

## NSW Government response to the Ombudsman's *Report on the operation of Part 3A, Division 7 of the Crimes Act 1900* (April 2016)

The NSW Government agrees with the overarching intent of the Ombudsman's recommendations. However, the Government will make some amendments when implementing the Ombudsman's recommendations that will provide more safeguards and oversight while continuing to allow the wider application of the consorting law. This is in recognition that the consorting law is a useful diversionary tool for young people in addition to being a useful tool for the disruption and prevention of organised criminal activity that establishes, uses or builds up criminal networks.

Recommendation	Government Response
<p>1. The Attorney General propose, for the consideration of Parliament, an amendment to the consorting law to remove children and young people aged 17 years or less from the application of the consorting law.</p> <p>These amendments should prohibit:</p> <ol style="list-style-type: none"> <li>a) the ability for police to issue consorting warnings and charge a child or young person aged 17 years or less under section 93X of the <i>Crimes Act 1900</i> NSW (<b>Crimes Act</b>), and</li> <li>b) the ability for police to treat a child or young person aged 17 years or less as a 'convicted offender' for the purposes of the consorting law.</li> </ol>	<p><b>Supported in part</b></p> <p>The NSW Government notes the concerns raised by the Ombudsman about the potential impact of the use of the consorting law on young people, particularly indigenous young people.</p> <p>However, the NSW Government believes the consorting law provides an effective means of deterring young people from serious criminal activity, including warning young people about consorting with convicted offenders who are suspected of recruiting young people for violent extremism or terror-related activities. Consorting warnings are also a useful diversionary tool for young people and can provide a gateway for young people accessing and participating in diversionary programs. This includes the Youth on Track early intervention program and the NSW Government's Countering Violent Extremism programs.</p> <p>If successful, the deterrent and diversionary aspects of the consorting law can be beneficial to young people by preventing offending, or preventing further or more serious offending.</p> <p>The Ombudsman's review discusses the way the consorting law was applied in respect of young people in the early stages of implementation of the consorting law. Since that time the NSW Police Force (<b>NSWPF</b>) has taken action to mitigate the possibility of error. This has included improvements to IT systems and delivering additional training and instruction to police officers.</p> <p>The Government proposes additional measures to respond to the needs of young people, which will include:</p> <ul style="list-style-type: none"> <li>• removing children under 14 years of age from the operation of the consorting law;</li> <li>• amending the Act to provide that a warning issued to a person under the age of 18 expires 6 after from the date the warning was issued; and</li> <li>• the NSWPF updating internal NSWPF consorting policy and standard operating procedures to ensure that advice is sought from the Commander, Police Prosecutions before a charge of consorting is laid in respect of a person aged under the age of 18.</li> </ul> <p>The NSWPF will continue to monitor the use of the consorting law on young people and a further review of the consorting law will be undertaken (see Recommendation 20).</p>

Recommendation	Government Response
<p>2. The Attorney General propose, for the consideration of Parliament, an amendment to section 93X(3)(b) of the Crimes Act, to remove the present ambiguity and reflect the NSWPF submission that a consorting warning state: <i>'(Name) is a convicted offender. Consorting with (name) is an offence.'</i></p>	<p><b>Supported in principle</b></p> <p>The Government will consult with the Parliamentary Counsel as to whether, and if so how, the statutory warning could be made clearer to address the Ombudsman's concern. Any warning should be both consistent with the actual elements of the offence as well as being simple and readily understandable. It is noted that a failure to use the exact wording will not invalidate an official warning under the Act.</p>
<p>3. The NSWPF amend its consorting policy, publications, standard operating procedures (SOPs) and training, to ensure retrospective consorting warnings are issued as soon as practicable after an incident of consorting, and not later than 14 days.</p>	<p><b>Supported in principle</b></p> <p>The NSWPF proposes to amend its internal consorting policy to ensure that retrospective consorting warnings are issued without unreasonable delay after an incident of consorting is detected.</p> <p>The Government does not support requiring all retrospective consorting warnings to be issued within 14 days or other prescribed time after the consorting event as this may interfere with NSWPF investigations (for example, where the consorting is discovered by interception warrant or CCTV images in the course of an ongoing investigation).</p>
<p>4. The NSWPF develop and implement training for frontline officers involved in issuing consorting warnings and creating consorting Event records on COPS that includes:</p> <ul style="list-style-type: none"> <li>a) the different types of consorting warnings;</li> <li>b) the difference between warnings and bookings; and</li> <li>c) how to ensure accurate record-keeping, including ensuring that all warnings are accurately recorded and any invalid warnings are identified and addressed according to the Consorting SOPs.</li> </ul>	<p><b>Supported</b></p> <p>The NSWPF has already developed and implemented a range of training in relation to the issues referred to in the recommendation.</p> <p>The NSWPF will continue to review existing training to ensure that it adequately addresses the specific issues referred to in the recommendation.</p>

