

Mr Paul Papalia; Mrs Liza Harvey; Dr Elizabeth Constable; Mr Martin Whitely; Mrs Michelle Roberts; Mr Andrew Waddell; Mr Bill Johnston; Mr Tom Stephens; Ms Margaret Quirk; Mr Fran Logan; Dr Tony Buti;
Deputy Speaker

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

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 1: Short title —

Debate was interrupted after the clause had been partly considered.

Mr P. PAPALIA: I have a question related to the justification for the bill and the subsequent method of its drafting. I refer to the specific incident of an out-of-control party in Port Kennedy on 20 July this year, following which mounted police, the air wing and large numbers of police attended to disperse 100 partygoers but no arrests were made. Did the government receive any requests for legislation of this nature as a direct response to that incident, justified by not being able to make arrests because there were not adequate laws; and is this then intended to rectify that situation?

Mrs L.M. HARVEY: The need for this legislation was raised by the police commissioner, as I understand it, late last year. This legislation has been progressed out of those conversations.

Mr P. PAPALIA: Is the minister suggesting that the reason that no arrests were made on 20 July in Port Kennedy was that this legislation was not in place?

Mrs L.M. HARVEY: I am not suggesting that at all. If the member would like to contact me directly about that particular incident, I am happy to provide him with information, but I do not have the information with me on that specific incident that he is talking about. I am happy to get it for him, but the member would need to give me the details to provide them at a different time.

Mr P. PAPALIA: The reason I ask is that this is not the only party in my electorate in the last six months; there have been a few. As I am aware, no arrests have been made in response to those incidents, all of which have been completely out of control and have required large amounts of police resources in response. I would have thought that in bringing this legislation into the house, other than that one incident which we are aware of which had high publicity around a young fellow organising a party through the internet, there might be some other reference material to explain why this legislation will prevent future incidents of this nature occurring. For instance, why would this legislation be any better than the current legislation in providing a police response to the party that happened on 20 July in Port Kennedy? I cannot for the life of me see why it would be. I think that the reason that we did not get a decent response in Port Kennedy in the way of arrests was that there was nowhere to put these guys if they were arrested. There were inadequate police resources to handle the arrests of those individuals and subsequently process them within the police resources in Rockingham, or in Peel for that matter. I think that that is the real reason. As we suggested in the second reading debate, I do not think this legislation is going to do anything much at all in the way of assisting police. If that is wrong, and the minister has specific reasons for why this legislation is going to enhance police capabilities over the current legislation, I would like to hear about it.

Mrs L.M. HARVEY: In response to the member's question, first of all, at the time of the event that he is talking about, this legislation did not exist, so the people who held that out-of-control gathering could not be charged with an offence; they could not have been charged with the offence of holding an out-of-control gathering.

Mr P. Papalia interjected.

Mrs L.M. HARVEY: Can I finish my sentence? In addition, when the police declare a party to be out of control, this legislation gives the police the powers to disperse a crowd, and it becomes an offence to fail to disperse from a gathering that has been declared out of control.

Ms M.M. Quirk interjected.

The SPEAKER: Member for Girrawheen!

Mrs L.M. HARVEY: Member, can I get to your question in a moment? I can only hear your voice at the moment.

In the instance that the member was referring to, which pre-dates this bill, those people could not be charged with holding an out-of-control gathering, and people who the police were trying to disperse could not be charged with failing to disperse. In addition, we are giving to the police the powers of arrest; it is a one-stop shop, if you like. We are giving the police vehicles that will have the capacity to take 14 people away from the scene of a

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crowd at one of these out-of-control gatherings. At present, if a person is arrested, two police officers in a vehicle need to take that person away from the scene of the gathering, and the decision needs to be made at that point whether police resources are better deployed in trying to manage the crowd and disperse the crowd or in arresting a person and taking them away. We are giving police the capacity to remove a lot of people at once with the buses, which is part of our resourcing. In addition to that, it becomes an arrestable offence if people fail to disperse.

Mr P. Papalia: By way of interjection, I understand what the minister is saying about the buses, but those buses are not reliant upon this legislation, are they? We could have those buses independent of or completely separate from the introduction of this legislation. I do not think that new laws or the implications of this law that the minister refers to are necessary to respond to 100 out-of-control people on the beach at Port Kennedy. They knew they were doing something wrong and the police knew they were doing something wrong; otherwise, the police would not have had the helicopter and all the horses there. Surely there is more to it than the minister introducing another couple of offences, because they were already committing offences, were they not?

Mrs L.M. HARVEY: Some of them may have been committing offences, but, as I said, I have not actually unpicked or seen the footage of that particular incident. What this bill does is introduce an offence for irresponsibly hosting an out-of-control gathering and for failing to disperse from the gathering. It gives police a one-stop shop whereby they can declare a gathering to be out of control. They can order the crowd to disperse. Failure to disperse means the police can then arrest those people. For the other offences, there is a chain of evidence requirement and a range of other issues that need to be dealt with to ensure that, if people are arrested under the Criminal Investigation Act, for instance, police can then take those charges and prosecute them in court.

Mr P. Papalia: That is with respect to hosting the party, but this was on the beach, so there was no host.

Mrs L.M. HARVEY: This specifically covers gatherings that can be on private property or public property. So in that instance, it is an out-of-control gathering regardless of where it is located, whether it is on a beach or on private property.

