, the vehicle.

I have some questions about paragraph (a). I want to expand on the situation I have just described, whereby Parliament is seeking to potentially criminalise my son if he has a few of his mates around and a couple of idiots

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come over and do something that is wrong. In relation to an out-of-control gathering, if my wife and I, as the owner and occupiers of the house, are not home at the time, but we have given permission to our son to have his mates come over, will we also be subject to criminal sanction? Even if we are home at the time, if my wife and I have authorised our son to use our home, which my wife and I own together, what will be the consequences for us? Would we potentially be subject to sanction if our son had 20 of his mates around, and they invited a couple of people he does not know, and for whatever reason a couple of them spilled out onto the street and had a fight? What obligations are placed on my wife and me as the owners or occupiers of the place? Would we be subject to criminal penalty?

I also have a question about the meaning of paragraph (b). I am struggling to understand the notion of “a vehicle”. Is this in relation to a gathering that occurs in a vehicle, or is this in relation to people who drive to a gathering, as we discussed previously?

Mrs L.M. HARVEY: Proposed section 32A(a) states —

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

So in the circumstance that the member has described, in which he has conferred authority for the management of his home to his son, his son would be deemed to be the person who has the control and management of the place for the purposes of this proposed section.

Mr M.P. Whitely: So it is one or the other?

Mrs L.M. HARVEY: Yes; it is one or the other.

In relation to a vehicle, a vehicle is anything that can convey a person. So, it could be a party bus, or a boat, or it could be stretch limousine that can hold 12 or more people, should such a vehicle exist—I have not been in one, so I am not sure how many people they hold.

Mr M.P. WHITELY: I understand the minister to say that it is one or the other—it is the owner or occupier, or a person who has the control and management of the place.

Mrs L.M. Harvey: It could be a renter.

Mr M.P. WHITELY: If my wife and I are the owners of the home, and we are upstairs, and our son and his mates are downstairs—I do not even know who is down there half the time—and a couple of his friends go outside and litter, or engage in a fight, or drive noisy vehicles, or obstruct traffic or the movement of pedestrians, or spill out into the street and are intoxicated, and it becomes an out-of-control party as defined previously, and we have given authority to our son to use our home, and in fact his friends are our guests, would my wife and I be criminally liable? Would we be subject to criminal penalty? We have given our son authority—they are our guests. We know most of our son’s mates—even people we do not know are welcome downstairs. If our son had this gathering and something happened outside, would we be criminally liable? Would my wife and I get a criminal record as a result of this and be in a situation in which we might get 12 months’ jail? We are the owners of the home, and we might even have let them in the front door, and we are upstairs, and they are all downstairs. If we would be liable, what steps would we need to take? What actions would be reasonable for us to take? What obligations would fall upon me? What obligations would fall upon my wife? My wife and I own the house jointly. Which one of us would be responsible? Would it be both of us? Would we have joint and several legal liability in this regard? Would the liability be on our son, because he is the one who lives in the house that they are all coming to visit, or would the liability be on us, because we have allowed them to come in? Who is the “person in authority”; and, if it is the owner of the house, is it my wife and me as joint owners?

Mrs L.M. HARVEY: This proposed subsection relates to police powers. “Person in authority” is defined for the purpose of the person whom the police officer would contact to assist him or her in shutting down the out-of-control gathering or dispersing the out-of-control gathering. In clause 4, we dealt with the charges. We are dealing now with the police powers at an out-of-control gathering and the ability of the police to locate the “person in authority” as defined in proposed section 32A(a) and (b).

Clause put and passed.

Clauses 7 to 9 put and passed.

Title put and passed.

Leave granted to proceed forthwith to third reading.

Third Reading

MRS L.M. HARVEY (Scarborough — Minister for Police) [4.40 pm]: I move —

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That the bill be now read a third time.