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<p><b>5.</b> The NSWPF design and implement a quality assurance process for the ongoing use of the consorting law.</p> <p>This process should be implemented within each command or relevant organisational unit and must ensure:</p> <ul style="list-style-type: none"> <li>a) accurate record-keeping;</li> <li>b) that correct procedures are followed if invalid warnings are identified; and</li> <li>c) that the NSWPF consorting policy and guidelines are complied with.</li> </ul>	<p><b>Supported</b></p> <p>The NSWPF will design and implement a quality assurance process for the ongoing use of the consorting law as set out in the Ombudsman's recommendation.</p>
<p><b>6.</b> On request, whether made at a police station, in writing, or to the Police Assistance Line, the NSWPF provide the following information in writing to a person issued with a consorting warning, or a person about whom a warning is issued:</p> <ul style="list-style-type: none"> <li>a) confirmation or otherwise of the validity of the relevant consorting warning</li> <li>b) details of the warning including the name of the person(s) warned, the name of the person(s) warned about, and the date and location of the warning.</li> </ul>	<p><b>Supported</b></p> <p>The NSWPF will update operational procedures to provide for information to be given, in writing, to a person in regards to a consorting warning issued to or about the person.</p>
<p><b>7.</b> The NSWPF prepare and publish a fact sheet about the consorting law, on the NSWPF website.</p> <p>The consorting fact sheet should include relevant information about the consorting law and the police complaints system, and links to the Police Assistance Line and LawAccess NSW.</p>	<p><b>Supported</b></p> <p>The NSWPF will prepare a fact sheet about the consorting law for publication on the NSWPF website.</p> <p>Police SOPs will be updated to provide that, as soon as practicable after the warning has been given to a person, the person will be advised that this document is available on the NSWPF website or provided with the document.</p>

Recommendation		Government Response
8.	The NSWPF refer to the requirements imposed by recommendations 6 and 7 in consorting policy, publications, SOPs and training.	<p><b>Supported</b></p> <p>The NSWPF will update internal consorting policy, publications, SOPs and training as part of the implementation of Recommendation 6 and 7.</p>
9.	The Attorney General propose, for the consideration of Parliament, an amendment to the consorting law to include a statutory time limit.	<p><b>Supported</b></p> <p>The Government proposes to amend the Act to provide that an official warning will cease to have effect after two years after the date of issue. A consorting warning issued to a person under the age of 18 will cease to have effect after 6 months after the date of issue.</p> <p>The NSWPF will also update the internal consorting policy and SOPs to require the advice of the Commander, Police Prosecutions before any charge for consorting is brought against a person when warnings were given six or more months apart from one another.</p>
10.	The NSWPF include in the Consorting SOPs practical guidance to officers to avoid unnecessary disclosure of the 'convicted offender' status of a person about whom someone is warned.	<p><b>Supported</b></p> <p>The NSWPF will include the proposed guidance and instructions in the Consorting SOPs.</p>
11.	The NSWPF include in the Consorting SOPs instructions that officers are not to disclose the details of the indictable offence a person was previously convicted of when issuing a consorting warning to others about them.	<p><b>Supported</b></p> <p>The NSWPF will include the proposed guidance and instructions in the Consorting SOPs.</p>

Recommendation	Government Response
<p><b>12.</b> The Attorney General propose, for the consideration of Parliament, amendments to section 93Y of the Crimes Act to include the following additional defences:</p> <ul style="list-style-type: none"> <li>a) 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.</li> <li>b) Consorting that occurs in the course of the provision of transitional, crisis or emergency accommodation.</li> <li>c) Consorting that occurs in the course of the provision of a welfare or support service.</li> </ul>	<p><b>Supported</b></p> <p>The Government proposes to amend the Act to include these defences.</p>
<p><b>13.</b> The Attorney General propose, for the consideration of Parliament, an amendment to the consorting law to include a definition of ‘family members’ that includes kinship relations between Aboriginal people.</p>	<p><b>Supported</b></p> <p>The Government proposes to amend the Act to clarify that ‘family members’ includes kinship relations between Aboriginal people.</p>
<p><b>14.</b> The Attorney General propose, for the consideration of Parliament, an amendment to the consorting law to include a broad definition of ‘health service’ that includes therapeutic, rehabilitation, drug and alcohol services, and accessing social workers and other counselling services.</p>	<p><b>Supported</b></p> <p>The Government proposes to amend the Act to include a broad definition of ‘health service’, as recommended by the Ombudsman.</p>