Mr P. Papalia: Is the minister suggesting that is why they did not arrest anybody at the time—because we did not have this law?

Mrs L.M. HARVEY: I think I have been very clear in saying that I do not have the details of that incident. I am happy to go back over that and provide that information to the member, but I am not going to speculate on what may or may not have occurred at the incident that the member is talking about.

The SPEAKER: Before I give the call to either the member for Girrawheen or the member for Churchlands, I just want to let members know that we are dealing with clause 1, which is the short title of the bill. It is not an opportunity for general debate on a range of other issues separate from or extraneous to this particular bill. What I am interested in progressing at this point is discussion on the specifics of clause 1.

Dr E. CONSTABLE: I am seeking some clarification from the minister. The short title of the bill refers, in brackets, to out-of-control gatherings. I have looked at the bill quite closely, and I am not sure whether or not those gatherings are just organised gatherings, such as parties, in either a public or private domain, or whether impromptu gatherings could also be classed as out of control, such as a melee that starts in Northbridge and ends up with a gathering of 12 or more people and gets out of control. Is that included here, because it is not clear, I do not think, as I read through this legislation that an impromptu gathering would be included or whether it is just an organised gathering? I think it is very important for that to be clarified.

Mrs L.M. HARVEY: I thank the member for the question. The definition of gathering is an assembly or meeting of a crowd. We have specifically called it a gathering.

Dr E. Constable: Where is that definition in the bill?

Mrs L.M. HARVEY: That is just the definition of gathering from the *Macquarie Dictionary*.

Dr E. Constable: We need a definition in this legislation to make it absolutely clear.

Mrs L.M. HARVEY: The definition taken from the *Macquarie Dictionary* is “an assembly or meeting; a crowd” and it can be any gathering of people whether purposely called together or a collection of people that ends up coming together and becoming out of control.

Mr M.P. WHITELY: I am trying to get my head around that, because it is quite an interesting concept. I want to put a specific scenario to the minister. Let us suppose that two groups, with six people in each group, are walking down the street and one person knows somebody in the other group but does not know the other people.

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He says, “Hi, Fred; how are you? Come over here.” So they gather and there are 12 people in this gathering. In that gathering, two people are smoking and they incorrectly dispose of their cigarette butts by throwing them on the ground. Under clause 4, in proposed section 75A(1)(b)(xi) —

The DEPUTY SPEAKER: We are dealing with clause 1.

Mr M.P. WHITELEY: I am talking to clause 1 and I am trying to get a handle on what is an out-of-control gathering. Those 12 people are now part of an informal arrangement that has been organised by one person who happened to spot somebody in another group and said hello to them, and two of them throw a cigarette butt on the ground. Does that meet the definition of an out-of-control gathering, because I am struggling with this notion of what an out-of-control gathering is? Having heard the minister’s answer to the member for Churchlands, it sounds to me that that does represent the definition of an out-of-control gathering, and I will explain why. It is a gathering, because the minister said it was a collection or meeting of 12 people, and the group to which I just referred now has 12 people. It is out of control because, as I said, proposed section 75A(1)(b)(xi) in clause 4 lists out of control as being two or more people engaged in depositing litter, and they have just thrown away the cigarette butts. Therefore, it seems to me that that group falls within the definition of an out-of-control gathering by the minister’s own explanation. I am struggling to understand this. I had quite a different understanding of what I thought an out-of-control gathering would be. I thought it would be a party at which people were spilling out into the streets and rioting, throwing bottles at the police and the like. But from the answer the minister just gave to the member for Churchlands, it seems that the group I described, which I would not consider to be an out-of-control gathering, is by the minister’s definition an out-of-control gathering. Will the minister tell me where I am wrong in my interpretation?

Mrs L.M. HARVEY: My understanding of the way legislation in this place generally works is that we would not have the definition of the word “gathering” in the bill; however, when we get to clause 4, the term is quite clearly defined.

Mr M.P. WHITELEY: It seems to me that the minister cannot have it both ways. The minister just said that people having an informal meeting—I think she quoted the *Macquarie Dictionary* definition of gathering as an informal meeting or collection of people—in fact represents a gathering. I am interested in the words “out-of-control gathering”. If that is the definition of gathering and the definition of out of control is two or more persons depositing litter, surely the group that I have just described to the minister is in fact caught under this legislation and surely that is an out-of-control gathering. I would expect the minister to provide a more comprehensive answer than the one that she did not provide then!

Mrs L.M. HARVEY: We can deal with this in two ways: in clause 4 or now. The word “gathering” is just the ordinary meaning of the word “gathering”. This bill relates to an out-of-control gathering, which is dealt with in clause 4. A section in the Criminal Code deals with unlawful assembly. Assembly is not a word that is defined in that act. Assembly is just the general and usual use of the word “assembly” and for the purposes of unlawful assembly, it is then further defined in the bill. That is the same as the word “gathering”. In this instance, “gathering” is the *Macquarie Dictionary* definition of gathering, which is a collection of people. An out-of-control gathering, which is what this bill is about, is defined in clause 4. I think it is more appropriately dealt with in clause 4.

Mr M.P. WHITELEY: I have to say that I do not find that particularly reassuring, and I think this is the appropriate time to talk about what this bill is called. I am not sure that the circumstances I outlined are an out-of-control gathering. A more accurate description would be that it is simply somewhat mildly annoying antisocial behaviour by a couple of people in a crowd of 12.