MR M.P. WHITELEY (Bassendean) [4.40 pm]: The immediate thought that comes to my mind is that the best legislation we could be passing is that the Parliament be barred from passing any law and order legislation within a year of a scheduled election. This Criminal Law Amendment (Out-of-Control Gatherings) Bill 2012 is a result of the typical law and order bidding war that happens in the lead-up to an election. It is bad legislation, and this house of this Parliament has failed in its duty to properly scrutinise legislation. It is appalling legislation. This is the worst legislation that I have encountered in my time as a member of Parliament. I apologise to my Labor colleagues in the sense that I did not pay any attention to this legislation until I saw it in the chamber. I should have raised these concerns in caucus and I apologise for not doing that, because it would have been a chance to thrash out, within a caucus process, some of the concerns I had. So, I am speaking as the member for Bassendean and in my role as a legislator. I wish I had in fact had the opportunity to scrutinise this legislation, or made the effort to scrutinise this legislation in greater detail.

My expectation of this legislation was that it would be designed and specifically targeted to deal with parties that were spilling out into the streets where crowds were assembling and people were acting in an unlawful, ugly-mob way; rocks were being thrown at police; people were fighting; and people were committing criminal damage. My expectation was that this legislation may have given the police some extra powers to temporarily detain people under those circumstances, or to assume a higher level of responsibility for people to disperse in those circumstances—in other words, it may have given the police a legal mechanism for ensuring greater crowd control. So, if the police gave orders for people to disperse, we may have in fact been raising the bar in terms of the obligation on people to disperse. I thought it would have done something to prevent the sorts of circumstances that we have seen on the television in which there were those out-of-control parties, where people were fighting in the streets, committing criminal damage, assaulting the cops and showing complete and utter disrespect—that is what I was expecting—and I thought that it may have in fact raised the bar for organisers of parties in the respect that they took steps to encourage that sort of behaviour. Someone may have said, “I’m Fred Smith. Come to my place for a burnout party”; or, “Come to Fred Smith’s place for a pharma party”, at which people swap prescription drugs; or, “Come to Fred Smith’s place for fight club; we’ll have some fights in the streets.” I thought we might have done something to tighten the laws for people who are promoting a party with the intention of it getting out of control. I would have thought that that would have been appropriate legislation. That is what I was expecting to be in this legislation; that is what I assumed would be in this legislation.

What I see is an amendment to the Criminal Code that sees an out-of-control gathering defined as being 12 or more persons, two of whom engage in a range of illegal activities, or unlawful activities, some of which are subject to criminal sanction and some of which are subject to lesser sanctions. I will go through those 13 actions again. They are trespassing on a place—so, trespassing; behaving in a disorderly manner; unlawfully destroying or damaging property or threatening to do so; assaulting or threatening to assault another person or taking part in a fight; doing an obscene act or an indecent act in a public place or in the sight of any person who is in a public place; emitting, or causing to be emitted, unreasonable noise, which I do not think is subject to criminal sanction—correct me if I am wrong, please, by interjection, minister, but I do not think that is subject to criminal sanction. There are levels of trespass also; I am not sure that all trespass is subject to criminal sanction. To continue, there is driving a motor vehicle so as to cause excessive noise—I think if a person has a motor vehicle that causes excessive noise, it is not necessarily subject to criminal action; unlawfully lighting fires or unlawfully using fireworks—there may be criminal penalties for those sorts of activities; throwing any object or releasing any material or thing in a manner that is likely to endanger the life, health or safety of any person—under certain circumstances that could be a criminal activity, but sometimes it is something less than that; causing an obstruction to traffic or to the movement of pedestrians—that is not always a criminal offence; depositing litter—that is certainly not a criminal offence but it is an offence that is punishable with a relatively minor fine—or breaking glass or other material; contravening the Liquor Control Act or the Misuse of Drugs Act—that is a criminal offence; and being intoxicated by liquor or an intoxicant in a public place—that can be a criminal offence. They are the 13 potential actions, some of which are subject to criminal penalty and some of which are not. Regardless of whether the acts are so severe as to be subject to criminal penalty, the organisers—the hosts—of the gathering are potentially subject to criminal penalty.

