



New South Wales

Crimes Amendment (Consorting and Organised Crime) Bill 2012

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Crimes Act 1900*:

- (a) to create a new offence of firing at a dwelling-house, with a higher penalty than the existing general offence for firing at a dwelling-house, where the offence occurs in the course of an organised criminal activity, and
- (b) to change the mental element for the offence of participating in a criminal group so that it is no longer necessary to prove that the defendant knowingly participated in the criminal group and knowingly or recklessly contributed to the occurrence of a criminal activity, and
- (c) to create new offences relating to participation in criminal groups, with higher penalties than the existing general offence for participating in a criminal group, where the defendant directed the activities of the criminal group or the activities of the criminal group were organised and on-going, and
- (d) to make it an offence to receive a material benefit from a criminal group that is derived from its criminal activities, and
- (e) to replace and clarify the offence of consorting with convicted offenders.

The Bill also makes consequential amendments to other Acts.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Crimes Act 1900 No 40

Firing at dwelling-houses

Schedule 1 [1] provides for a new offence of firing a firearm at a dwelling-house or other building in the course of an organised criminal activity, with reckless disregard for the safety of any person. The maximum penalty is imprisonment for 16 years. The maximum penalty for the existing general offence of firing at a dwelling-house or building, with reckless disregard for the safety of any person, is imprisonment for 14 years.

Schedule 1 [2] provides for alternative verdicts in relation to prosecutions for the new offence.

Participation in criminal groups

The *Crimes Act 1900* contains several offences relating to participation in criminal groups.

Schedule 1 [4] changes the mental element for the existing general offence of participating in a criminal group. At present, it is necessary to prove that the defendant knew that the group was a criminal group and knew, or was reckless as to whether, his or her participation contributed to the occurrence of a criminal activity. As a result of the amendment, it will be necessary only to prove that the defendant knew, or ought reasonably to have known, that the group was a criminal group and knew, or ought reasonably to have known, that his or her participation in the criminal group contributed to the occurrence of a criminal activity.

Schedule 1 [4] also provides for a new offence (with a higher penalty than the existing general offence of participating in a criminal group) of participating in a criminal group by directing any of its activities. In this case, knowledge that the group is a criminal group, and knowledge or recklessness as to whether the participation contributes to the occurrence of a criminal activity, is required. The maximum penalty is imprisonment for 10 years.

Schedule 1 [5] provides for a new offence (with a higher penalty than the existing general offence of participating in a criminal group) of participating in a criminal group whose activities are organised and on-going. Knowledge that the group is a criminal group, and knowledge or recklessness as to whether the participation contributes to the occurrence of a criminal activity, is required. The maximum penalty is imprisonment for 15 years.

Schedule 1 [7] provides for alternative verdicts in relation to prosecutions for the new offences.

Receiving benefits derived from criminal activities of criminal groups

Schedule 1 [6] makes it an offence to receive from a criminal group a material benefit derived from the criminal activities of the criminal group, knowing that the group is a criminal group and knowing, or being reckless as to whether, the benefit is derived from criminal activities of the criminal group. It is not necessary to prove participation in the criminal group. The offence carries a maximum penalty of imprisonment for 5 years.

Schedule 1 [8] makes the offence an alternative verdict on a charge of participating in a criminal group.

Schedule 1 [3] is a consequential amendment.

Consorting with convicted offenders

Schedule 1 [9] provides for a new offence of consorting with convicted offenders.

A person will be guilty of the new offence if the person:

- (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.

A convicted offender is any person who has been convicted of an indictable offence (excluding the offence of consorting). Spent convictions will also be excluded by operation of the *Criminal Records Act 1991*, section 12.

The new offence makes it clear that:

- (a) habitual consorting requires the defendant, at a minimum, to have consorted with at least 2 convicted offenders and to have consorted with each of those offenders on at least 2 occasions, and
- (b) the defendant is guilty of an offence only if the defendant consorts with convicted offenders after having been warned by a police officer that each convicted offender is a convicted offender and that consorting with a convicted offender is an offence.