Ms M.M. Quirk: The minister just thought your point was ridiculous.

Mr M.P. WHITELEY: The minister might think this is ridiculous, but I think this legislation is ridiculous because the minister is unable to answer the question. The minister said that the *Macquarie Dictionary* definition is a collection of people. If we look at the words “out-of-control gathering”, which is in the title of this bill, there are two elements. The first is: what is a gathering? It is a collection of people and in this case it is 12 or more people. The second is: what is out of control? If we read later on in the bill, out of control is two or more persons associated with a gathering depositing litter. That means the group I described of 12 people having an incidental meeting is covered by the definition of out of control. Therefore, if one member of a group of six people says to a member of another group of six people, “Hello, Fred; how are you?”, and they all group together and two people drop cigarette butts, it meets the definition as the minister has explained it so far. However, I do not think that is an out-of-control gathering. I think we need to find another name for this bill, if that is in fact what the minister means to catch by it, because it seems that is what the minister means to catch. That is the definition of

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gathering and the minister has already defined in the legislation what is out-of-control behaviour. I think we need to spend some time searching for a more appropriate name for this bill.

Mrs M.H. ROBERTS: I take the points that have been made by the member for Churchlands and also the member for Bassendean. I note that the minister has said in response that this could be appropriately dealt with at clause 4 rather than clause 1. I would like to make the case that it is actually appropriate to deal with it at both clauses. I acknowledge that clause 4 defines the term “out-of-control gathering” and lists what is constituted as an out-of-control gathering on pages 3, 4 and 5. What we are debating at the moment is the actual short title. Clause 1 states —

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

There is no question that this is an amendment to the Criminal Code; however, the form of the words in brackets was a choice that was made to accurately describe the bill. It says in brackets “out-of-control gatherings” so that when people see the title of the bill, they will know what aspect of the Criminal Code is being amended. We want to accurately depict within the title of the bill the contents of this amending bill. The choice of the word “gatherings” in the plural is important because it could, for example, be called the “out-of-control assemblies” bill or the “out-of-control groups” bill or numerous other synonyms for a gathering. When people look to the dictionary for a definition of the word “gathering”, the first definition they will see is as a verb rather than a noun. In this sense, it is used as a noun. The words in the short title are important because they give people information about what this amending bill is about.

The DEPUTY SPEAKER: Before the minister answers, I again point out that we are dealing with clause 1. Clause 1 deals with the title of the bill; it does not deal with clause 4. In other words, it deals only with the title of the bill.

Mr W.J. Johnston: The words in the title are what we have been debating.

The DEPUTY SPEAKER: I am battling to follow members. It is quite clear to me what the words in the title are but members are debating the definitions. Surely we will deal with that when we come to clause 4.

Point of Order

Mrs M.H. ROBERTS: I could move an amendment to this bill to change the word “gatherings” to “assemblies” or another word. That is the point that is being canvassed. If it helps the debate, perhaps one of us could move an amendment and we could debate it for a longer time and get a clearer definition.

Debate Resumed

Mrs L.M. HARVEY: The word “gathering” is used in the ordinary dictionary definition of the word. It is not a scientific term. If the member wants to move an amendment to replace it with another word, I suggest she move an amendment. This is not a technical term. A gathering is a collection of people, an assembly or a meeting of a group of people. It is pretty clear to me what it means. If it is unclear to members opposite, I suggest they move an amendment and we will put it to the vote.

Mr A.J. WADDELL: I understand the point the minister makes that the word “gathering” might be an ordinary word, but if we look at the legislation carefully, it has two elements to it. The first is the criminalising of the throwing of the party by the party organiser. In other words, if someone throws a party that becomes out of control, the organiser has committed a criminal offence. The second element is the powers provided to the police to disperse the party. It seems to me that if the gathering happens in a public place where there is no discernible organiser, all the first section ceases to have any effect whatsoever, in which case the only thing the minister is talking about is the police having the power to disperse the group of people who happen to be in the gathering, but no legislation is required for that. Currently, people have the power to be in a public place and the police have the power to disperse people and move them on. In effect, when dealing with a public gathering in a public place, this bill does nothing. It has an impact only when dealing with a private gathering and when dealing with organisers in private places. In that sense, I believe we should make it very clear in the title that the bill is aimed at criminalising the behaviour of people who throw parties that ultimately turn out to be out-of-control parties under this definition.

The DEPUTY SPEAKER: Is the member moving an amendment?

Mr A.J. WADDELL: No.

Mr W.J. Johnston: No, he is doing his job; he’s debating the bill.

The DEPUTY SPEAKER: I did not ask you, member for Cannington.

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Mr W.J. Johnston interjected.

The DEPUTY SPEAKER: I call the member for Cannington for the third time.

Mr A.J. WADDELL: I am making the point that there is some validity in creating clarity of the name of what will ultimately be the act to reflect what it actually does as opposed to suggesting it does something other than what it claims to do.

The DEPUTY SPEAKER: I would have thought that if you believed that this heading was unclear and did not do its job, someone would move an amendment to the title.

Point of Order

Mr W.J. JOHNSTON: I seek clarification of what the Deputy Speaker is suggesting. I am seeking to understand the role the Chair is playing.