We have this absurd situation in which the perpetrators of the offence—the people who take the action—could be subject to much less significant consequences than a person who may not even know about the action, as was revealed by the answers of the minister in consideration in detail. I did go through that incidence of somebody trespassing—it seems absurdly low—on a place, which is a relatively minor infringement, or dropping some litter such as a cigarette butt, which is certainly not a criminal offence, being subject to a relatively minor maximum penalty, but the person who has no knowledge of that but who organised the gathering is potentially subject to a 12-month prison sentence.

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The reassurances that were given by the minister in the second reading debate were effectively that the vibe is going to cover this. She said that the police will apply commonsense. What she effectively said—I am paraphrasing it, and we can check the *Hansard* tomorrow—was that the police will not apply the letter of the law; they will apply commonsense. I am confident that most of the time they will, but the danger is that they are operating in defiance of the wishes of this Parliament if they do. If they do not apply the letter of the law, they are operating in defiance of the wishes of this Parliament, so if they do not prosecute people under the ridiculous circumstances that I have mentioned, despite the fact that this Parliament has effectively told them to, they are applying commonsense against the law. It is our job to make the law; it is the job of the police to enforce the law. Therefore, it is our job to make responsible and mature laws, and this house is about to fail collectively in that responsibility.

The issues that were raised in the consideration in detail stage included the absurd prospect that actions not taken by the organiser of the party, but taken by guests at the party or people who are attending the party or attending the gathering, will be viewed through the eyes of the affected person. The test is not the action itself; the test is how were they viewed. Proposed section 75A(1)(c) refers to the conduct of persons associated with the gathering causes, or is likely to cause, certain reactions, so “causes” can be the trigger; in other words, if it causes —

- (i) fear or alarm to any person who is not associated with the gathering ...

Therefore, if somebody with a particularly low threshold and tolerance is caused to become fearful or alarmed, the legislation kicks in. There is no discretion.

If we are going to put this sort of obligation on people, it should be the clearly defined behaviour of the organiser. But what we are actually doing is making it three steps away. The organiser, who may not know what is going on, is responsible for the actions of other people, over whom they have no direct control, and they may not necessarily have any knowledge of. But they are not even judged on that; they are judged on whether the third party—the supposedly affected party—is caused fear. Criminal sanctions should be for things we do. I should get a criminal record if I do something criminal; my children should get a criminal record if they do something criminal. My son should not be made a criminal because somebody who comes to his party goes out to the front of our house and acts like a bit of an idiot and the neighbour takes offence at it. Whether my son has a criminal record should not depend on whether the neighbour takes offence at it, and it should not depend upon the actions of other people.

As I said in my second reading contribution, what is it about us that when we get to a certain age we look back and are so fearful of young people? We demand of them a level of behaviour that we would never have tolerated of anybody who expected it of ourselves. The Premier has run a great campaign about enlivening the centre of Perth—about dropping the “Dullsville” tag. What could deliver the Dullsville tag more substantially than anti-party legislation? This legislation makes somebody who organises a social gathering responsible for the perceptions of other people who happen to incidentally come past the social gathering about the behaviour of people who are not even at the social gathering. Talk about putting fear into people! The responsible thing to do with this legislation is not to have a gathering or a party.

I remember the stop-and-search legislation, and I have to say that this is worse. At least with the stop-and-search legislation the government was actually trying to achieve a laudable aim; it was trying to get weapons off people. There was a trade-off between civil liberties and safety—I acknowledge that. I was a passionate opposer of the stop-and-search legislation, but I could see the potential benefit. Here, there is no potential benefit. I will go through the actions listed in the bill that are indisputably criminal: behaving in a disorderly manner, which is unlikely to attract a prison sentence; destroying property; assaulting or threatening to assault or taking part in a fight; doing an obscene act in public; unlawfully lighting fires; unlawfully using fireworks; throwing an object that is likely to endanger life; and contravening the Liquor Control Act or the Misuse of Drugs Act. They are all subject to criminal sanctions. So if we want to make actions criminal, the ones we are trying to stamp out are already criminal. Let us put some effort into applying the law that is already there.