The existing consorting offence (which is repealed by **Schedule 1 [10]**) does not describe what is meant by habitual consorting, and does not require the defendant to have been given an official warning.

The new offence clarifies the circumstances in which consorting is permitted, such as between family members or in the course of lawful employment, the lawful operation of a business, training or education.

The new offence also makes it clear that consorting can occur in person or by any other means, including by electronic or other form of communication.

The new offence is an indictable offence with a maximum penalty of imprisonment for 3 years, or a fine of 150 penalty units, or both.

Schedule 1 [11] provides for the Ombudsman to review the operation of the new offence at the end of the period of 2 years from its commencement.

Schedule 2 Consequential amendment of other Acts

Schedule 2 makes amendments to other Acts that are consequential on the amendments described above.

First print



New South Wales

Crimes Amendment (Consorting and Organised Crime) Bill 2012

Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Crimes Act 1900 No 40	3
Schedule 2 Consequential amendment of other Acts	8



New South Wales

Crimes Amendment (Consorting and Organised Crime) Bill 2012

No. , 2012

A Bill for

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

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes Amendment (Consorting and Organised Crime) Act 2012</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6

Schedule 1	Amendment of Crimes Act 1900 No 40	1
[1]	Section 93GA Firing at dwelling-houses or buildings	2
	Insert after section 93GA (1A):	3
	(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.	4 5 6 7
[2]	Section 93GA (4)	8
	Insert after section 93GA (3):	9
	(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.	10 11 12 13 14 15 16
[3]	Part 3A, Division 5, heading	17
	Omit the heading. Insert instead:	18
	Division 5 Criminal groups	19
[4]	Section 93T Participation in criminal groups	20
	Omit section 93T (1). Insert instead:	21
	(1) A person who participates in a criminal group is guilty of an offence if the person:	22 23
	(a) knows, or ought reasonably to know, that it is a criminal group, and	24 25
	(b) knows, or ought reasonably to know, that his or her participation in that group contributes to the occurrence of any criminal activity.	26 27 28
	Maximum penalty: Imprisonment for 5 years.	29
	(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:	30 31
	(a) knows that it is a criminal group, and	32
	(b) knows, or is reckless as to whether, that participation contributes to the occurrence of any criminal activity.	33 34
	Maximum penalty: Imprisonment for 10 years.	35

[5] Section 93T (4A)	1
Insert after section 93T (4):	2
(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:	3
(a) knows that it is a criminal group, and	4
(b) knows, or is reckless as to whether, that participation contributes to the occurrence of any criminal activity.	5
Maximum penalty: Imprisonment for 15 years.	6
[6] Section 93TA	7
Insert after section 93T:	8
93TA Receiving material benefit derived from criminal activities of criminal groups	9
(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:	10
(a) knows that it is a criminal group, and	11
(b) knows, or is reckless as to whether, the benefit is derived from criminal activities of the criminal group.	12
Maximum penalty: Imprisonment for 5 years.	13
(2) In this section, a material benefit <i>derived</i> 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.	14
[7] Section 93U Alternative verdicts	15
Omit “93T (2), (3) or (4)”. Insert instead “93T (1A), (2), (3), (4) or (4A)”.	16
[8] Section 93U (2)	17
Insert at the end of section 93U:	18
(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.	19
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[9] Part 3A, Division 7	1
Insert after Division 6 of Part 3A:	2
Division 7 Consorting	3
93W Definitions	4
In this Division:	5
<i>consort</i> means consort in person or by any other means, including	6
by electronic or other form of communication.	7
<i>convicted offender</i> means a person who has been convicted of an	8
indictable offence (disregarding any offence under section 93X).	9
93X Consorting	10
(1) A person who:	11
(a) habitually consorts with convicted offenders, and	12
(b) consorts with those convicted offenders after having been	13
given an official warning in relation to each of those	14
convicted offenders,	15
is guilty of an offence.	16
Maximum penalty: Imprisonment for 3 years, or a fine of	17
150 penalty units, or both.	18
(2) A person does not <i>habitually consort</i> with convicted offenders	19
unless:	20
(a) the person consorts with at least 2 convicted offenders	21
(whether on the same or separate occasions), and	22
(b) the person consorts with each convicted offender on at	23
least 2 occasions.	24
(3) An <i>official warning</i> is a warning given by a police officer (orally	25
or in writing) that:	26
(a) a convicted offender is a convicted offender, and	27
(b) consorting with a convicted offender is an offence.	28
93Y Defence	29
The following forms of consorting are to be disregarded for the	30
purposes of section 93X if the defendant satisfies the court that	31
the consorting was reasonable in the circumstances:	32
(a) consorting with family members,	33
(b) consorting that occurs in the course of lawful employment	34
or the lawful operation of a business,	35

