



THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: RBG586908

Direct line: 9926-0216

20 February 2012

The Hon. Greg Smith SC MP
Attorney General and Minister for Justice
Level 31
Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Attorney General,

Crimes Amendment (Consorting and Organised Crime) Bill 2012

The Law Society's Criminal Law Committee (Committee) has reviewed the *Crimes Amendment (Consorting and Organised Crime) Bill 2012* and makes the following comments for your consideration.

The Committee is particularly concerned about the proposed amendments to the offence of consorting. The proposed consorting offence makes it a crime for otherwise innocent people to associate with people who have been convicted of an indictable offence and imposes a sentence of up to three years imprisonment if they do so. The Committee agrees with Associate Professor Steel, that "In a modern-day society there should not be an offence of speaking to anybody unless the nature of a conversation is a conspiracy."¹ The proposed offence undermines the freedom of expression and freedom of association. Offences should be based on conduct worthy of punishment; merely associating with people should not be a crime.

The proposed offence is extremely broad, and confers too much discretionary power on the police. The offence essentially restricts a person who is convicted of an indictable offence from consorting with anybody other than co-workers, their family, legal and health providers, and the people they might undertake an educational program with, subject to the discretion of the police. The discretion lies with the police, as it is the police who are required to "officially warn" the putative offender as a precondition of the offence.

Associate Professor Steel accurately observes that:

"... it is inconsistent with the principle of justice and fair punishment that a person who has served and completed the punishment for a crime imposed by a court should then be subject to further punishment. In this case the person with a conviction is not committing the offence of consorting, but the effect is to punish that person by forbidding others from being in their company. Such indirect

¹ 'O'Farrell's consorting laws slammed as 'easy politics', SMH article, February 2012.

punishment is unjust. This is particularly as the punishment could be lifelong, that is, once convicted of an indictable offence, a person will always be a 'convicted person' for the purposes of consorting."²

The official warning, which can be given orally, is required to indicate that a convicted offender in fact has a conviction. This is a serious invasion into the privacy of the convicted person, given that the person with whom they are "consorting" has no other legal entitlement to know whether or not the person they are speaking to is a convicted person. The following example illustrates this problem: Two people meet socially and have no knowledge about each other. Police approach one of the people and "officially warn" them that the other person has a conviction, although they may never meet the convicted person again. That person now knows that the other person is has a conviction, for no apparent reason other than the fact that police want to discourage them from speaking to that person.

The NSW Police Force already have adequate tools and wide powers to deal with organised crime. For the reasons discussed above, the Committee is of the view that the offence of consorting is unnecessary and should be removed from the Bill. If the offence is to remain, then the Committee suggests that the following amendments are required:

- Amend the definition of "convicted person" to require that a person has been convicted of a serious indictable offence rather than an indictable offence.
- Insert a pre-condition in the "official warning" provisions that require it to be "reasonably necessary for a law enforcement purpose to disclose that a person is a convicted person."
- Insert a provision that provides that the convicted person must be an adult and that the offence does not apply to people under the age of 18.

Please do not hesitate to contact me if you would like to discuss the content of this submission further.

Yours sincerely,



Justin Dowd
President

² Steel, Alex "Consorting in New South Wales: Substantive Offence or Police Power?" [2003] UNSWLawJl 40; (2003) 26(3) University of New South Wales Law Journal 567