As I said, there are three ways we can respond to this. The first is a long-term structural thing; it is actually trying to build a better society, which is what we should be talking about far more in this Parliament. But let us put that aside. The second thing we can do is get more police, and the third thing that can be done is to pretend to do something, which is exactly what this legislation does. This legislation imposes criminal sanctions on people who may not even know about criminal actions being taken by other people or, worse still, criminal sanctions on people who may not even know about minor misdemeanours done by somebody else. The whole system of law and responsibility comes back to the idea of foreseeability. There are so many problems with the issue of foreseeability in this bill. To the extent that the responsibilities placed on individuals are clear, they are completely disturbing.

I will be characterised for this as somebody who is soft on out-of-control parties. That is complete rubbish. If the government had brought legislation into this house that gave police extra powers to deal with an out-of-control crowd, I could have understood that. If the government had brought into this place powers that criminalised organising parties or gatherings with the intention of inviting and engaging in criminal or antisocial behaviour—in other words, “Come to my party; we’re going to do burnouts in the street”, that type of activity, or “Come to my party; bring whatever drugs you can lay your hands on”—that might be different. But we have this absurd situation of the bar being set so high that it is impossible to get over. It will be luck who gets charged; actually, in reality, probably the police will do the right thing. The minister is right in a sense; they probably will apply commonsense. They probably will completely and utterly ignore this legislation and apply commonsense, in which case no real harm will be done. It is all part of the BS law and order debate that happens in the lead-up to elections.

But there is a real danger if this measure stays on the statute book and we get a Commissioner of Police or police who want to abuse such powers. I am a supporter of the police because the vast majority do a great job under difficult circumstances, but they do not all do a great job all the time. As in any organisation, there are people who abuse powers. We are giving extraordinary powers to the police. We did not even get to some parts of clause 4 that refer to powers to be conferred upon police because it was not deemed to be an efficient use of this Parliament’s time to actually debate those things. We are giving extraordinary powers to the police, which, at some stage, they may abuse. Just because our civil liberties are broadly respected through culture and custom, it does not mean we should just abandon all legislative protections. Just because we know that the police are, on balance, pretty good people and they do not do over-the-top, ridiculous things, it does not mean we can legislate to allow them to do whatever they want whenever they want, which is effectively what we are doing here.

This legislation will pass. Had I got my hands on this legislation before the debate started, had I paid attention—because I made assumptions, as I explained, about what the legislation would be—I would have gone to my party room to put my case. I would have told it that I would oppose this legislation and call a division. I am not going to do that because it is not fair on my party—I did not go to the party room and use that forum. If a division is called, I will not support this legislation. I will abstain from the vote. Technically, I am failing in my obligation to the party; I apologise for that. If I had realised how bad this legislation was, I would have used —

Mr A.P. Jacob interjected.

Mr M.P. WHITELY: I am. The member does not understand. What I am saying is that if a division is called, I will absent myself from the vote, which I am not allowed to do. It is not fair on my party to call the division. I do not know if the member understands that.

Mr A.P. Jacob: I can understand perfectly.

Mr M.P. WHITELY: I oppose this legislation. I am disappointed there are no Independents in the chamber at the moment, so I think it will probably pass on voices without opposition. I want to put on the record that I am disappointed in myself for not identifying this legislation before we came into the chamber. I picked it up when the debate started. I looked at it and could not believe how bad it was. This is the worst legislation.

A member interjected.

Mr M.P. WHITELY: It is not grandstanding; it is doing my job. If we were collectively doing our job, this sort of nonsense would not be passing through the house.

No harm will probably come of it, but it will rely on the commonsense of the police force because we are giving it extraordinary powers. Certainly no good will come from it because it does not effectively address the problem. The answer is not more legislation. The answer is not a new bill or a new law. The answer is ideally trying to take steps to stop these sorts of behaviours and address the fundamental problems that have led to these sorts of behaviours, and backing it up —

Mr P. Abetz interjected.

Mr M.P. WHITELY: Yes, it is. It is all of those things—things we should be spending our time discussing; backed up by an adequate police response.

