THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: CLC/IIC/JJC/HRC/GUak:1188550

25 August 2016

The Hon Gabrielle Upton MP
Attorney General
GPO Box 5341
SYDNEY NSW 2001

By email: shannon.thompson@minister.nsw.gov.au

Dear Attorney General,

NSW Ombudsman's review of the consorting law

The Law Society of NSW writes regarding the Ombudsman's recent review of the consorting law: report on the operations of Part 3A, Division 7 of the *Crimes Act 1900* ("the Ombudsman's Report").[1]

The Law Society has previously made a number of submissions outlining our concerns around the operation of legislative provisions in relation to "consorting". These submissions are attached. The Law Society did not support the passage of the *Crimes Amendment (Consorting and Organised Crime) Act 2012*, which introduced the new sections 93X and 93Y into the *Crimes Act 1990* ("*Crimes Act*"). At the time, the Law Society supported the repeal of the consorting provisions or, in the alternative, supported amendments to the legislation to ensure it is used for the purpose of combating organised crime.

The Law Society also provided a submission to the Ombudsman's Consorting Issues Paper ("Issues Paper"),[2] noting that the consorting provisions undermine freedom of expression and freedom of association. The Law Society's submission to the Issues Paper was concerned that, despite their introduction to address organised crime, the consorting provisions apply to all citizens in NSW and that no criminal behaviour needs to be contemplated or carried out. In particular, the submission expressed concern about the disproportionate impact of the consorting provisions on Aboriginal and Torres Strait Islander people.

We take this opportunity to reiterate our opposition to the consorting legislation in Part 3A, Division 7 of the *Crimes Act*, as outlined in our previous submissions.

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[1] NSW Ombudsman, *The consorting law: Report on the operation of Part 3A, Division 7 of the Crimes Act 1900* (April 2016), accessed at https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0005/34709/The-consorting-law-report-on-the-operation-of-Part-3A,-Division-7-of-the-Crimes-Act-1900-April-2016.pdf.

[2] NSW Ombudsman, *Consorting Issues Paper: Review of the use of the consorting provisions by the NSW Police Force* (November 2013), accessed at https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0009/12996/Consorting-Issues-Report_June2014_update.pdf.

While the intention of the legislation was aimed at curbing the criminal activities of "criminal gangs", the Law Society considers that the legislation is not so restricted and catches people who have never committed or been suspected of a criminal offence. The Law Society remains concerned that the legislation penalises people simply for associating with people who have previously been convicted of an indictable offence – a category that is not restricted to serious offences.

The Ombudsman's Report acknowledges that the NSW Police Force made a policy decision not to limit the use of the consorting law to organised crime or criminal gangs and notes that in practice, police use the consorting law as a tool against behaviour ranging from minor street crime to the most serious offences.[3] As such, the Report found that the use of the consorting law, in lieu of existing summary offences or move-on directions, appears to circumvent the level of seriousness attributed to this type of conduct by Parliament.[4]

The Law Society makes the following specific comments on the findings of the Ombudsman's Report.

The findings of the Ombudsman's Report

The Ombudsman's Report acknowledges that the consorting law has been the subject of considerable public debate, noting that criticism, historical misuse and the need to consider the possibility of amendments or repeal of the provisions were expressed to the Ombudsman throughout the review period.[5] It is significant to note that all of the 34 submissions received to the Ombudsman's Issues Paper, with the exception of that from the NSW Police Force, expressed serious concerns about the law, with more than half of the submissions directly calling for the repeal of the provisions.[6]

When the Crimes Amendment (Consorting and Organised Crime) Bill 2012 ("the Bill") was introduced into Parliament, it was noted during parliamentary debate that the consorting law may disproportionately impact on Aboriginal and Torres Strait Islander people due to their well-documented over-representation in the criminal justice system.[7]

The Ombudsman's Report confirms these concerns, detailing the use of the consorting law in relation to disadvantaged and vulnerable people, including Aboriginal people, people experiencing homelessness, and children and young people.[8] The Ombudsman's Report found that 37 per cent of people who were subject to the consorting law were Aboriginal, and that Aboriginal people were also more likely to have others warned about consorting with them.[9]

Also of concern is the Ombudsman's Report finding that the proportion of women, children and young people subject to the consorting law who were Aboriginal was especially high, noting that of the 201 children and young people in the consorting dataset, 118, or nearly 60 per cent, were Aboriginal.[10]

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[3] NSW Ombudsman, *The consorting law: Report on the operation of Part 3A, Division 7 of the Crimes Act 1900* (April 2016), 16.
[4] Ibid 70.
[5] Ibid 22.
[6] Ibid.
[7] Ibid 15.
[8] Ibid iii.
[9] Ibid 39.
[10] Ibid.