The DEPUTY SPEAKER: I am trying to chair the committee.

Mr W.J. JOHNSTON: Yes, but with respect, surely a member is entitled to speak on a clause however they choose, and if you choose to sit them down, you are entitled to do that, Mr Deputy Speaker, but I am not quite sure what else you are —

The DEPUTY SPEAKER: I am trying —

Mr W.J. JOHNSTON: I am seeking guidance from the Chair about exactly how to have this debate.

The DEPUTY SPEAKER: I will give you guidance. We have heard a number of times from the minister what she understands is meant by the title. You are saying that the title is not a sufficient title and I listened to a long speech from the member for Forrestfield saying that it does not cover all the ramifications of the bill. If you want to say that it is not an accurate title of the bill, move an amendment to the title.

Debate Resumed

Mr W.J. JOHNSTON: I appreciate getting the call because that is one approach that could be taken, of course. Another approach could be to defeat the clause. That is another alternative that is available to the Parliament because the Parliament is the master of its own destiny. If the minister cannot explain why this clause should be supported by the Parliament, the Parliament has a duty to not allow the poor wording of the clause. That is why we are here. That is why the Deputy Speaker is in the Chair and I am here.

Dr K.D. Hames: You are exactly right, so let's have a vote on it.

Mr W.J. JOHNSTON: Okay. I just want to make it clear what we are doing here. Mr Deputy Speaker, if someone is not complying with the standing orders, you should direct them to that and sit them down. But let us make it clear that we have a responsibility to make sure that we deal with the clause. As the Deputy Premier just said by interjection, that is the responsibility we have in the chamber. I join with my colleagues. I am uncertain of, and have not heard an explanation from the minister about, why this is an appropriate title. There is only one way to judge whether it is an appropriate title, which you understand Mr Deputy Speaker, and that is to examine the balance of the bill. We cannot tell whether the words in clause 1 are appropriate without examining the words in the other clauses. Members are doing exactly what the Deputy Speaker has asked them to do, which is to reflect on clause 1 in respect of the balance of the words in the bill. The argument members are developing is to point out why the words in clause 1 are not appropriate given the words in subsequent clauses. It is impossible to properly examine the legislation presented to us from the government —

The DEPUTY SPEAKER: Is this a point of order?

Mr W.J. JOHNSTON: No, I am speaking. I have time on the clock.

It is impossible to determine whether clause 1 is appropriate without reflecting on the balance of the words in the rest of the bill because clause 1 sets out the intention of the bill to the community. The only possible way we can do that is to reflect on the words in the balance of the bill. Members have made the point that the words in clause 1 do not reflect the words in the balance of the bill. A number of members, including the member for Forrestfield, also made the point that if what the bill does is different from what the short title says it does, clearly it is appropriate for the government to change the short title because that would properly reflect what is being done.

It may be that we have politics by press release and that all the government is interested in is the short title of the bill and does not care about the balance of the bill. That may well be the case. You might be correct, Mr Deputy Speaker, that the only thing the government cares about is having a press release saying that it has introduced

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legislation that deals with out-of-control gatherings when in fact the bill does not do that. That is not the purpose of the bill. As you would understand, Mr Deputy Speaker—I appreciate your guidance on that earlier—if that is the government’s intention, it is defrauding the public of Western Australia. It is cheating us. It is cheating everyone. I agree with your position on that and with what you said, Mr Deputy Speaker. I think it is appropriate to have the opportunity for a proper discussion—as you directed, Mr Deputy Speaker, in accordance with your ruling—to make sure that this fraud is not perpetrated on the people of the state. The problem for us, Mr Deputy Speaker, as you have indicated, is that the government has told the people of the state that this bill is about out-of-control parties when in fact it is dealing with something else; it is dealing with other issues. That comment, I think, was apposite from you as Chair of this consideration in detail stage of the bill, Mr Deputy Speaker. I thank you for being of such great assistance to us to narrow in on the fact that the government has not been telling the truth to the people of this state and that you are a Liberal member of Parliament and you yourself have identified that fraud —

The DEPUTY SPEAKER: Member for Cannington, do not draw me into the debate please.

Mr W.J. JOHNSTON: — is a demonstration of the travesty being conducted here today. I do thank you for providing that insight to make it clear to everybody in this state that the government is defrauding the people of this state by bringing in what is no more than a public relations stunt, a press release rather than a policy. It will be interesting; if there is one out-of-control party after this legislation passes the Parliament, it will be the Minister for Police’s fault. That minister will be responsible for that because she says this is all they need to stop out-of-control parties in this state. What a travesty.

Mr T.G. STEPHENS: I want to ask the minister whether she had given any consideration before she introduced this bill with the current short title that is before the house to any alternative titles that might better describe the bill in its entirety. I am indebted to the member for Gosnells, who said to me a little while ago that an alternative short title could have been reference to the riotous assemblies act. That is a title that many members of the house are familiar with—a statute that has been deployed in other jurisdictions that perhaps has some relevance to a bill of this sort. For instance, I think it was deployed in South Africa in 1956, where the Riotous Assembly Act was eventually part of the whole apparatus of the South African statutory —

Mr M.J. Cowper: Section 54B of the Police Act, “Unlawful assemblies”.

Mr T.G. STEPHENS: That is a point. Yes I remember section 54B.

Mr M.J. Cowper interjected.

