



New South Wales

# **Criminal Legislation Amendment (Consorting and Restricted Premises) Act 2018 No 50**

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# **Criminal Legislation Amendment (Consorting and Restricted Premises) Act 2018 No 50**

Act No 50, 2018

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An Act to amend the *Crimes Act 1900* and the *Restricted Premises Act 1943* as a result of certain reports by the Ombudsman; and for other purposes. [Assented to 5 October 2018]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Criminal Legislation Amendment (Consorting and Restricted Premises) Act 2018*.

**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 93W Definitions

Insert at the end of the section:

- (2) For the purposes of this Division, an *indictable offence* includes an offence committed in another jurisdiction that would be an indictable offence if committed in this jurisdiction.

### [2] Section 93X Consorting

Insert “(other than a person under the age of 14 years)” after “person” in section 93X (1).

### [3] Section 93X (3) and (4)

Omit section 93X (3). Insert instead:

- (3) An *official warning* is a warning given by a police officer (orally or in writing) to the effect that:
- (a) a certain person is a convicted offender, and
  - (b) habitually consorting with convicted offenders is an offence.
- (4) An official warning ceases to have effect for the purposes of subsection (1):
- (a) if the warning is given to a person under the age of 18 years—6 months after the warning is given, or
  - (b) in any other case—2 years after the warning is given.

### [4] Section 93Y Defence

Insert “or welfare service” after “health service” in section 93Y (d).

### [5] Section 93Y (g) and (h)

Insert after section 93Y (f):

- (g) consorting that occurs in the course of complying with:
  - (i) an order granted by the Parole Authority, or
  - (ii) a case plan, direction or recommendation by a member of staff of Corrective Services NSW,
- (h) consorting that occurs in the course of providing transitional, crisis or emergency accommodation.

### [6] Section 93Y (2)

Insert at the end of section 93Y:

- (2) In this section:
- family member* includes, for a defendant who is an Aboriginal person or a Torres Strait Islander, a person who is or has been part of the extended family or kin of the defendant according to the indigenous kinship system of the defendant’s culture.
- health service* means:
- (a) medical (including psychological), hospital, ambulance, paramedical, dental, community health or environmental health service, or
  - (b) another service:
    - (i) relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in, or

injury to, persons (whether provided as a public or private service), and

(ii) that is of a class or description prescribed by the regulations.

**Parole Authority** means the State Parole Authority constituted by section 183 of the *Crimes (Administration of Sentences) Act 1999*.

**welfare service** means a service (whether provided as a public or private service) relating to the provision of:

- (a) housing, employment benefits, rental assistance or other financial assistance or family support, or
- (b) another community welfare service necessary for the promotion, protection, development and maintenance of the well-being of persons, including any rehabilitation, counselling, drug or alcohol service.

## [7] Schedule 11 Savings and transitional provisions

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

### Part Criminal Legislation Amendment (Consorting and Restricted Premises) Act 2018

#### Definition

In this Part:

**amending Act** means the *Criminal Legislation Amendment (Consorting and Restricted Premises) Act 2018*.

#### Application of amendments

An amendment made by the amending Act applies only in respect of an offence committed, or alleged to have been committed, on or after the commencement of the amendment.

#### Savings provision for official warnings

Section 93X, as in force immediately before its amendment by the amending Act, continues to apply to an official warning given before the commencement of that amendment as if that amendment had not been made.

#### Review of operation of amendments made by amending Act

- (1) The LECC is to review the operation of the amendments made by the amending Act.
- (2) The review is to be undertaken within 3 years after the commencement of this clause.
- (3) The LECC is to report to the Attorney General and the Minister for Police on the outcome of the review as soon as practicable after the review is completed.
- (4) In this clause, **LECC** means the Law Enforcement Conduct Commission constituted by section 17 of the *Law Enforcement Conduct Commission Act 2016*.

## **Schedule 2      Amendment of Restricted Premises Act 1943 No 6**

### **[1] Section 4 Rescission of declaration**

Omit section 4 (1) (a). Insert instead:

- (a) by the owner or occupier of the premises the subject of the declaration, if the Court is satisfied the conditions referred to in section 3 (1) in respect of which the declaration was made:
  - (i) have ceased for a continuous period of at least 12 months before the application is made, and
  - (ii) are unlikely to reoccur at the premises, or

### **[2] Section 4 (1A)**

Insert after section 4 (1):

- (1A) For the purposes of subsection (1) (a), the burden of establishing that the conditions have ceased and are unlikely to reoccur lies on the owner or occupier of the premises.

### **[3] Section 4 (3)**

Insert after section 4 (2):

- (3) An owner or occupier may not make more than one application for the rescission of a declaration in respect of the same premises within any 12 month period.

### **[4] Section 10 Entry by police**

Insert at the end of the section:

- (2) If the occupier of premises is not present when a member of the Police Force enters the premises under this section, the member must notify the occupier of the premises as soon as practicable after the entry.
- (3) Failure to notify the occupier of the premises under subsection (2) does not make the exercise of power conferred on a member of the Police Force by this section unlawful.

### **[5] Sections 13AA–13AC**

Insert after section 13:

#### **13AA Power for police to give directions**

- (1) A member of the Police Force executing a search warrant under section 13 may give reasonable directions to a person on the premises to which the warrant relates.
- (2) The direction must be reasonable in the circumstances for the purpose of minimising risk to the safety of any person on the premises.
- (3) The person must not, without reasonable excuse, fail or refuse to comply with the direction.  
Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

#### **13AB Search of person pursuant to warrant**

A member of the Police Force executing a search warrant under section 13 may search a person on the premises to which the warrant relates if the

member of the Police Force reasonably suspects the person to be in possession of a thing mentioned in the warrant.

**13AC Power of police to demand name and address**

- (1) A member of the Police Force executing a search warrant under section 13 may require a person on the premises to which the warrant relates to state the person's full name and residential address.
- (2) A member of the Police Force may ask a person who is required under this section to state the person's full name and residential address to provide proof of the name and address.
- (3) It is not an offence under this section to fail to comply with a request under subsection (2).
- (4) A person who, without reasonable excuse, fails or refuses to comply with a requirement made of the person under subsection (1) is guilty of an offence.  
Maximum penalty: 10 penalty units.
- (5) A person who gives any information in purported compliance with a requirement made of the person under subsection (1), knowing that it is false or misleading in a material respect, is guilty of an offence.  
Maximum penalty: 10 penalty units.

[Second reading speech made in—  
Legislative Assembly on 19 September 2018  
Legislative Council on 26 September 2018]