The Law Society is particularly concerned to note the finding in the Ombudsman's Report of an exceptionally high police error rate when issuing consorting warnings in relation to children and young people.[11] The Report found that 105 out of 133 children and young people who had others warned about consorting with them were incorrectly identified by police as 'convicted offenders'. This exceptional error rate of 79 per cent resulted in 195 unlawful consorting warnings being issued, most of them to other children and young people.[12]

The Ombudsman's Report also identified instances in the consorting data where people experiencing homelessness have been charged with habitually consorting, issued consorting with warnings and had their associates warned about consorting with them.[13] Organisations involved in providing supports and services to vulnerable people raised concerns with the Ombudsman about this use of the consorting law, advising that a number of their clients had stopped attending the support services offered out of fear that they might be charged with habitually consorting if they entered the locality.[14]

The Law Society is disappointed to note that, despite the above findings, the Ombudsman's Report makes few recommendations for legislative reform and instead, continues to emphasise the appropriate use of police discretion in ensuring that the legislation is only used to target serious criminal offending.

Recommendations for reform

If the consorting provisions are retained by the NSW Government, the Law Society supports the implementation of the recommendations of the Ombudsman's Report, which go some way to addressing the concerns with the operation of the provisions.

However, the Law Society submits that the legislation should be further amended as follows, to ensure that the laws operate as intended – to target serious and organised crime:

(i) It is inappropriate for people who have never been convicted of an offence, and for whom there is no reason to believe they will commit an offence, to be exposed to being convicted of consorting. The provision should be limited to people who have been previously convicted of a serious indictable offence.

(ii) The provision should be limited to where the previous serious indictable offence occurred within two years of the consorting conduct. If a person has not committed a further serious indictable offence in that time, there is less reason to believe that an association will lead to any criminal conviction – this should not be left to police policy.

(iii) A warning should only be able to be given if the police officer has a reasonable basis to believe that the consorting will result in the commission of a serious indictable offence.

(iv) The provisions should be limited to convictions for "organised crime offences", and this list should be determined through consultation with relevant stakeholders.

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[11] Ibid iii.
[12] Ibid 83.
[13] Ibid 68.
[14] Ibid 69.

(v) The prescribed list of defences should be automatic and should not reverse the onus of proof. The current list of defences set out in section 93Y of the *Crimes Act* is inadequate. Consideration should be given to broadening the scope of the defences to include a broader range of legitimate associations, including but not limited to: ministers of religion and other clergy; a person seeking to access supports and services such as those required by people experiencing homelessness; or in relation to associations between people living together on a temporary basis, including living in refuges or crisis accommodation, or in open and public spaces.

(vi) The provision should also provide for the general defence of "reasonable excuse".

(vii) The current penalty for the offence should be lowered to two years imprisonment.

Thank you for considering this submission. If you have any questions regarding this submission, please contact Anastasia Krivenkova, Principal Policy Lawyer, on (02) 9926 0354 or anastasia.krivenkova@lawsociety.com.au.

Yours sincerely,

Gary Ulman
President

THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: IndgIssuesREvk826972

26 March 2014

The Hon Victor Dominello MP
Minister for Aboriginal Affairs
Level 37 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

By email: office@dominello.minister.nsw.gov.au

Dear Minister,

NSW Ombudsman Consorting Issues Paper – Review of the use of the consorting provisions by the NSW Police Force

I am writing to you on behalf of the Indigenous Issues Committee of the Law Society of NSW ("Committee"). The Committee represents the Law Society on Indigenous issues as they relate to the legal needs of people in NSW and includes experts drawn from the ranks of the Law Society's membership.