Mr T.G. STEPHENS: The minister was policing it, I think.

Mr M.J. Cowper: I was right there.

Mr T.G. STEPHENS: I think I was at the receiving end of that.

Mr M.J. Cowper: No; it was others that I recall. I will not mention their names.

Mr T.G. STEPHENS: I remember section 54B; it was deployed on the way through with the convoy to —

Mr M.J. Cowper: You don’t have to go to South Africa; you can go right down the main street.

Mr T.G. STEPHENS: The minister has got me to digress. I ask the minister whether any consideration has been given to a bill having a title such as the riotous assemblies act. It seems to perhaps better encapsulate the sort of considerations that the government has given to its concerns about wanting to proscribe and which the community would want us to proscribe; that is, to prevent people from assembling riotously. I fear that unless there is a better description for the bill than the one currently in the short title, too many people can be easily caught up in the implementation or the policing of a bill of this sort when it becomes a statute. I voiced to the minister during the second reading debate some of my concerns, such as the breaking of glass as a traditional occurrence among the Greek community where they —

Ms M.M. Quirk: A Jewish wedding.

Mr T.G. STEPHENS: A Greek wedding?

Ms M.M. Quirk: A Jewish wedding.

Mr T.G. STEPHENS: A Jewish wedding also? I have only been to a Greek wedding and experienced the breaking of glass. With the interplay of 12 people and the breaking of glass that event would be suddenly covered under the terms of this act. As I also said, if the bells were rung too loudly at a gathering of 12 people

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having a party at the Carmelite Monastery on Easter Sunday night it could be covered by the provisions of this bill.

Mr M.J. Cowper: I wish to raise a point of order, Mr Deputy Speaker

Mr T.G. STEPHENS: I was not talking about 54B!

Point of Order

Mr M.J. COWPER: I draw the attention of the house to the provisions of standing order 94 in relation to relevance. We are debating clause 1, the title of the bill, but I believe the member for Pilbara is having some other irrelevant conversation.

Mr T.G. STEPHENS: On the same point of order. We are debating the short title of the bill and discussing whether it is appropriate for this bill. I am asking the minister what consideration she gave to alternative names to describe the sorts of —

Mr M.J. Cowper: It's not a Greek dinner plate bill.

The DEPUTY SPEAKER: All right, member. Member for Pilbara, carry on.

Debate Resumed

Mr T.G. STEPHENS: Thank you very much Mr Deputy Speaker. Before I was rudely interrupted, I was asking a fairly simple question. Has the minister given consideration to some alternative titles? What were they and is she attracted to the short title the “riotous assemblies act” for instance?

Ms M.M. Quirk: The minister has not answered the question; she is treating the Parliament with contempt.

The DEPUTY SPEAKER: Member for Girrawheen!

Ms M.M. Quirk interjected.

Mr M.P. WHITELY: I am happy to sit down if the minister stands up, but I do not think she intends to. I might add another alternative because I have a somewhat different take on this bill. If this bill indeed seeks to deal with riotous assembly, or even out-of-control gatherings, either of those two might be appropriate names. But if we read clause 4—I only do that, as the member for Cannington so eloquently and briefly pointed out, to explain the context of the title of the bill—some of the behaviours described as evidence of the out-of-control element of the gathering, including, as I pointed out before, depositing litter, which is probably the most obvious example, are not to me evidence of an out-of-control gathering. I wonder whether the minister gave any consideration to calling the bill the “Criminal Law Amendment (Potentially Mildly Annoying or Worse Informal Gathering) Act 2012”. I, frankly, thought that when we were going to deal with an out-of-control gatherings bill, we would be talking about the sort of riotous behaviour we saw with the parties that were out of control, spilling out into the streets, with people throwing bottles and assaulting police officers—things that are obviously illegal and can be dealt with under current law. But I thought we might find some sort of special circumstances that would help the police to deal with them. But, as is defined in section 4, we are talking about dealing with two or more persons associated with any gathering of 12 people engaging in such heinous acts as throwing cigarette butts and depositing litter! Given the bar is set very low in this bill, I am wondering whether the minister has given any thought to calling it the “Criminal Law (Potentially Mildly Annoying or Worse Informal Gathering) Act 2012”. I use the word “potentially” because later in the bill it indicates that people do not have to drop even two cigarette butts. The police could act to take action against the “organiser” of an informal gathering, which, as we heard earlier, could be two groups of six people walking past each other in the street and who invite the one they knew—the other five would be strangers—into the discussion. It could be a situation as minor as that. I think we need to give consideration to changing the name. Sorry; I got sidetracked. As I said, the word “potentially” is important because a person does not even have to commit out-of-control behaviour—in other words the dropping of two cigarette butts—the police need only suspect that could be about to happen. We need the word “potentially” in the title to say there could be potentially some mildly annoying behaviours, in the case of dropping cigarette butts, or worse, in the case of riotous behaviour. It could, in fact, be riotous behaviour, but we have to reflect how low the bar is set here because people reading this will be thinking of out-of-control gatherings. My plain English, ordinary, everyday understanding of that is a scene in which bottles are being thrown, violent acts are occurring, people are fighting, there is out-of-control street drinking and indecent acts are being performed in public. That is what I would consider to be out-of-control behaviour. I was going to finish within five minutes, but unfortunately I will not be able to do that.

Several members interjected.