Recommendation	Government Response
<p><b>15.</b> The NSWPF amend its consorting policy, SOPs, publications and training to encourage officers to exercise their discretion not to issue consorting warnings or commence criminal proceedings on the basis of the following types of consorting:</p> <ul style="list-style-type: none"> <li>a) 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;</li> <li>b) Consorting that occurs in the course of the provision of transitional, crisis or emergency accommodation;</li> <li>c) Consorting that occurs between family members where 'family members' is defined in a culturally inclusive way, with particular reference to the Aboriginal kinship system; and</li> <li>d) Consorting that occurs in the course of the provision of a welfare or support service.</li> </ul>	<p><b>Supported</b></p> <p>The NSWPF will update internal consorting policy, SOPs, publications and training based, inter alia, on the amendments to be progressed in response to Recommendations 12 – 14.</p>
<p><b>16.</b> The NSWPF amend its consorting policy, SOPs, relevant publications, and training so that application of the consorting law is focused on the prevention of serious criminal offending.</p>	<p><b>Supported in principle</b></p> <p>The NSWPF will review and, where appropriate, update internal NSWPF policy, SOPs and training regarding application of the consorting law to state the application of the consorting law is focused on the prevention of organised criminal activity that establishes, uses or builds up criminal networks.</p>

Recommendation	Government Response
<p><b>17.</b> The NSWPF amend its consorting policy, SOPs, relevant publications, and training so that:</p> <ul style="list-style-type: none"> <li>a) identification of people who are to be targeted for consorting should be intelligence-driven, and based on an identified risk that the relevant individuals are involved in recent or ongoing serious criminal offending; and</li> <li>b) use of the consorting law in the circumstances is likely to assist to prevent serious criminal offending.</li> </ul>	<p><b>Supported in principle</b></p> <p>The NSWPF will update its internal consorting policy, SOPs, relevant publications, and training so that:</p> <ul style="list-style-type: none"> <li>(a) identification of people who are targeted for consorting should be intelligence-driven, and based on an identified risk that the relevant individuals are involved in recent or ongoing criminal offending; and</li> <li>(b) use of the consorting law in the circumstances is likely to assist to prevent criminal offending.</li> </ul> <p>The NSWPF will review internal policy to ensure that the application of the consorting law is focused on the prevention of organised criminal activity that establishes, uses, or builds up criminal networks.</p>
<p><b>18.</b> The NSWPF proscribes the use of the consorting law to address or prevent minor offending, including offences outlined in the Summary Offences Act 1988, and reflect this in NSWPF consorting policy, SOPs, relevant publications, and training</p>	<p><b>Supported in principle</b></p> <p>The NSWPF will review NSWPF consorting policy, SOPs, relevant publications, and training to ensure that the application of the consorting law to address or prevent minor offending is appropriate given the focus of the consorting law to prevent organised criminal activity that establishes, uses, or builds up criminal networks.</p>
<p><b>19.</b> The Attorney General propose, for the consideration of Parliament, an amendment to the consorting law to insert an objects clause into Part 3A, Division 7 of the Crimes Act that defines the purpose of the consorting law to be the prevention of serious criminal offending.</p>	<p><b>Not supported</b></p> <p>The Crimes Act does not contain objects clauses.</p> <p>The Government does not propose amending the Act to limit the use of the consorting laws to “serious criminal offending” only. The Government believes this would limit the ability for police to use the consorting law to effectively police a range of criminal activity that is of concern to local communities, but which may not fall within a prescriptive and narrow definition of “serious criminal offending”.</p>

Recommendation	Government Response
<p><b>20.</b> The Attorney General require the preparation of a further public report by an independent body on the operation of the consorting law in Part 3A, Division 7 of the Crimes Act.</p>	<p><b>Supported</b></p> <p>The Law Enforcement Conduct Commission will provide a report to the Attorney General and the Minister for Police on the operation of the consorting law for tabling in Parliament after a further three years of the law's operation. The report will focus on consorting laws as they relate to young people and vulnerable people.</p>