Crimes Amendment (Consorting and Organised Crime) Bill 2012

Schedule 1 Amendment of Crimes Act 1900 No 40

(c)	consorting that occurs in the course of training or education,	1 2
(d)	consorting that occurs in the course of the provision of a health service,	3 4
(e)	consorting that occurs in the course of the provision of legal advice,	5 6
(f)	consorting that occurs in lawful custody or in the course of complying with a court order.	7 8
[10]	Section 546A Consorting with convicted persons	9
	Omit the section.	10
[11]	Schedule 11 Savings and transitional provisions	11
	Insert at the end of the Schedule with appropriate Part and clause numbers:	12
Part	Crimes Amendment (Consorting and Organised Crime) Act 2012	13 14
	Report by Ombudsman on consorting offence	15
(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 <i>Crimes Amendment (Consorting and Organised Crime) Act 2012</i>), the Ombudsman must prepare a report on the operation of that Division.	16 17 18 19 20
(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.	21 22 23
(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.	24 25 26 27
(4)	The Ombudsman must furnish a copy of the report to the Attorney General and to the Commissioner of Police.	28 29
(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.	30 31 32
(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.	33 34 35

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- (7) The report: 1
- (a) is, on presentation and for all purposes, taken to have been 2
laid before the House, and 3
 - (b) may be printed by authority of the Clerk of the House, and 4
 - (c) if so printed, is for all purposes taken to be a document 5
published by or under the authority of the House, and 6
 - (d) is to be recorded: 7
 - (i) in the case of the Legislative Council, in the Minutes 8
of the Proceedings of the Legislative Council, and 9
 - (ii) in the case of the Legislative Assembly, in the Votes 10
and Proceedings of the Legislative Assembly, 11on the first sitting day of the House after receipt of the 12
report by the Clerk. 13

Schedule 2	Consequential amendment of other Acts	1
2.1	Criminal Assets Recovery Act 1990 No 23 (as amended by the Crimes (Criminal Organisations Control) Act 2012)	2
	Section 6 Meaning of “serious crime related activity”	3
	Insert “or 93TA” after “section 93T” in section 6 (2) (g1).	4
2.2	Criminal Procedure Act 1986 No 209	6
[1]	Schedule 1 Indictable offences triable summarily	7
	Omit “93T (2) or (3)” from item 10C in Table 1 to the Schedule.	8
	Insert instead “93T (1A), (2), (3) or (4A)”.	9
[2]	Schedule 1, Table 2, item 4D	10
	Omit “93T (1)”. Insert instead “93T (1) or 93TA”.	11
[3]	Schedule 1, Table 2, item 4E	12
	Insert after item 4D:	13
	4E Consorting	14
	An offence under section 93X of the <i>Crimes Act 1900</i> .	15
2.3	Police Act 1990 No 47	16
[1]	Section 207A Commissioner may conduct integrity testing programs	17
	Insert “93X,” after “section” in section 207A (4) (d).	18
[2]	Section 207A (4) (d)	19
	Omit “, 546A”.	20