The DEPUTY SPEAKER: Order, members for Jandakot and Warnbro!

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Mr M.P. WHITELEY: I was knocked off my train of thought by the member for Murray–Wellington. My suggestion was that “potentially or mildly annoying or worse informal gatherings” replace the words “out-of-control gatherings” in the title of the bill.

Dr A.D. BUTI: I would like to hear more from the member for Bassendean.

Mr M.P. WHITELEY: Let me recap briefly. The bill outlines behaviours that the public would not consider evidence of a situation being out of control. I will read from the bill just so members are absolutely clear that I am not making this stuff up! I refer to proposed section 75A(1)(b)(xi), which states that two or more persons engaged in the conduct of depositing litter is considered an out-of-control gathering. That act is considered to be sufficient evidence for the gathering to be out of control. That is not out-of-control behaviour—certainly not my understanding of the meaning. It is mildly annoying behaviour. I hate it when people drop cigarette butts in the street. It really annoys me because I like to live in a clean city, and Perth is a beautiful city. I do find it annoying; in fact, I find it mildly annoying. The title should use the words “mildly annoying or worse” because we do need to recognise that it does deal with serious riotous-type behaviour. As I said before, we must also use the word “potentially” in the title, because having read the bill further, we know that it does not have to have happened; there has to be only the suspicion by a senior sergeant or a higher ranked officer that that behaviour is about to happen or is likely to happen. Given how low the bill sets the bar, my suggestion is that the short title be amended to the Criminal Law Amendment (Potentially Mildly Annoying or Worse Informal Gatherings) Bill 2012. I will not officially move it as an amendment, but I want to hear what the minister has to say about it. If she does not accept it, she needs to explain how two people dropping unlit cigarette butts—let us suppose that they are being responsible enough to put them out, but they are nonetheless littering—is evidence of out-of-control behaviour at an out-of-control gathering. If that is not evidence of an out-of-control gathering, then this is the wrong title for the bill and it needs to be modified to reflect how low the bill sets the bar.

Clause put and passed.

Clause 2: Commencement —

Mrs M.H. ROBERTS: Clause 2 deals with the commencement of the act. I seek clarification as to why this act will come into being in two separate parts. Why will part 1 of the act come into being when it receives royal assent and the rest of the act on a day fixed by proclamation?

Mrs L.M. HARVEY: This is standard practice when a bill refers to regulations. We expect that both parts (a) and (b) will come into effect on the same day.

Ms M.M. QUIRK: I will be grateful if the minister could outline what steps will need to be taken once the bill is passed to ensure that it comes into effect. For example, will changes have to be made to the police computer system? I think the minister mentioned vans. I would be interested to know what stage they are at in being purchased or fitted out. What other measures need to be taken before this legislation can come into force?

Mrs L.M. HARVEY: The buses are being fitted out at present to be fit for purpose.

Ms M.M. Quirk: Where were they acquired from?

Mrs L.M. HARVEY: They were acquired from the Department of Corrective Services. They need to be fitted out to be fit for purpose because they will be used for a different purpose—namely, the removal of people who might be resisting that action. The only other requirement or hold-up between when the bill is proclaimed and when it comes into operation would be in the development of a form for the authorisation of a senior officer to act under the act. We do not perceive there will be any other hold-up to this act coming into operation.

Ms M.M. Quirk: What about training for officers? This is technical and, in some respects, ambiguous legislation. Frontline officers will have to enforce this legislation. When do you anticipate that they will be trained?

Mrs L.M. HARVEY: During the drafting of the bill, we consulted the regional operation groups. It has some knowledge and understanding of the workings of the bill. It is not a technical bill to implement from a policing perspective.

Mr F.M. LOGAN: Can the minister confirm whether the two vans she referred to are two of approximately seven vans that were behind Hakea Prison and were deemed by Serco as surplus to requirement and that have now been drafted for use by the police? If that is the case, have they been specifically fitted out for the purposes of meeting the ends that the minister has just described as being holding cells for people picked up at out-of-control parties? If so, what changes are being made and how much is the cost of those changes?

Mrs L.M. HARVEY: We have allocated a pool of funding of about \$2.5 million towards the fit-out of buses, the training of dogs and a range of other issues to do with managing out-of-control gatherings. It is my

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understanding that the buses came from DCS. I do not know where they were parked when they were in the control of DCS. As far as the fit-out goes, it is my understanding that to make them fit for purpose some of the sharp edges inside the vans and in the openings need to be altered to ensure that people cannot injure themselves if they resist being put into the vans.

Mr F.M. LOGAN: The minister would be aware that the buses that she is referring to are for the transportation of prisoners to and from hospital, prison or court; they are not really designed as holding cells. For what period of time would the minister expect a person to be held in those temporary mobile holding cells? How long would they be in there as a result of being apprehended at an out-of-control party? How many people would the minister expect would be put into each of those holding cells?