Correct me if I am wrong, minister; please feel free to interject: I understand that some of those out-of-control parties that have ended up on the telly have not resulted in criminal charges against the people who were fighting and rioting in the street. There have been instances of that. That, to me, is evidence this bill will not be applied; or maybe it will be. Actually, now that I think about it, maybe it will be because it may be an easier target to go for the organiser of the party. At least we would know who that was. There would be no problems in identifying who was responsible for the party. Maybe they will be the soft target. That is a real danger—maybe they will be the soft target and could be charged under this legislation. In other words, maybe the police will say, “We couldn’t identify who the people rioting in the street were but we need a response.” There may even be pressure

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put on by a police minister in the lead-up to an election, who may say, “Let’s go and get somebody. Let’s get the organiser of the party”! That is an easier target; much easier to identify—even though that person may not have even known of it, or it may have spiralled out of control in a way they could not control. These things do get out of control. Mobs get out of control in ways that people cannot foresee. Maybe the police will not be able to identify who the people rioting in the street were, who the people engaging in criminal behaviour were or who the people engaging in antisocial behaviour were. Maybe they will say, “We have to have a response. We’ve got this legislation; we’ve got to use it. The minister is going to expect it. We’re a month before an election. Let’s target this person.” Some 18-year-old who organised the party probably said, “Bring your mates.” He probably did not know what was going on. It spirals out of control. He says, “Oh my God, what’s going on?” Police roll up. They cannot identify who is fighting and rioting in the street. The minister says, “We’re tough on out-of-control parties. Apply this legislation, police commissioner.” The Commissioner of Police is forced to apply the legislation and some 18-year-old ends up with a criminal record and all the consequences of that. All they have done is be a bit careless. “Careless” is probably not the right word—a bit open in their invitation. All they have done is be hospitable.

This is an appalling piece of legislation. Thank God we have an upper house because maybe by the time it gets there, there might be some rational behaviour. There might be the numbers there to defeat this legislation. As I said, if a division is called, I will not be supporting this legislation. If my vote was to make a difference to the outcome, I would vote in the negative. If there is a division, I will look at that as the numbers fall at the time; otherwise I will abstain from the vote. If I had spotted this and raised the concerns that I have inside my own party room, I would be voting in opposition to it, but it is not fair to my party to do that. In some senses it is not even fair to do what I am doing now. I am genuinely torn in what I am doing. This is shocking legislation. It can potentially criminalise any one of us, or any one of our children, grandchildren, cousins, neighbours or friends.

Mr P. Abetz interjected.

Mr M.P. WHITELY: No; not if they do the wrong thing. The member has not been listening throughout discussion on the legislation. It is only if somebody associated with them does the wrong thing. Technically, the wrong thing can be as minor as littering. It is unlikely to be applied, but we have a responsibility to develop decent legislation. This house is about to fail in that regard.

MR A.J. WADDELL (Forrestfield) [5.07 pm]: I will be very brief. I think I made most of the points I needed to make in my second reading contribution to the Criminal Law Amendment (Out-of-Control Gatherings) Bill. We learnt a couple of things throughout consideration in detail. We have learnt that this bill, if it is passed, will stand alone within the Criminal Code in so much as it does not require a police response for somebody to be prosecuted under this act. We have learnt that primarily it will be aimed at people who organise parties as opposed to the people we have seen rioting on the streets when these so-called out-of-control parties happen. We have learnt that in addition to \$12 000 fines that somebody might face, or the one year in prison, there will be costs associated with that. Those costs, as we have heard from the minister, given the estimation from a previous event, were around \$16 000. If we add that into the mix, my absolute fear is that the effect of this bill will be that if a perfectly lawful party for some reason became, in the organiser’s mind, totally beyond his or her control—that is, it leaked into the social media and hordes of youths came down—the first inclination might be to do the very opposite to that which we hope one would do; that is, the police would not be called. Help would not be sought because that would essentially be saying, “Bring on down the forces because my credit card is now running and I potentially could be paying for that.” That will be a huge disincentive for people to call for help when they need it. That will have the exact opposite effect of what we are trying to achieve here today. That is a very dangerous effect. I think it is an unintended consequence of this bill, but it is one that certainly would happen. I would certainly think twice before dobbing myself in for potentially being the organiser of one of these events. We will have to see how it plays out.

