

The table below shows the NSW Police Force response (as at 9 November 2023) to recommendations made in the Commission’s *Review of the operation of the amendments to the consorting law under Part 3A Division 7 of the Crimes Act 1900* (February 2023).

LECC Recommendation	NSW Police Force Response	Action Taken by NSW Police Force
<p>Recommendation 1:</p> <p>The NSWPF should ensure that all warnings naming people convicted of an offence in another jurisdiction, that would be an indictable offence if committed in NSW, are reviewed and verified at the time the warning is issued.</p>	<p>Not Supported.</p>	<p>The NSWPF updated the Consorting Standard Operating Procedures (in December 2022) to include the following statement – “A convicted offender is a person who has been convicted of an indictable offence (other than a consorting offence) in the past 10 years. This includes persons with interstate offences that would be an indictable offence if they occurred in NSW. For interstate offences, officers will need to verify and record the offences on COPS and obtain a charge certificate.”</p> <p>The updated Consorting Standard Operating Procedures elevate consorting to a ‘serious and organised crime’ targeting strategy.</p> <p>The NSWPF introduced a new case management model requiring the Criminal Investigator to oversight and confirm the appropriateness of all consorting warnings issued. This included verifying the validity of an interstate offence.</p> <p>For COPS Event or Incident records not meeting the criteria for a consorting warning, the NSWPF updated records to clearly indicates the warning has been rejected.</p>
<p>Recommendation 2:</p> <p>The Attorney General, propose for the consideration of Parliament, an amendment to preclude the consorting laws from applying to people under the age of 18 years.</p>	<p>Not Supported.</p>	<p>N/A</p>
<p>Recommendation 3:</p> <p>The NSWPF should, if Recommendation 2 is not accepted, amend its Standard Operating Procedures to require a JusticeLink check to be conducted either before naming someone under 18 years of age or as soon as practicable after warning is issued. If this check identifies that the person named did not have a conviction recorded, the warning should be removed from COPS and the person</p>	<p>Supported.</p>	<p>The new Consorting Standard Operating Procedures elevate consorting to a ‘serious and organised crime’ targeting strategy.</p> <p>The NSWPF introduced a new case management model requiring the Criminal Investigator to oversight and confirm the appropriateness of consorting warnings issued. This includes verifying the validity/accuracy? of any interstate offence/s.</p> <p>For COPS Event or Incident records not meeting the criteria for a consorting warning, the NSWPF updated records to clearly indicates the warning has been rejected.</p>

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issued with the warning should be told the warning has been withdrawn.		
<p>Recommendation 4:</p> <p>The NSWPF should amend its Consorting Standard Operating Procedures to require all warnings issued to people under the age of 18 years to be in writing.</p>	Supported.	<p>The updated Consorting Standard Operating Procedures state that a 'Person Warned' can request the consorting warning in writing.</p> <p>The NSWPF updated the Consorting Fact Sheet to state that 'Persons Warned are able to request the consorting warning in writing'.</p>
<p>Recommendation 5:</p> <p>The NSWPF amend its Consorting Standard Operating Procedures and consorting training materials to require officers to ensure someone under 18 years old:</p> <ul style="list-style-type: none"> <li>(a) has understood the warning issued to them</li> <li>(b) knows the warning is valid for 6 months</li> <li>(c) understands the definition of habitual consorting</li> </ul>	Supported.	<p>A 'consorting incident form' has been introduced and made available for all officers on the NSWPF intranet. This form includes the duration of the warning (for both adults and youth), and a simplified explanation of consorting.</p> <p>The Consorting Standard Operating Procedures, and pre-emptive and retrospective templates, include a simplified definition of consorting.</p> <p>The NSWPF updated the pre-emptive and retrospective templates to state that youth warnings are valid for 6 months.</p>
<p>Recommendation 6:</p> <p>The NSWPF amend its Consorting Standard Operating Procedures and training to require officers to tell those issued with an oral warning that they can request in a warning in writing.</p>	Supported.	<p>The updated Consorting Standard Operating Procedures state that a 'Person Warned' can request the warning in writing.</p> <p>The NSWPF updated the Consorting Fact Sheet to state that 'Persons Warned are able to request the consorting warning in writing'.</p>
<p>Recommendation 7:</p> <p>The NSWPF amend its publicly available consorting fact sheets to clearly state that someone issued with an oral warning can request the warning in writing.</p>	Supported.	<p>The updated Consorting Standard Operating Procedures state that a 'Person Warned' can request the consorting warning in writing.</p> <p>The NSWPF updated the Consorting Fact Sheet to state that 'Persons Warned are able to request the consorting warning in writing'.</p>

