



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.