

Review of the operation of amendments to the consorting law: Feb 2019 – Feb 2022

The Law Enforcement Conduct Commission has reviewed the way recent amendments to NSW consorting laws work. The Commission has released a report outlining its findings and recommendations.

What is consorting?

Consorting means associating or keeping company with someone. Consorting does not require an unlawful intention or criminal purpose.

Under the Crimes Act, police can charge someone with consorting if police:

- warned them about two people who have been convicted of an indictable offence (these are more serious offences that are considered in the District or Supreme Court), and
- found them to have been associating with those two people on at least one more occasion after being warned.

There are a number of defences in the legislation. The person charged with consorting offences has to show the Court that they apply.

The maximum sentence for consorting is three years in prison and/or a \$16,500 fine.

What were the amendments?

The consorting law was amended in 2018. These amendments:

- allow police to issue warnings about people who committed relevant offences in other states
- limited the use of consorting laws to people over the age of 14
- limited the time a warning stays in place to 6 months for people under 18 years and for 2 years for adults
- clarified what should go in a consorting warning

- created extra defences to a charge of consorting such as: compliance with directions from the State Parole Authority and Corrective Services officers, engaging in welfare services or transitory accommodation arrangements
- clarified that associating within Aboriginal kinship systems is a defence to consorting charges.

How many warnings were issued?

In the three years the review covered:

- Police issued 16,480 warnings to 2,671 people.
- General duties police officers gave 79% of the warnings.
- Police charged 11 people with consorting. One person was charged twice. No-one under 18 was charged.
- Police warned 48 people under the age of 18.
- Aboriginal and Torres Strait Islander people formed 42% of the people that police either warned or warned about.

Targeting less serious offending

Many of the warnings general duties police officers issued related to comparatively less serious potential offending.

For example, police stopped and searched a group of people on suspicion of possessing drugs. When police found someone in the group had been convicted of an indictable offence they issued a consorting warning and often a move-on direction.

Case study: Burgers and drinks (p.58 in our report)

Two people were stopped by a police officer for riding bicycles without helmets or lights in the early hours of the morning. They told the officer who stopped them that they were heading home after getting food. They had burgers and drinks in their bags. The officer asked for their details, and after seeing they both had earlier drug related contact

with police he decided to search both men. He did not find anything during the search.

The officer asked how they knew each other, and both men indicated they met at a methadone clinic. He then issued both men with a verbal consorting warning, telling them “I’ve got a job to do and you two shouldn’t be together.” One of the men asked why they were being warned, as they were not breaking the law. The officer responded that “you are now because you are convicted offenders.”

The NSW Police Force has changed its procedures to make sure the law is used to disrupt and prevent serious organised crime. The Commission recommends the law should also be changed to make it clear that police should only use consorting warnings and charges to target and disrupt serious organised criminal activity.

Warnings to children

There were 48 children warned for consorting. All the children warned were aged 14 years and over. None were charged. This is a lot less than the Ombudsman’s past review of consorting law, but many of the young people warned do not appear to be linked to serious organised criminal activity.

Case Study: Suspected supply of alcohol to minors (p.25 in our report)

Police responded to a report at 5:30pm that a group of young people were being supplied with alcohol in a public park on Sydney’s North Shore.

Police spoke with two young people who were 15 and 16, and an older person who was 20. The young people denied drinking, and the older person said he was waiting to meet a friend. He was issued with a move-on direction. After checking the older person’s history, police found he had been convicted of an indictable offence. Police issued consorting warnings to both young people.

Police spoke to the same older person eight days earlier after a similar complaint about drinking and anti-social behaviour. At that time, he was with three other people, one of whom was 16. Police issued that young person with a consorting warning.

The Commission has recommended that the law should not apply to those under 18 years old. This would mean they cannot be warned or warned about.

What has the Commission recommended?

As well as recommending legislative changes, the Commission has made another 11 recommendations aimed at improving police systems, the guidance given to police officers and the information police give to people warned about consorting.

The NSW Police Force made some positive changes to its procedures at the end of 2022. These changes should reduce the number of warnings linked to less serious offending. The NSW Police Force will need to make sure training for police officers covers these recent changes.

The Commission will monitor any changes to systems and guidance resulting from its recommendations.