The Committee commends the Department of Aboriginal Affairs on the capacity building work carried out in relation to the Opportunity, Choice, Healing, Responsibility and Empowerment (OCHRE) initiative. The Committee notes the introduction of the Ombudsman Amendment (Aboriginal Programs) Bill 2014. In the Committee's view, a coordinated approach to capacity building is necessary and the Committee is pleased to see the Government adopt an approach that includes an evaluation and feedback system.

The Committee notes however that a crucial factor relevant to the overall impact of community capacity building is the interaction that Aboriginal people have with the criminal justice system. In this context, the Committee writes to you in relation to the NSW Ombudsman's issues paper on the use of consorting provisions by the NSW Police Force ("Issues Paper").[1]

The Law Society of NSW provided a submission to the Ombudsman on the Issues Paper (attached). The Committee writes to you to draw your attention to the Ombudsman's findings that despite the consorting provisions being said to be directed towards "criminal

[1] By way of brief background, sections 93W – 93Y of the *Crimes Act 1900* (NSW) were inserted by the Crimes Amendment (Consorting and Organised Crime) Bill 2012 "to ensure that the provisions of the Act remain effective at combating criminal groups in NSW." It was also stated to be part of a number of amendments intended "to ensure that the NSW Police Force has adequate tools to deal with organised crime"[1]. They replaced existing provisions in relation to consorting in s 546A of the *Crimes Act 1900*, which was largely disused (Issues Paper p.5). Relevantly, s 546A was a summary offence, punishable by six months imprisonment or a fine of four penalty units. Section 93X is an offence punishable by imprisonment of up to three years and a fine of 150 penalty units.

groups" and "organised crime", it is apparent from the Issues Paper that the consorting provisions have had a disproportionate impact on Aboriginal people.

In particular, the Issues Paper notes:

- Aboriginal people comprise 2.5% of the total NSW population but make up 40% of the people subject to the provisions in the first year of use (Issues Paper, pp.9-10).

- Two thirds of the 83 children and young people aged between 13 and 17 years are Aboriginal comprising almost 85% of the children subject to the provision.

- Just over half of the 109 women are Aboriginal (Issues Paper, pp.9-30).

- A third of men who were given a warning for consorting were Aboriginal. 62% of women given warning were Aboriginal. Over half of the children given warnings were Aboriginal people. (Issues Paper, p.30).

It is clear that Local Area Commands ("LACs") are applying the provision directly to Aboriginal people. The Issues Paper (p.12) notes that for LACs located in the Western Region of NSW, 84% of people who were directly affected were Aboriginal. It also notes that in the remaining regions Aboriginal people subject to the consorting provisions accounted for:

- 57% in the Central Metropolitan Region
- 33% in the South West Metropolitan Region
- 33% in the North West Metropolitan Region.

In contrast Aboriginal people only accounted for 6% of people warned by specialist squads (Issues Paper, p.12). The Committee's view is that this is a telling statistic as one would expect specialist squads to have greater exposure to and involvement in the interdiction of organised crime than police performing general duties in LACs.

Aboriginal people are particularly vulnerable to this provision for a number of reasons.

First, as the Issues Paper (p.20 and 29) notes, 30.05% of Aboriginal people have been convicted of an indictable offence over the last 10 years compared to 3.53% of the general population. That means they are more likely to be capable of being the subject of a warning.

Second, because of the high incarceration rates of Aboriginal people, Aboriginal people are more likely to be the subject of offences which are not able to be "spent" (see s 7(1)(a), *Criminal Records Act 1991* (NSW) and are therefore more exposed to the operation of s 93X.

Third, Aboriginal social and kinship relations make them more likely to be in contact with other members of their community, which makes avoidance within their community more difficult.

Fourth, kinship and sharing customs (cultural reciprocity) also make ostracising members of their community more difficult.

Fifth, it is well documented that Aboriginal people are more likely to socialise and congregate in public spaces because of a range of cultural and socio-economic factors. The visibility of Aboriginal people makes them more likely to be targeted for this type of offence.