Mrs L.M. HARVEY: We are getting somewhat away from clause 2. The amount of time that people would be held in these vans would be determined by how far away they were from a place at which they could be processed after arrest. It depends on where the party is. That is quite speculative. I am not prepared to go into that. Each of the vans holds 14 people. They are being made fit for purpose—for the purposes that we require them for, which is a different purpose from what they were used for at the Department of Corrective Services.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Sections 75A and 75B inserted —

Dr A.D. BUTI: As the minister would realise, in many respects, this is the most substantial clause of the first part of the bill. It lists the various activities that two or more people can be associated with, which will start the trigger to decide whether it is an out-of-control party. As was very logically articulated last night by the member for Bassendean, from what we can gather, all those provisions under proposed new section 75A(1)(b)—under (a), 12 or more people must be present at a gathering before it is considered to be out of control—are already illegal or unlawful. One has to wonder why the police will not be able to act in any case. I am interested in some of these clauses more than others. I turn first to proposed subparagraph (x), which states —

causing an obstruction to traffic or to the movement of pedestrians;

Often when attending a gathering or maybe a party, people park on the kerb or even on the road. They are not intentionally trying to cause a disturbance, substantially interfere with the lawful activities of any other person or substantially interfere with the enjoyment by any other person of the unlawful access to that place. It may be a large party, and people need to park somewhere. The way the legislation is written, it would seem that it imposes an absolute liability. There does not seem to be any mens rea required. If I arrive late at the party and park my car on the road or the kerb nearby other parked cars and I am preventing someone driving their car along the road to access their home, that could possibly trigger the provisions under (c), which are also necessary to be considered out of control; that is, substantial interference with lawful activities or substantial interference to the enjoyment of a place. I would be interested in the minister's comments. Surely she would not have intended that someone who has parked their car so they can go to a party, with no intention of interfering with someone else's access to their place of residence or otherwise interfering with their enjoyment, can be caught up under this provision.

Mr M.P. Whitely: It is not them; it is the organiser of the party.

Dr A.D. BUTI: That is right. In the end, it is the organiser of the party. That is a very good point. That makes it even more of a travesty. If someone parks their car, with no intention of causing a disturbance, the person who organised the party could be held responsible. As the member for Cannington mentioned yesterday in his speech on the second reading debate, the possible penalties are quite severe. They go beyond what is generally the case. A person who is found guilty under this legislation could be up for a substantial amount of money with respect to the police investigation and so forth. I thank the member for Bassendean for bringing me back to that. If two or more people have parked their car in a way that will affect someone's access to their property or —

Mr M.P. Whitely: Two people in the one car.

Dr A.D. BUTI: Yes, there could be two people in the one car. It could even relate to motorbikes or pushbikes. I am trying to be serious here.

Mr W.J. JOHNSTON: I am very interested in the comments of the member for Armadale.

Dr A.D. BUTI: This is what we were trying to allude to last night. Some of the examples we referred to may have seemed a bit far-fetched. The minister mentioned in her reply to the second reading debate that the Amanda Banks example is not what this legislation was intended for. I take her at her word; I am sure that is not what she intended. The problem is that this legislation can pick up those examples. We have a situation in which two

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people are doing something, without intending to cause a problem. The organiser of the party will not necessarily have control over where someone parks. The minister may say that they should have security officers or parking inspectors.

As the member for Forrestfield said yesterday, people will not be able to have parties. The legislation may have the effect of deterring parties so we will not have out-of-control parties. I am sure the minister does not want a situation in which people will be scared to have parties. The precautions that they will need to put in place will be so expensive that they will not be able to hold a party. Twenty-first and eighteenth birthday parties will be something of the past. We will be able to tell our grandchildren that we had a twenty-first birthday party. They will not be able to have a twenty-first birthday party because they will not be able to afford it. I know people in my electorate will not be able to afford it. It will become too expensive. They will become scared. As a parent, when my child reaches 18 or 21, I will be very loath to allow them to hold a party without having paid security there because of the possibility that I could be held liable for what may happen. As the member for Bassendean mentioned, the threshold for this legislation to kick in is incredibly low. I will be interested to hear the minister's comments on the issue of intent.

Mrs L.M. HARVEY: The member for Armadale needs to take this in context when the term “out-of-control gathering” is used. The member needs to look at proposed section 75A(1), which refers to —

- (a) ... a gathering of 12 or more persons; and
- (b) 2 or more persons associated with the gathering engage in conduct of any of the following kinds —

These are listed in proposed subparagraphs (i) to (xiv) —

...

and

- (c) the gathering, or the conduct of persons associated with the gathering (taken together), causes or is likely to cause —
 - (i) fear or alarm to any person who is not associated with the gathering; or
 - (ii) a substantial interference with the lawful activities of any person; or
 - (iii) a substantial interference with the peaceful passage through, or enjoyment of, a place by any person who has lawful access to that place;
- and
- (d) the gathering is not excluded under subsection (3).

A senior officer, in declaring a gathering to be out of control, would need to satisfy all of those criteria together in context. There may only be two or more of the persons “engaged in conduct of any of the following kind”, but the other criteria need to be satisfied as well, and adjoining these three requirements, the gathering has 12 or more people. Then there are the criteria listed under proposed section 75A(1)(b) in proposed subparagraphs (i) to (xiv), and, the gathering is causing fear or alarm, substantial interference et cetera. This legislation is not intended, and it would not be used, for instance, to declare an out-of-control gathering just because there are 12 people and two of them litter, unless that gathering was causing fear or alarm to any person not associated with that gathering, substantial interference with the lawful activities of another person or substantial interference with the peaceful passage through, or enjoyment of a person, through that place. Therefore, criteria for an office to declare a gathering as an out-of-control gathering are quite demanding.

