

Western Australia

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

As at 06 Dec 2012

No. 56 of 2012

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

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Contents

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No. 56 of 2012

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

[Assented to 6 December 2012]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

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

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 — *The Criminal Code* amended

3. Act amended

This Part amends *The Criminal Code*.

4. Sections 75A and 75B inserted

At the end of Part II Chapter IX insert:

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

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

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

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- (vii) driving a motor vehicle so as to cause excessive noise or smoke in contravention of the *Road Traffic Act 1974* section 62A;
 - (viii) unlawfully lighting fires or unlawfully using fireworks;
 - (ix) 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;
 - (x) causing an obstruction to traffic or to the movement of pedestrians;
 - (xi) depositing litter or breaking glass or other material;
 - (xii) contravening the *Liquor Control Act 1988* or the *Misuse of Drugs Act 1981*;
 - (xiii) being intoxicated by liquor or an intoxicant (as defined in section 206(1)) in a public place;
 - (xiv) any other conduct prescribed by the regulations;
- 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).
- (2) In subsection (1) —
vehicle has the meaning given in the *Criminal Investigation Act 2006* section 3(1).
- (3) For the purposes of subsection (1)(d), a gathering of any of the following kinds is excluded —
- (a) a gathering on licensed premises;
 - (b) a public meeting or procession for which a permit under the *Public Order in Streets Act 1984* has been issued;
 - (c) a gathering that is primarily for the purposes of political advocacy, protest or industrial action;
 - (d) a gathering of a kind prescribed by the regulations.
- (4) In subsection (3) —
licensed premises has the meaning given in the *Liquor Control Act 1988* section 3(1), but does not include premises to which an occasional licence granted under section 59 of that Act relates.
- (5) 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.

75B. Organising out-of-control gathering

- (1) In this section —
organise, in relation to a gathering, means to have a substantial involvement in arranging, managing,

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advertising or promoting the gathering (whether or not any other organisers of the gathering know of or consent to that involvement);

responsible adult, in relation to a child, means a parent, guardian or other person having responsibility for the day-to-day care of the child but does not include a person who the regulations provide is not a responsible adult.

- (2) A person —
- (a) who organises a gathering that becomes an out-of-control gathering; or
 - (b) who —
 - (i) is a responsible adult in relation to a child who organises a gathering that becomes an out-of-control gathering; and
 - (ii) gives the child permission to organise the gathering or permits the gathering to occur,
- is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.
- (3) 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.
- (4) Without limiting subsection (3), the following are examples of steps that could be taken to ensure that a gathering does not become an out-of-control gathering —
- (a) engaging persons to provide security services at the gathering;

- (b) organising the gathering in a manner that indicates that only persons invited to the gathering may attend;
 - (c) giving notice of the gathering to the Commissioner of Police in a manner approved by the Commissioner of Police;
 - (d) taking steps to request the attendance of police officers at the gathering as soon as practicable after becoming aware that —
 - (i) the gathering is likely to become an out-of-control gathering; or
 - (ii) any person is trespassing on a place where the gathering is occurring.
- (5) 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.
- (6) The order must specify that the amount is to be paid to the Commissioner of Police.
- (7) The *Sentencing Act 1995* Part 16 applies to and in respect of an order made under subsection (5) as if it were a compensation order made under that Part.

Part 3 — Criminal Investigation Act 2006 amended

5. Act amended

This Part amends the *Criminal Investigation Act 2006*.

6. Section 32A inserted

At the beginning of Part 5 Division 2 insert:

32A. Terms used

In this Division —

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

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.

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

After section 37 insert:

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

- (1) In this section —

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

- (2) If a senior officer reasonably suspects that —
- (a) there is an out-of-control gathering occurring in a place or vehicle; or
 - (b) a gathering of persons occurring in a place or vehicle is likely to become an out-of-control gathering,
- the officer may authorise the exercise of powers under section 38B.
- (3) A senior officer's authorisation under subsection (2) —
- (a) may be applied for and given by remote communication; and
 - (b) must specify the place or vehicle to which it applies; and
 - (c) has effect for 24 hours, or for any lesser period specified by the officer, after it is given.
- (4) A senior officer who under subsection (2) gives an authorisation must make a written record of it, the date and time it was given, and the reasons for giving it.
- (5) Powers under section 38B may be exercised by the senior officer who gave the authorisation under subsection (2) or by any other police officer.

38B. Entry of place or vehicle to prevent or disperse out-of-control gathering

- (1) Under an authorisation given under section 38A(2) in relation to a gathering and a place or vehicle, as the case requires, a police officer may do one or more of the following —
- (a) enter the place, or stop and enter the vehicle, for any of the purposes mentioned in paragraphs (b) to (g);

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- (b) locate, or attempt to locate, a person in authority;
- (c) order any person or group of persons in or in the vicinity of the place or vehicle to leave the place or vehicle immediately;
- (d) order any person or group of persons in or in the vicinity of the place or vehicle to cease any conduct of a kind described in *The Criminal Code* section 75A(1)(b)(i) to (xiv) or any other conduct that is unlawful;
- (e) order any person or group of persons to do anything that is reasonably necessary to enable or assist any other person to comply with an order under paragraph (c) or (d) or subsection (2);
- (f) take, or order any person or group of persons to take, any reasonable measures that the officer considers necessary —
 - (i) if an out-of-control gathering is occurring — to prevent the out-of-control gathering from continuing, to restore peace and good order, to protect the safety of any person or to prevent damage to property; or
 - (ii) if a gathering is occurring that is likely to become an out-of-control gathering — to prevent the gathering from becoming an out-of-control gathering;
- (g) ascertain or attempt to ascertain whether any offence has been committed under section 38C or another written law.

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

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

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

- (1) In this section —

assault has the meaning given in *The Criminal Code* section 222;

behave in a disorderly manner has the meaning given in *The Criminal Code* section 74A(1);

circumstances of aggravation means circumstances in which, during the commission of the offence, the offender —

- (a) behaves in a disorderly manner; or
 - (b) destroys or damages the property of another person or threatens to do so; or
 - (c) assaults or threatens to assault any person; or
 - (d) throws any object or releases any material or thing —
 - (i) in a manner that is likely to endanger the life, health or safety of any person; or
 - (ii) in circumstances that are likely to cause fear or alarm to any person.
- (2) A person commits an offence if the person fails to comply with an order given under section 38B(1) or (2).

Penalty:

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

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

8. Section 128 amended

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

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

section 6(1); or

- (b) after paragraph (c) insert:

- (d) under section 38C(2).

9. Section 153 amended

After section 153(1) insert:

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

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