The Issues Paper identifies that the manner in which s 93X is being enforced exposes these vulnerabilities of Aboriginal people to its operation. The Issues Paper (p.38) notes that:

> The incidents of consorting often involved sitting in public places such as parks and drinking or talking with others. One man received a warning while packing up his sleeping bag near to where a group was sitting and drinking. All five men received warnings and were the subject of warnings to others. On occasion they were warned for spending time with each other.

The Issues Paper (p.24) also notes that:

> four of the 10 LACs advised they were targeting convicted offenders and others congregating in public places including shopping malls, outdoor seating areas and in cafes".

It also notes (p.28) that "use of the consorting provisions primarily involved police observing people in public places to determine if they were consorting."

These examples show that the enforcement of the provision has little to do with organised crime and more to do with regulating public places. Given the substantive penalty that attaches to the offence the Committee submits that it is an oppressive mechanism for that purpose.

The potential for the provision to be misused and to have an adverse effect on Aboriginal people is exacerbated by the fact that it can be used against a person who has never had a conviction, has never been engaged in criminal activity nor intends to be engaged in criminal activity. A conviction under this provision could nonetheless have a significant effect on the person, including their employment prospects. In this regard it is concerning that the Issues Paper (p.43) notes that 200 of the 1,260 people (16%) subject to the consorting provisions had either no criminal record at all or no indictable convictions.

It is the Committee's view that s 93X operates to force people to ostracise those who have been guilty of an indictable offence. There is no statutory limitation on when that indictable offence occurred. Although the police may as a matter of policy not give a warning unless the convicted person was convicted in the last 10 years (Issues Paper, p.23), there is no defence available to an offender if that policy is not followed. The fact that the effect of the provision is to force people to ostracise certain individuals by reason of their previous conviction is an outcome which potentially impairs their reintegration into society and undermines the objectives of rehabilitation.

The Committee is concerned that of the 14 matters where charges have been laid, three have been proven to be mistaken and one was innocent (Issues Paper, p.11). What is unknown is the extent to which the warnings have been mistakenly or inappropriately given. To the extent that has occurred, then people have been improperly told to cease associating with each other under threat of a three year gaol term.

In the context of the above, the Committee notes the following about the terms of ss 93W-X:

- It is inappropriate for people who have never been convicted of an offence, and for whom there is no reason to believe will commit an offence, to be exposed to being convicted of consorting. If the provision is to remain, it should be limited to people who have been previously convicted of an indictable offence.

- The provision should be limited to where the previous indictable offence occurred within 5 years of the consorting. If a person has not committed a further offence in

that time, then there is less reason to believe that an association will lead to any criminal conviction. It is not a matter which should be left to police policy.

- The provision casts far too wide a "net" and should not apply to all indictable offences. It should only apply to indictable offences with some nexus to organised crime.

- A police officer should only be able to give a warning if he or she has a reasonable basis to believe that the consequence of the consorting will be the commission of an offence.

- The defences set out in s 93Y are inadequate. As the Human Rights and Criminal Law committees of the Law Society have noted in the past, even if the consorting occurs for the purposes of obtaining legal advice, a defendant must show that it is "reasonable in the circumstances". These ought to be automatic defences. Consideration should be given to broadening the scope of the defence to include a broader range of legitimate associations.

The Issues Paper provides a concrete example of where criminal law provisions (enacted in response to popular sentiment) have been used in a way that departs from the original purpose of the legislation, and consequently has had significantly adverse consequences for Aboriginal people.

This outcome undermines efforts to reduce the disproportionate rate of incarceration of Aboriginal people. It is widely accepted that incarceration has a criminogenic effect, which in turn undermines community capacity building and "Closing the Gap" efforts. Imprisonment has a flow-on effect for individuals in respect of, for example, care and protection of children and employment prospects. The Committee submits that this approach is counter-productive from a justice as well as a fiscal perspective.

The Committee requests your support for the repeal of the consorting provisions. In the alternative, the Committee requests your support for amendment of the consorting provisions in ensure that they are in fact used in for the purpose of combatting organised crime. In addition to the observations and recommendations made above, the attached submission contains further recommendations in relation to the repeal or amendment of the consorting provisions made by three other Law Society policy committees.

