



New South Wales

Criminal Legislation Amendment (Consorting and Restricted Premises) Bill 2018

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Crimes Act 1900* in response to the Ombudsman's report tabled in the Legislative Assembly on 17 June 2016 relating to the operation of Division 7 (Consorting) of Part 3A of that Act, and
- (b) to amend the *Restricted Premises Act 1943* in response to the Ombudsman's report tabled in the Legislative Assembly on 3 November 2016 relating to certain police powers and offence provisions under that Act.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Crimes Act 1900 No 40

Schedule 1 [1] provides that, for the purposes of the offence of consorting with convicted offenders, a convicted offender is a person who has been convicted of an indictable offence, which includes an offence committed in another jurisdiction that would be an indictable offence if committed in this jurisdiction.

Schedule 1 [2] excludes any person under the age of 14 years from the offence of consorting.

A person is guilty of the offence of consorting only if the person habitually consorts with at least 2 convicted offenders after having been given an official warning in relation to each of those convicted offenders. **Schedule 1 [3]** substitutes section 93X (3) to require that an official warning more closely reflect the elements of the offence of consorting and to ensure that a lack of strict compliance with the wording in the provision does not invalidate the warning. Proposed section 93X (4) provides that an official warning expires 2 years after the warning is given or, in the case of a person under the age of 18 years, 6 months after the warning is given.

Schedule 1 [4] and [5] extend the defence of reasonable consorting to consorting that occurs in the course of complying with an order by the State Parole Authority or with a case plan, direction or recommendation by a member of staff of Corrective Services NSW or providing transitional, crisis or emergency accommodation or a welfare service. **Schedule 1 [6]** inserts definitions of *health service*, *Parole Authority* and *welfare service*.

Schedule 1 [6] also defines *family member* to make it clear that the defence of reasonable consorting between family members includes, for a defendant who is an Aboriginal person or a Torres Strait Islander, persons who are or have been part of the extended family or kin of the defendant according to the indigenous kinship system of the defendant's culture.

Schedule 1 [7] inserts certain savings and transitional provisions, including a requirement for the Law Enforcement Conduct Commission (*the LECC*) to review the operation of the amendments made by the proposed Act within 3 years after the commencement of the proposed Act. The LECC must report to the Attorney General and the Minister for Police on the outcome of the review.

Schedule 2 Amendment of Restricted Premises Act 1943 No 6

Schedule 2 [1] provides that a declaration by the Supreme Court or the District Court under Part 2 of the *Restricted Premises Act 1943* may be rescinded if the Court is satisfied that the conditions, in respect of which the declaration was made, have ceased for a continuous period of 12 months and are unlikely to reoccur. **Schedule 2 [2]** provides that the burden of establishing that the conditions have ceased and are unlikely to reoccur lies on the owner or occupier of the premises. **Schedule 2 [3]** provides that a person may not apply again for the rescission of the declaration in the same 12 month period.

Schedule 2 [4] requires a member of the Police Force to notify the occupier of premises the subject of a declaration if the member enters the premises when the occupier of the premises is not present.

Schedule 2 [5] inserts proposed sections 13AA–13AC, which relate to the powers a member of the Police Force may exercise in connection with a search warrant issued under section 13 of the *Restricted Premises Act 1943*.

Proposed section 13AA allows a member of the Police Force to give reasonable directions to any person on premises to which a search warrant relates for the purpose of minimising risk to the safety of any person on the premises. The proposed section makes it an offence to fail or refuse to comply with a direction without reasonable excuse.

Proposed section 13AB allows a member of the Police Force to search any person on premises to which a search warrant relates if the member reasonably suspects the person to be in possession of a thing mentioned in the warrant.

Proposed section 13AC allows a member of the Police Force to require a person on premises to which a search warrant relates to state his or her full name and residential address. A person is guilty of an offence if the person fails or refuses to comply with the requirement or gives information in purported compliance with the requirement knowing that it is false or misleading in a material respect.



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New South Wales

Criminal Legislation Amendment (Consorting and Restricted Premises) Bill 2018

No. , 2018

A Bill for

An Act to amend the *Crimes Act 1900* and the *Restricted Premises Act 1943* as a result of certain reports by the Ombudsman; and for other purposes.

The Legislature of New South Wales enacts:

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1 Name of Act

2

This Act is the *Criminal Legislation Amendment (Consorting and Restricted Premises) Act 2018*.

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2 Commencement

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This Act commences on a day or days to be appointed by proclamation.

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Schedule 1 Amendment of Crimes Act 1900 No 40

[1] Section 93W Definitions

Insert at the end of the section:

- (2) For the purposes of this Division, an *indictable offence* includes an offence committed in another jurisdiction that would be an indictable offence if committed in this jurisdiction.

[2] Section 93X Consorting

Insert “(other than a person under the age of 14 years)” after “person” in section 93X (1).

[3] Section 93X (3) and (4)

Omit section 93X (3). Insert instead:

- (3) An *official warning* is a warning given by a police officer (orally or in writing) to the effect that:
- (a) a certain person is a convicted offender, and
 - (b) habitually consorting with convicted offenders is an offence.
- (4) An official warning ceases to have effect for the purposes of subsection (1):
- (a) if the warning is given to a person under the age of 18 years—6 months after the warning is given, or
 - (b) in any other case—2 years after the warning is given.