Dr A.D. BUTI: I thank the minister, but I think the example I used clearly fits within the criteria—the three triggers. Twelve or more people at a party—12 people at a party is not a lot—especially for a twenty-first or an eighteenth birthday party.

Dr E. Constable interjected.

Dr A.D. BUTI: Yes, but we need that first bit first.

So, a party has 12 people in attendance and only two of them have to misbehave—not 12, two. There could be 20 people, 30 people or 50 people, and only two of them have to misbehave. Granted, we then go to proposed section 75A(1)(c) and the need to satisfy a person's fear or alarm or substantial interference of access to lawful activity or enjoyment, but that could quite easily happen. Cars could be parked over the road would be substantial interference to someone trying to get through to their house. Loud music could be substantial interference to the enjoyment of someone's home. For the minister to say that these criteria have a high threshold

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is not borne out by the legislation. Substantial discretion is being left to the police officer. Granted, most police officers will hopefully behave in a commonsense manner, but that does not always happen. The problem here is that the organiser of the gathering is responsible. The whole idea of this legislation is to create liability to the organiser. Imagine that the organiser has sent out an invitation to 20 friends, inviting them to come over to celebrate a twenty-first birthday. He has not even put it on Facebook; it has not been advertised to anyone else, and in fact, only those 20 people arrive. Those 20 people arrive and two people, only two people, have to engage one of those listed contravening acts—it could be one we do not even know about, because it could be prescribed in regulations—and if proposed paragraph (c) is triggered, prima facie the organisers of the party are liable under this legislation. The minister may say that there is another provision in the legislation for the organisers having taken reasonable steps to ensure that the party does not become out of control, but what are reasonable steps? What is a reasonable step to ensure that people do not park over the road? Do people need to be outside directing traffic? Do security officers need to be employed? I think the minister is missing the point about the threshold of requirement; it is very, very low. The fact is that if two people are engaged in one of those listed contravening acts, they probably are the people who should be prosecuted and not the organisers of the party who have nothing to do with the acts. Why should I, who organises a party, be prosecuted because two people are doing something that is interfering with the enjoyment of someone else's property? That is absurd. I know that is not what the minister intended, but unfortunately, that is what will result from the legislation before the house. Maybe those two people should be prosecuted, but not the innocent organisers. Yes, of course the organiser of the party in Piara Waters should be prosecuted, but we are not talking about something like that that here. We are talking about people who just want to hold a party who may end up being liable because of the way this legislation is drafted, and liable in quite a substantial manner. In respect to proposed paragraph (c), which refers to “fear or alarm” and “substantial interference”—of course there is an issue about “substantial interference”, but leaving that aside, I refer to where the legislation states —

fear or alarm to any person who is not associated with the gathering; ...

Is that a subjective or an objective assessment? For example, if I were a timid person and I saw people engaging in insulting conduct and maybe a bit of unruly behaviour, it would cause fear or alarm to me, but it may not cause fear or alarm to a more robust character such as the member for Bassendean. Is it a reasonable test? Is it an objective test or is it a subjective test? Can the minister point to where in the legislation I could find reference to that?

Mrs L.M. HARVEY: In response to the member for Armadale's question, I say again that, first of all, all these things need be taken in context. Proposed section 75A(1)(c) refers to the gathering, or the conduct of persons associated with the gathering, taken together, causing or being likely to cause fear or alarm, substantial interference et cetera. Bear in mind that a senior officer with the rank of sergeant or above will be making a call about whether a gathering is an out-of-control gathering that fits the criteria. The officers who respond to public disorder incidents, noise complaints, general complaints about parties and those sorts of things understand whether the —

Mr W.J. Johnston: That is a separate issue; that is about the Criminal Investigation Act —

Mrs L.M. HARVEY: Excuse me, I believe I have the opportunity to actually explain my answer the way I would like to explain it and I will do that.

Mr W.J. Johnston interjected.

The DEPUTY SPEAKER: Member for Cannington.

Mrs L.M. HARVEY: Going further along in the bill, a senior officer is the person who declares a gathering as being out of control. I have faith in a senior officer of the rank of sergeant or above in our police department being able to determine whether they would be declaring a gathering to be an out-of-control gathering that fits all of these criteria. The police respond to calls from neighbours who are alarmed about noises they hear coming from next door, who complain about noises they hear from motor vehicles and who complain about a whole range of things. I would put to the member that an officer of the rank of sergeant or above will be able to come to one of these public disorder incidents and determine whether these criteria fit his or her assessment of that particular gathering being out of control, and that they satisfy the tests we have put in this legislation under proposed section 75A.

Mr W.J. JOHNSTON: So, the minister is saying that a person cannot be prosecuted for an out-of-control party unless a police officer has made a decision and issued some sort of instruction that it is an out-of-control party? Is that what the minister is saying? Is there a need for the Criminal Investigation Act? I am terribly sorry, Mr Deputy Speaker, but I have to refer to it; I have to refer to clause 7, not clause 4, because the words I need are in

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clause 7; I am terribly sorry about that. Is the minister saying that if no declaration is made under section 38A, someone cannot be prosecuted for a contravention of proposed section 75A? Does the minister want me to wait until she has finished consulting? Is the minister saying that someone cannot be prosecuted for a breach of section 75A of the Criminal Code unless a declaration has been made under section 38A of the Criminal Investigation Act?

Debate interrupted, pursuant to standing orders.