Members can mark my words: we will see out-of-control parties this summer. This bill will not solve that problem. There are huge unintended consequences lurking below the surface. This bill is a massive attack on the civil liberties of Western Australia. It is unfortunate that this Parliament is taking the action it is to get the political headline that makes it look like it is doing something when it is not.

DR E. CONSTABLE (Churchlands) [5.10 pm]: I have been in this place for over 20 years and I honestly thought that I had seen everything possible that could happen in here, but today I saw something that I have never seen before. Firstly, from the government we have legislation that has good intentions. They are to ensure that the streets are safe for people and we do not have the out-of-control gatherings that we have seen publicised over the past two or three years. These are the sorts of gatherings that none of us would want in our street. We want to ensure that laws are in place to protect the community and protect our streets. To that extent, I support the legislation; however, I do not support legislation—I followed this debate very carefully, and even though I was not in the chamber for the whole of the debate, I was listening in my office—under which somebody can do

something at a gathering and the person organising that gathering finds themselves in a situation in which they are charged with committing a crime. I cannot support that.

On the other side, I have seen something that I have never seen before; that is, an opposition that clearly does not support the legislation but is going to vote for it. I respect the member for Bassendean because he is in a very difficult position. He has made his thoughts about this legislation quite clear. He does not support it. I came into this chamber after I heard him say that he hopes that one of the Independents calls for a division. What is going on? Now it is up to the Independents to call for a division on behalf of everyone else. It has been most extraordinary to watch this unfold over the past couple of days. This legislation is not good legislation. The intent is good but the legislation itself is not good. It is now too late, but halfway through consideration in detail the government should have decided to abandon the legislation, go away and start again. It is bad legislation. It is not the sort of legislation that we want to see go through this Parliament.

DR J.M. WOOLLARD (Alfred Cove) [5.12 pm]: I will speak briefly on the third reading of the Criminal Law Amendment (Out-of-Control Gatherings) Bill. Some of the concerns that I raised with the minister during consideration in detail were addressed in a further briefing, at which it was brought to my attention that under section 62 of the Criminal Code, charges can be laid when three or more persons are assembled. I wanted the number of persons in this legislation to go from 12 to 25. This legislation seeks to increase the number of people at an out-of-control gathering from three to 12.

I am also pleased to see, as set out in the explanatory memorandum, that proposed new section 75A(1)(b)(xiv) allows for additional forms of conduct to be prescribed in regulations. The explanatory memorandum states —

An example of conduct which could be prescribed would be the supply of alcohol to juveniles without parental consent.

I congratulate the minister for this provision. However, I am still concerned after listening to the debate that the person who might get the criminal conviction might be the person, as was just stated by the member for Churchlands, who organises the gathering that then becomes out of control—not at their response. My concerns are somewhat allayed by the fact that provided a clear education campaign accompanies the proclamation of this legislation, people will realise that they are able to phone the police when a gathering gets out of control. If they have phoned the police, that will be considered under this legislation. I cannot remember which section of the bill it is, but there is a reasonable defence for the host of not having been the cause of the out-of-control gathering. I guess the proof will be in the pudding in the long term with this legislation as to how it is both used by the police and interpreted by the courts.

I guess everyone in this house wants to know that measures are in place to prevent the instances, as the minister described during consideration in detail, that occurred in Balga a few weeks ago. I did not monitor that closely and I was not aware of the numbers involved in that instance, but I have been given a bit more information about those numbers and what happened during that event. When this legislation is proclaimed, if the community and young people are made aware of it, it may prevent instances such as that occurring in the future. I am hopeful about the protection that the government believes is in this bill when it comes to defences, particularly in proposed new section 75B(4)(d); that is, if a gathering does become out of control, if the person organising the gathering takes the opportunity to call the police, that person should be protected from being found guilty for organising that out-of-control gathering.