[4] Section 93Y Defence

Insert “or welfare service” after “health service” in section 93Y (d).

[5] Section 93Y (g) and (h)

Insert after section 93Y (f):

- (g) consorting that occurs in the course of complying with:
 - (i) an order granted by the Parole Authority, or
 - (ii) a case plan, direction or recommendation by a member of staff of Corrective Services NSW,
- (h) consorting that occurs in the course of providing transitional, crisis or emergency accommodation.

[6] Section 93Y (2)

Insert at the end of section 93Y:

- (2) In this section:
- family member* includes, for a defendant who is an Aboriginal person or a Torres Strait Islander, a person who is or has been part of the extended family or kin of the defendant according to the indigenous kinship system of the defendant’s culture.
- health service* means:
- (a) medical (including psychological), hospital, ambulance, paramedical, dental, community health or environmental health service, or
 - (b) another service:
 - (i) relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in, or

injury to, persons (whether provided as a public or private service), and	1
(ii) that is of a class or description prescribed by the regulations.	2
Parole Authority means the State Parole Authority constituted by section 183 of the <i>Crimes (Administration of Sentences) Act 1999</i> .	3
welfare service means a service (whether provided as a public or private service) relating to the provision of:	4
(a) housing, employment benefits, rental assistance or other financial assistance or family support, or	5
(b) another community welfare service necessary for the promotion, protection, development and maintenance of the well-being of persons, including any rehabilitation, counselling, drug or alcohol service.	6
[7] Schedule 11 Savings and transitional provisions	7
Insert at the end of the Schedule, with appropriate Part and clause numbering:	8
Part Criminal Legislation Amendment (Consorting and Restricted Premises) Act 2018	9
Definition	10
In this Part:	11
amending Act means the <i>Criminal Legislation Amendment (Consorting and Restricted Premises) Act 2018</i> .	12
Application of amendments	13
An amendment made by the amending Act applies only in respect of an offence committed, or alleged to have been committed, on or after the commencement of the amendment.	14
Savings provision for official warnings	15
Section 93X, as in force immediately before its amendment by the amending Act, continues to apply to an official warning given before the commencement of that amendment as if that amendment had not been made.	16
Review of operation of amendments made by amending Act	17
(1) The LECC is to review the operation of the amendments made by the amending Act.	18
(2) The review is to be undertaken within 3 years after the commencement of this clause.	19
(3) The LECC is to report to the Attorney General and the Minister for Police on the outcome of the review as soon as practicable after the review is completed.	20
(4) In this clause, LECC means the Law Enforcement Conduct Commission constituted by section 17 of the <i>Law Enforcement Conduct Commission Act 2016</i> .	21

Schedule 2	Amendment of Restricted Premises Act 1943	1
	No 6	2
[1] Section 4 Rescission of declaration		3
Omit section 4 (1) (a). Insert instead:		4
(a)	by the owner or occupier of the premises the subject of the declaration, if the Court is satisfied the conditions referred to in section 3 (1) in respect of which the declaration was made:	5
(i)	have ceased for a continuous period of at least 12 months before the application is made, and	6
(ii)	are unlikely to reoccur at the premises, or	7
[2] Section 4 (1A)		11
Insert after section 4 (1):		12
(1A)	For the purposes of subsection (1) (a), the burden of establishing that the conditions have ceased and are unlikely to reoccur lies on the owner or occupier of the premises.	13
[3] Section 4 (3)		16
Insert after section 4 (2):		17
(3)	An owner or occupier may not make more than one application for the rescission of a declaration in respect of the same premises within any 12 month period.	18
[4] Section 10 Entry by police		21
Insert at the end of the section:		22
(2)	If the occupier of premises is not present when a member of the Police Force enters the premises under this section, the member must notify the occupier of the premises as soon as practicable after the entry.	23
(3)	Failure to notify the occupier of the premises under subsection (2) does not make the exercise of power conferred on a member of the Police Force by this section unlawful.	24
[5] Sections 13AA–13AC		29
Insert after section 13:		30
13AA Power for police to give directions		31
(1)	A member of the Police Force executing a search warrant under section 13 may give reasonable directions to a person on the premises to which the warrant relates.	32
(2)	The direction must be reasonable in the circumstances for the purpose of minimising risk to the safety of any person on the premises.	33
(3)	The person must not, without reasonable excuse, fail or refuse to comply with the direction.	34
	Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.	35
13AB Search of person pursuant to warrant		36
	A member of the Police Force executing a search warrant under section 13 may search a person on the premises to which the warrant relates if the	37
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member of the Police Force reasonably suspects the person to be in possession of a thing mentioned in the warrant.	1 2
13AC Power of police to demand name and address	3
(1) A member of the Police Force executing a search warrant under section 13 may require a person on the premises to which the warrant relates to state the person's full name and residential address.	4 5 6
(2) A member of the Police Force may ask a person who is required under this section to state the person's full name and residential address to provide proof of the name and address.	7 8 9
(3) It is not an offence under this section to fail to comply with a request under subsection (2).	10 11
(4) A person who, without reasonable excuse, fails or refuses to comply with a requirement made of the person under subsection (1) is guilty of an offence. Maximum penalty: 10 penalty units.	12 13 14
(5) A person who gives any information in purported compliance with a requirement made of the person under subsection (1), knowing that it is false or misleading in a material respect, is guilty of an offence. Maximum penalty: 10 penalty units.	15 16 17 18