

Passed by both Houses



New South Wales

Crimes Amendment (Consorting and Organised Crime) Bill 2012

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2012*



New South Wales

Crimes Amendment (Consorting and Organised Crime) Bill 2012

Act No , 2012

An Act to amend the *Crimes Act 1900* in relation to consorting and organised crime; and to make consequential amendments to other Acts.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Amendment (Consorting and Organised Crime) Act 2012*.

2 Commencement

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

Schedule 1 Amendment of Crimes Act 1900 No 40

[1] Section 93GA Firing at dwelling-houses or buildings

Insert after section 93GA (1A):

- (1B) A person who, in the course of an organised criminal activity, fires a firearm at a dwelling-house or other building with reckless disregard for the safety of any person is liable to imprisonment for 16 years.

[2] Section 93GA (4)

Insert after section 93GA (3):

- (4) If, on the trial of a person for an offence under subsection (1A) or (1B), the jury is not satisfied that the accused is guilty of the offence but is satisfied on the evidence that the person is guilty of an offence under subsection (1), it may find the person not guilty of the offence charged but guilty of an offence under subsection (1), and the accused is liable to punishment accordingly.

[3] Part 3A, Division 5, heading

Omit the heading. Insert instead:

Division 5 Criminal groups

[4] Section 93T Participation in criminal groups

Omit section 93T (1). Insert instead:

- (1) A person who participates in a criminal group is guilty of an offence if the person:
- (a) knows, or ought reasonably to know, that it is a criminal group, and
 - (b) knows, or ought reasonably to know, that his or her participation in that group contributes to the occurrence of any criminal activity.

Maximum penalty: Imprisonment for 5 years.

- (1A) A person who participates in a criminal group by directing any of the activities of the group is guilty of an offence if the person:
- (a) knows that it is a criminal group, and
 - (b) knows, or is reckless as to whether, that participation contributes to the occurrence of any criminal activity.

Maximum penalty: Imprisonment for 10 years.

[5] Section 93T (4A)

Insert after section 93T (4):

- (4A) A person who participates in a criminal group whose activities are organised and on-going by directing any of the activities of the group is guilty of an offence if the person:
- (a) knows that it is a criminal group, and
 - (b) knows, or is reckless as to whether, that participation contributes to the occurrence of any criminal activity.

Maximum penalty: Imprisonment for 15 years.

[6] Section 93TA

Insert after section 93T:

93TA Receiving material benefit derived from criminal activities of criminal groups

- (1) A person who receives from a criminal group a material benefit that is derived from the criminal activities of the criminal group is guilty of an offence if the person:
- (a) knows that it is a criminal group, and
 - (b) knows, or is reckless as to whether, the benefit is derived from criminal activities of the criminal group.

Maximum penalty: Imprisonment for 5 years.

- (2) In this section, a material benefit *derived* from the criminal activities of a criminal group is a material benefit derived or realised, or substantially derived or realised, directly or indirectly, from the criminal activities of a group.

[7] Section 93U Alternative verdicts

Omit “93T (2), (3) or (4)”. Insert instead “93T (1A), (2), (3), (4) or (4A)”.

[8] Section 93U (2)

Insert at the end of section 93U:

- (2) If, on the trial of a person for an offence under section 93T (1), (1A) or (4A), the jury is not satisfied that the accused is guilty of the offence charged but is satisfied that the accused is guilty of an offence under section 93TA, it may find the accused not guilty of the offence charged but guilty of an offence under section 93TA, and the accused is liable to punishment accordingly.

[9] **Part 3A, Division 7**

Insert after Division 6 of Part 3A:

Division 7 Consorting

93W Definitions

In this Division:

consort means consort in person or by any other means, including by electronic or other form of communication.

convicted offender means a person who has been convicted of an indictable offence (disregarding any offence under section 93X).

93X Consorting

- (1) A person who:
 - (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,is guilty of an offence.
Maximum penalty: Imprisonment for 3 years, or a fine of 150 penalty units, or both.
- (2) A person does not *habitually consort* with convicted offenders unless:
 - (a) the person consorts with at least 2 convicted offenders (whether on the same or separate occasions), and
 - (b) the person consorts with each convicted offender on at least 2 occasions.
- (3) An *official warning* is a warning given by a police officer (orally or in writing) that:
 - (a) a convicted offender is a convicted offender, and
 - (b) consorting with a convicted offender is an offence.

93Y Defence

The following forms of consorting are to be disregarded for the purposes of section 93X if the defendant satisfies the court that the consorting was reasonable in the circumstances:

- (a) consorting with family members,
- (b) consorting that occurs in the course of lawful employment or the lawful operation of a business,

- (c) consorting that occurs in the course of training or education,
- (d) consorting that occurs in the course of the provision of a health service,
- (e) consorting that occurs in the course of the provision of legal advice,
- (f) consorting that occurs in lawful custody or in the course of complying with a court order.

[10] Section 546A Consorting with convicted persons

Omit the section.

[11] Schedule 11 Savings and transitional provisions

Insert at the end of the Schedule with appropriate Part and clause numbers:

Part Crimes Amendment (Consorting and Organised Crime) Act 2012

Report by Ombudsman on consorting offence

- (1) As soon as practicable after the end of the period of 2 years from the commencement of Division 7 of Part 3A (as inserted by the *Crimes Amendment (Consorting and Organised Crime) Act 2012*), the Ombudsman must prepare a report on the operation of that Division.
- (2) For that purpose, the Commissioner of Police is to ensure that the Ombudsman is provided with information about any prosecutions brought under section 93X.
- (3) The Ombudsman may at any time require the Commissioner of Police, or any public authority, to provide any information or further information the Ombudsman requires for the purposes of preparing the report under this clause.
- (4) The Ombudsman must furnish a copy of the report to the Attorney General and to the Commissioner of Police.
- (5) The Attorney General is to lay (or cause to be laid) a copy of the report before both Houses of Parliament as soon as practicable after the Attorney General receives the report.
- (6) If a House of Parliament is not sitting when the Attorney General seeks to lay a report before it, the Attorney General may present copies of the report to the Clerk of the House concerned.

- (7) The report:
- (a) is, on presentation and for all purposes, taken to have been laid before the House, and
 - (b) may be printed by authority of the Clerk of the House, and
 - (c) if so printed, is for all purposes taken to be a document published by or under the authority of the House, and
 - (d) is to be recorded:
 - (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and
 - (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the report by the Clerk.

Schedule 2 Consequential amendment of other Acts

2.1 Criminal Assets Recovery Act 1990 No 23 (as amended by the Crimes (Criminal Organisations Control) Act 2012)

Section 6 Meaning of “serious crime related activity”

Insert “or 93TA” after “section 93T” in section 6 (2) (g1).

2.2 Criminal Procedure Act 1986 No 209

[1] Schedule 1 Indictable offences triable summarily

Omit “93T (2) or (3)” from item 10C in Table 1 to the Schedule.

Insert instead “93T (1A), (2), (3) or (4A)”.

[2] Schedule 1, Table 2, item 4D

Omit “93T (1)”. Insert instead “93T (1) or 93TA”.

[3] Schedule 1, Table 2, item 4E

Insert after item 4D:

4E Consorting

An offence under section 93X of the *Crimes Act 1900*.

2.3 Police Act 1990 No 47

[1] Section 207A Commissioner may conduct integrity testing programs

Insert “93X,” after “section” in section 207A (4) (d).

[2] Section 207A (4) (d)

Omit “, 546A”.