Questions may be directed to Vicky Kuek, policy lawyer for the Committee, at 9926 0354 or victoria.kuek@lawsociety.com.au

Yours sincerely,

Ros Everett
President

THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: REad823498

10 March 2014

Review of the new consorting provisions
NSW Ombudsman
Level 24, 580 George Street
SYDNEY NSW 2000

By email: review@ombo.nsw.gov.au

Dear Ombudsman,

Consorting Issues Paper – Review of the use of the consorting provisions by the NSW police force

I write to you on behalf of the Criminal Law, Juvenile Justice, Indigenous Issues and Human Rights Committees of the Law Society of NSW ("the Committees") in regard to your review of the use of consorting provisions by the NSW police force.

I thank you for the invitation to comment.

I attach the Committees' submission for your consideration.

Yours sincerely,

Ros Everett
President

Consorting Issues Paper

Review of the use of the consorting provisions
by the NSW Police Force

Joint Submission by the
Criminal Law Committee ("CLC")
Juvenile Justice Committee ("JJC")
Indigenous Issues Committee ("IIC")
Human Rights Committee ("HRC")
("the Committees")
Of the Law Society of NSW

INTRODUCTION

The CLC provided a submission to the Attorney General of NSW as well as other members of Parliament on 20 February 2012 in relation to the Crimes Amendment (Consorting and Organised Crime) Bill 2012. The Law Society made a further submission on 26 October 2012. Copies are attached for your reference.

Since the introduction of the above legislation, the Committees' view is that the consorting provisions have undermined freedom of expression and freedom of association. It is the Committees' further view that offences should be based on conduct worthy of punishment; merely associating with people should not be a crime. The Committees are concerned that the current consorting provisions apply to all citizens of NSW and no criminal behaviour needs to be contemplated or carried out.

The Committees, in particular the IIC, have expressed concern about the disproportionate impact the consorting provisions have had on the Aboriginal population. The Committees set out their general concerns below, followed by responses to the specific questions as set out in the Issues Paper.

Indigenous Issues Committee

The IIC submits that sections 93W – 93Y of the *Crimes Act 1900 (NSW)* were inserted by the Crimes Amendment (Consorting and Organised Crime) Bill 2012 "to ensure that the provisions of the Act remain effective at combating criminal groups in NSW." It was also stated to be part of a number of amendments intended "to ensure that the NSW Police Force has adequate tools to deal with organised crime"[1]. They replaced existing provisions in relation to consorting in s 546A of the *Crimes Act*, which was largely disused (Issues Paper p.5). Relevantly, s 546A was a summary offence, punishable by six months imprisonment or a fine of four penalty units. Section 93X is an offence punishable by imprisonment of up to three years and a fine of 150 penalty units.

Despite being said to be directed towards "criminal groups" and "organised crime", it is apparent from the Issues Paper that the consorting provisions have had a disproportionate impact on Aboriginal people. In particular, the Issues Paper notes:

[1] Hansard, Council, p 9091.

- Aboriginal people comprise 2.5% of the total NSW population but make up 40% of the people subject to the provisions in the first year of use (Issues Paper, pp.9-10).

- Two thirds of the 83 children and young people aged between 13 and 17 years are Aboriginal comprising almost 85% of the children subject to the provision. Just over half of the 109 women are Aboriginal (Issues Paper, pp.9-30).

- A third of men who were given a warning for consorting were Aboriginal. 62% of women given warning were Aboriginal. Over half of the children given warnings were Aboriginal people. (Issues Paper, p.30).

It is clear that Local Area Commands ("LACs") are applying the provision directly to Aboriginal people. The Issues Paper (p.12) notes that for LACs located in the Western Region of NSW, 84% of people who were directly affected were Aboriginal. It also notes that in the remaining regions Aboriginal people accounted for:

- 57% of those subject to the consorting provisions in the Central Metropolitan Region
- 33% of those subject to the consorting provisions in the South West Metropolitan Region
- 33% of those subject to the consorting provisions in the North West Metropolitan Region.

In contrast Aboriginal people only accounted for 6% of people warned by specialist squads (Issues Paper, p.12).