I am sorry that this bill has progressed so quickly because I would have liked to have had more time to check another issue. I do not know whether the minister could answer through interjection, but if an out-of-control gathering occurs in a place outside the metropolitan area, such as a beach, where there are no phone lines, what defence could be used then, because a person could not take steps to request the attendance of the police?

Mrs L.M. Harvey: Taking reasonable steps would be doing everything in our utmost power to try to disperse the out-of-control gathering and manage the behaviour of the people there.

Dr J.M. WOOLLARD: So, if they could not contact the police, providing that there was no way it could be seen that they escalated the behaviour, they would not be found guilty of this offence.

Mrs L.M. Harvey: It is quite hypothetical, and, also, with respect to that out-of-control gathering, if it was in a regional area and was not substantially impeding the lawful activities or enjoyment of other people, it may not even be declared an out-of-control gathering.

Dr J.M. WOOLLARD: In that case I will support this legislation and I very much hope that the assurances that have been given to his house about the protection of the person who may organise a gathering that becomes out of control mean that they would not be convicted, provided that that person is aware and has either called the police or tried to calm the waters themselves to stop any aggression from escalating.

MRS M.H. ROBERTS (Midland) [5.21 pm]: I will just take two minutes at this point because of the other comments that have been made during the third reading debate. I want to make it quite clear that the Labor Party has supported the Criminal Law Amendment (Out-of-Control Gatherings) Bill 2012. Do we think it is the panacea for all the parties? No. A lot more needs to be done by government, particularly in terms of the resourcing of our police force. The government had promised legislation as of towards the end of last year. It said it would bring forward legislation to assist police in dealing with these out-of-control parties and, as a general principle, we said we supported that. Time and again I asked this year, as did other members on this side of the house, where the legislation was and when the government would bring it forward. Towards the end of the autumn session this year, we were advised that it would be a priority for the spring session, so we fully expected that in the first sitting week back in August we would at last see the legislation. I want to put on record that at no point has the government attempted to have a bipartisan approach to this legislation. At no stage in advance of presenting legislation to the house did the government present legislation to the opposition or seek our cooperation. For some reason the government delayed—maybe it was for base political reasons; I do not know—bringing forward this legislation until this very late stage. I can only suspect, having seen some of the brochures that Liberal candidates are putting out in the electorate, that the Liberal Party wanted the Labor Party to oppose this legislation. We do not oppose this legislation.

Several members interjected.

The SPEAKER: Members!

Mrs M.H. ROBERTS: People on this side of the house have raised concerns and have scrutinised the legislation. They are right to have properly scrutinised this legislation in this house and to have raised questions with the government. However, the responsibility lies with the government to get this legislation right. It brought it on at a late stage. It has said that this legislation is required, that this is the legislation that the police want and that this is the legislation that will help sort out the party situation this summer. We will not stand in the way. We will not have the Liberal Party or the National Party say that the reason that parties are out of control this summer over the period of December, January, February and March is that the Labor Party opposed legislation that would have dealt with those out-of-control parties, and that the reason no prosecutions are occurring is that the Labor Party opposed the legislation. On that basis, we have supported the legislation. I suspect that there will be some unintended consequences of this legislation and maybe in April, when this house presumably resumes sitting, there may be a need to amend this legislation. I want to make it very, very clear that if this legislation is inadequate and if it has had insufficient scrutiny, the responsibility for that lies with the Liberal Party and the government, because the government introduced it at a late stage. The government did not introduce it at a stage when there was a better time for scrutiny, nor did it attempt to negotiate something with the opposition. It may well be that this legislation is a stunt; I hope that it is not; I hope it is effective. But when parties are out of control in December, January and February, this legislation should be at the disposal of police and we will be able to see whether the government has got it right. We will hold the government to account for this legislation and we will hold the government to account on its response to out-of-control parties over the summer.

