

The object of this Bill is to amend the *Crimes Act 1900*:

(a) to create a new offence of firing at a dwelling-house, with a higher penalty than the existing general offence for firing at a dwelling-house, where the offence occurs in the course of an organised criminal activity, and

(b) to change the mental element for the offence of participating in a criminal group so that it is no longer necessary to prove that the defendant knowingly participated in the criminal group and knowingly or recklessly contributed to the occurrence of a criminal activity, and

(c) to create new offences relating to participation in criminal groups, with higher penalties than the existing general offence for participating in a criminal group, where the defendant directed the activities of the criminal group or the activities of the criminal group were organised and on-going, and

(d) to make it an offence to receive a material benefit from a criminal group that is derived from its criminal activities, and

(e) to replace and clarify the offence of consorting with convicted offenders.

The Bill also makes consequential amendments to other Acts.

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**

##### **Firing at dwelling-houses**

**Schedule 1 [1]** provides for a new offence of firing a firearm at a dwelling-house or other building in the course of an organised criminal activity, with reckless disregard for the safety of any person. The maximum penalty is imprisonment for 16 years. The maximum penalty for the existing general offence of firing at a dwelling-house or building, with reckless disregard for the safety of any person, is imprisonment for 14 years.

**Schedule 1 [2]** provides for alternative verdicts in relation to prosecutions for the new offence.

##### **Participation in criminal groups**

The *Crimes Act 1900* contains several offences relating to participation in criminal groups.

**Schedule 1 [4]** changes the mental element for the existing general offence of participating in a criminal group. At present, it is necessary to prove that the defendant knew that the group was a criminal group and knew, or was reckless as to whether, his or her participation contributed to the occurrence of a criminal activity.

As a result of the amendment, it will be necessary only to prove that the defendant knew, or ought reasonably to have known, that the group was a criminal group and knew, or ought reasonably to have known, that his or her participation in the criminal group contributed to the occurrence of a criminal activity.

**Schedule 1 [4]** also provides for a new offence (with a higher penalty than the existing general offence of participating in a criminal group) of participating in a criminal group by directing any of its activities. In this case, knowledge that the group is a criminal group, and knowledge or recklessness as to whether the participation contributes to the occurrence of a criminal activity, is required. The maximum penalty is imprisonment for 10 years.

**Schedule 1 [5]** provides for a new offence (with a higher penalty than the existing general offence of participating in a criminal group) of participating in a criminal group whose activities are organised and on-going. Knowledge that the group is a criminal group, and knowledge or recklessness as to whether the participation contributes to the occurrence of a criminal activity, is required. The maximum penalty is imprisonment for 15 years.

**Schedule 1 [7]** provides for alternative verdicts in relation to prosecutions for the new offences.

##### **Receiving benefits derived from criminal activities of criminal groups**

**Schedule 1 [6]** makes it an offence to receive from a criminal group a material benefit derived from the criminal activities of the criminal group, knowing that the group is a criminal group and knowing, or being reckless as to whether, the benefit is derived from criminal activities of the criminal group. It is not necessary to prove participation in the criminal group. The offence carries a maximum penalty of imprisonment for 5 years.

**Schedule 1 [8]** makes the offence an alternative verdict on a charge of participating in a criminal group.

**Schedule 1 [3]** is a consequential amendment.

#### **Consorting with convicted offenders**

**Schedule 1 [9]** provides for a new offence of consorting with convicted offenders.

A person will be guilty of the new offence if the person:

- (a) habitually consorts with convicted offenders, and
- (b) consorts with those convicted offenders after having been given an official warning in relation to each of those convicted offenders.

A convicted offender is any person who has been convicted of an indictable offence (excluding the offence of consorting). Spent convictions will also be excluded by operation of the *Criminal Records Act 1991*, section 12.

The new offence makes it clear that:

- (a) habitual consorting requires the defendant, at a minimum, to have consorted with at least 2 convicted offenders and to have consorted with each of those offenders on at least 2 occasions, and
- (b) the defendant is guilty of an offence only if the defendant consorts with convicted offenders after having been warned by a police officer that each convicted offender is a convicted offender and that consorting with a convicted offender is an offence.

The existing consorting offence (which is repealed by **Schedule 1 [10]**) does not describe what is meant by habitual consorting, and does not require the defendant to have been given an official warning.

The new offence clarifies the circumstances in which consorting is permitted, such as between family members or in the course of lawful employment, the lawful operation of a business, training or education.

The new offence also makes it clear that consorting can occur in person or by any other means, including by electronic or other form of communication.

The new offence is an indictable offence with a maximum penalty of imprisonment for 3 years, or a fine of 150 penalty units, or both.

**Schedule 1 [11]** provides for the Ombudsman to review the operation of the new offence at the end of the period of 2 years from its commencement.

#### **Schedule 2 Consequential amendment of other Acts**

**Schedule 2** makes amendments to other Acts that are consequential on the amendments described above.