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<p>Recommendation 8:</p> <p>The NSWPF should include a clearly worded description of what ‘habitually consorting’ means based on the wording in the consorting law in a checklist for officers issuing warnings.</p>	<p>Supported.</p>	<p>A ‘consorting incident form’ has been introduced and made available for all officers on the NSWPF intranet. This form lists the questions an officer should ask when issuing a consorting warning, and how the warning should be delivered.</p> <p>A simplified explanation of consorting has been included in the incident form, updated Consorting Standard Operating Procedures, and consorting warning templates.</p>
<p>Recommendation 9:</p> <p>The NSWPF should amend its template letters for pre-emptive warnings to include the statutory definition of habitual consorting.</p>	<p>Supported</p>	<p>The NSWPF has included a simplified explanation of consorting in all related templates. The NSWPF also included the statutory definition of ‘habitual consorting’ in the pre-emptive and retrospective consorting warning templates.</p>
<p>Recommendation 10:</p> <p>The NSWPF include guidance in the Consorting Standard Operating Procedures and consorting training on assessing what impact a warning may have on both the person named in a warning continuing to access drug and alcohol treatment and diversion services.</p>	<p>Supported.</p>	<p>The updated Consorting Standard Operating Procedures emphasise police discretion and reiterate the importance of officers assessing an interaction’s likelihood of facilitating future serious crime.</p> <p>The updated Consorting Standard Operating Procedures include the defences for consorting, including accessing health services, rehabilitation services and drug or alcohol services. Officers are also instructed to give consideration to these defences when issuing a consorting warning and/or charge.</p>
<p>Recommendation 11:</p> <p>The NSWPF should ensure its consorting training provides guidance around the meaning of kin and the amended processes for issuing a consorting warning to an Aboriginal person.</p>	<p>Not Supported.</p>	<p>The NSWPF response to the Commission’s draft final report states:</p> <ul style="list-style-type: none"> <li>• The flow chart in the Consorting Standard Operating Procedures illustrate that the NSWPF is focused on this issue.</li> <li>• Engaging with Aboriginal Community training is not about specific laws, but rather giving a greater understanding of Aboriginal people and communities through their cultural lens. Kinship is explained in the training. Kinship is also further explained in training delivered in person by the Aboriginal Coordination Team.</li> </ul>

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<p>Recommendation 12:</p> <p>The NSWPF should amend its Consorting Standard Operating Procedures to require officers, unless there is an overriding operational reason not to, to activate their body worn video camera whenever they are issuing a consorting warning, particularly when issuing an oral warning. The reason for not recording the warning on body worn video should be stated in the accompanying COPS event.</p>	<p>Not Supported.</p>	<p>The NSWPF response to the Commission’s draft final report states that the current Body-Worn Video Standard Operating Procedures address the requirement for police officers to activate body worn video, which is likely to cover the situation of providing an oral warning for consorting. Specifically, the Body-Worn Video Standard Operating Procedures state:</p> <ul style="list-style-type: none"> <li>○ A police officer will activate their body worn video camera when it is appropriate to do so. In making the decision to activate the body worn video camera, a police officer will use their own judgement and take into account a number of factors, including: <ul style="list-style-type: none"> <li>▪ officer safety and protection</li> <li>▪ the need to capture evidence</li> <li>▪ accountability</li> <li>▪ community expectations</li> <li>▪ contentious situations</li> <li>▪ involvement of vulnerable persons</li> <li>▪ protection of offenders and the community</li> <li>▪ any other relevant factors that exist.</li> </ul> </li> <li>○ Police should use the body worn video camera during their shift to record incidents they attend, evidence they see and conversations they have with members of the public. Body worn video recordings should be incident specific (whether or not the recording is ultimately required for use as evidence). Police will not be required to record their entire shift or every interaction that occurs whilst they are on duty.</li> <li>○ A body worn video camera should be used: <ul style="list-style-type: none"> <li>▪ when police would normally use their official police notebook to record information</li> <li>▪ to capture evidence or record something of relevance</li> <li>▪ when a police power is anticipated or being exercised, or whilst performing a policing functioning</li> <li>▪ first response crime and incident investigation – body worn video cameras can be very effective for recording the location</li> </ul> </li> </ul>

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		<p>of evidence at the scene of crime or during a search situation in the field</p> <ul style="list-style-type: none"> <li>▪ licensed premises (business) inspections and patrols</li> <li>▪ policing incidents involving anti-social behaviour</li> <li>▪ vehicle stops</li> <li>▪ conversations with members of the public that relate to an incident, is relevant to an investigation, potential criminal proceedings, or contain possibly valuable information.</li> </ul> <ul style="list-style-type: none"> <li>○ All recordings should be treated as having evidentiary value until confirmed otherwise.</li> </ul> <ul style="list-style-type: none"> <li>• If consorting was specified, then the Standard Operating Procedures would require revisions to include many other types of matters. Such a list would be extensive, broad and likely to cause confusion.</li> <li>• There may be other existing factors that require police not to use a body worn video camera for a consorting warning, for example where the person of interest is also a human source or associated with a human source whose identity may be compromised during a recorded conversation. This is why discretion must be applied to the decision of body worn video activation.</li> <li>• The requirement for activation may lead to the exclusion of evidence for consorting bookings, even though interactions leading to the booking may have been captured by other public CCTV or electronic devices. If consorting bookings were mandated for body worn video recording in policy the true nature of criminal relationships, including reasons for not recording, will be affected and potentially removed from judicial scrutiny, which is contrary to open and transparent justice.</li> </ul>
<p>Recommendation 13: The Attorney General propose, for the consideration of Parliament, an amendment to the consorting law to state that the purpose of the consorting law is to prevent serious criminal offending.</p>	<p>Not Supported.</p>	<p>N/A</p>