MRS L.M. HARVEY (Scarborough — Minister for Police) [5.25 pm] — in reply: I thank members for their contributions to this debate and place on record my appreciation for the support of the opposition in allowing the Criminal Law Amendment (Out-of-Control Gatherings) Bill 2012 to pass. It is not intended that this legislation will be the panacea for managing every out-of-control party and for stopping out-of-control gatherings. What it does do, though, is provide police officers with the additional powers they need to help manage the unruly mobs as they become out of control. Under the existing legislation, police have to give a 15-minute warning for people to disperse from the scene. The way that police describe their actions at out-of-control gatherings to me is that they have a line of officers in riot gear, they give an order to disperse, they wait 15 minutes, and then they hunker down and wait for the projectiles to start landing on them. Under this legislation, we give the police powers to immediately disperse crowds, which gives crowds less opportunity to organise themselves with projectiles that they can then hurl at police. I think this legislation will go a long way to assisting police officers in being able to manage out-of-control mobs, and I think it will go some way to creating a disincentive for people to organise these gatherings.

I find it extraordinary that, as this bill was ready a few weeks ago, the member for Bassendean could say that he has not had enough time to scrutinise the legislation. It has nine clauses, member, and there was a lot of publicity and a lot of attention paid to this issue over a period of time.

Mr M.P. Whitely: I take responsibility for that, as I explained.

Mrs L.M. HARVEY: That is great. There has been much debate in this house, but I just found that an extraordinary assertion to make.

Extract from Hansard

[ASSEMBLY — Thursday, 18 October 2012]

p7291c-7312a

Dr Tony Buti; Mrs Liza Harvey; Mr Martin Whitely; Dr Elizabeth Constable; Mr Andrew Waddell; Mr John Quigley; Dr Janet Woollard; Mr John Bowler; Mrs Michelle Roberts

This legislation provides an incentive in that organisers can know that they have lost control of the gathering and they can take reasonable steps to shut the event down—indeed, they can call police and perhaps stop the event or gathering from even occurring once they realise that the invitation list has gone beyond their ability to manage.

I thank the member for Alfred Cove for her contribution to this debate and I very much had in my mind many of the conversations that have been had, and the debate that has been held, in this chamber regarding secondary supply of alcohol to juveniles when the provision was inserted into the legislation regarding conduct prescribed by regulation. That is specifically what I had in mind when that clause was put in the legislation and I want to put on the record that it was the member for Alfred Cove's contribution to the debate that assisted with the compilation of this legislation.

In closing, I thank members for their contributions to the debate. I thank the opposition for its support and, indeed, I hope that this bill will pass through this house and have a speedy passage through the other place so that our police can use it in time for the summer party period.

Question put and a division taken with the following result —

Ayes (41)

Mr P. Abetz	Mr J.H.D. Day	Mr M. McGowan	Mr C.J. Tallentire
Mr F.A. Alban	Mr J.M. Francis	Mr J.E. McGrath	Mr P.C. Tinley
Ms L.L. Baker	Mr B.J. Grylls	Mr P.T. Miles	Mr A.J. Waddell
Mr C.J. Barnett	Mrs L.M. Harvey	Ms A.R. Mitchell	Mr T.K. Waldron
Mr I.C. Blayney	Mr A.P. Jacob	Mr M.P. Murray	Mr P.B. Watson
Mr I.M. Britza	Dr G.G. Jacobs	Dr M.D. Nahan	Dr J.M. Woollard
Mr T.R. Buswell	Mr W.J. Johnston	Mr C.C. Porter	Mr B.S. Wyatt
Dr A.D. Buti	Mr A. Krsticevic	Mr D.T. Redman	Mr A.J. Simpson (<i>Teller</i>)
Mr G.M. Castrilli	Mr F.M. Logan	Mrs M.H. Roberts	
Mr R.H. Cook	Mr W.R. Marmion	Ms R. Saffioti	
Mr M.J. Cowper	Mrs C.A. Martin	Mr M.W. Sutherland	

Noes (2)

Dr E. Constable	Ms A.S. Carles (<i>Teller</i>)	\
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Question thus passed.

Bill read a third time and transmitted to the Council.