Aboriginal people are particularly vulnerable to this provision for a number of reasons. First, as the Issues Paper (p.20 and 29) notes, 30.05% of Aboriginal people have been convicted of an indictable offence over the last 10 years compared to 3.53% of the general population. That means they are more likely to be capable of being the subject of a warning. Second, because of the high incarceration rates of Aboriginal people, they are more likely to be the subject of offences which are not able to be "spent" (see s 7(1)(a), *Criminal Records Act 1991* (NSW) and are therefore more exposed to the operation of s 93X. Third, Aboriginal social and kinship relations make them more likely to be in contact with other members of their community, and to make avoidance of members of their community more difficult. Fourth, kinship and sharing customs also make ostracising members of their community more difficult. Fifth, it is well documented that Aboriginal people are more likely to socialise and congregate in public spaces because of a range of cultural and socio-economic factors. Their visibility in this regard makes them more likely to be targeted for this kind of offence.

The Issues Paper identifies that the manner in which s 93X is being enforced exposes these vulnerabilities of Aboriginal people to its operation. The Issues Paper (p.38) notes that

> The incidents of consorting often involved sitting in public places such as parks and drinking or talking with others. One man received a warning while packing up his sleeping bag near to where a group was sitting and drinking. All five men received

> warnings and were the subject of warnings to others. On occasion they were warned for spending time with each other.

The Issues Paper (p.24) notes that "four of the 10 LACs advised they were targeting convicted offenders and others congregating in public places including shopping malls, outdoor seating areas and in cafes". It also notes (p.28) that "use of the consorting provisions primarily involved police observing people in public places to determine if they were consorting."

These examples show that the enforcement of the provision has little to do with organised crime and more to do with regulating public places. Given the substantive penalty that attaches to the offence it is an oppressive mechanism for that purpose.

The potential for the provision to be misused and to have an adverse effect on Aboriginal people is exacerbated by the fact that it can be used against a person who has never had a conviction, has never been engaged in criminal activity nor intends to be engaged in criminal activity. A conviction under this provision could nonetheless have a significant effect on the person, including their employment prospects. In this regard it is concerning that the Issues Paper (p.43) notes that 200 of the 1,260 people (16%) subject to the consorting provisions had either no criminal record at all or no indictable convictions.

It is the IIC's view that section 93X operates to force people to ostracise those who have been guilty of an indictable offence. There is no statutory limitation on when that indictable offence occurred. Although the police may as a matter of policy not give a warning unless the convicted person was convicted in the last 10 years (Issues Paper, p.23), there is no defence available to an offender if that policy is not followed. The fact that the effect of the provision is to force people to ostracise certain individuals by reason of their previous conviction is an outcome which potentially impairs their reintegration into society and undermines the objectives of rehabilitation.

The IIC is concerned that of the 14 matters where charges have been laid, three have been proven to be mistaken and one was innocent (Issues Paper, p.11). What is unknown, is to what extent the warnings have been mistakenly or inappropriately given. To the extent that has occurred, then people have been improperly told to cease associating with each other under threat of a three year gaol term.

In the context of the above, the IIC notes the following about the terms of s 93W-X:

- It is inappropriate for people who have never been convicted of an offence, and for whom there is no reason to believe will commit an offence, to be exposed to being convicted of consorting. If the provision is to remain, it should be limited to people who have been previously convicted of an indictable offence.

- The provision should be limited to where the previous indictable offence occurred within 5 years of the consorting. If a person has not committed a further offence in that time, then there is less reason to believe that an association will lead to any criminal conviction. It is not a matter which should be left to police policy.

- A warning should only be able to be given if the police officer has a reasonable basis to believe that the consorting will result in the committing of an offence.

- The defences set out in s 93Y are inadequate. As the Committees have noted in the past, even if the consorting occurs for the purposes of obtaining legal advice, a defendant must show that it is "reasonable in the circumstances". These ought to be automatic defences. Consideration should be given to broadening the scope of the defence to include a broader range of legitimate associations.

Human Rights Committee

The HRC is also concerned with the use of consorting provisions by the NSW police force and notes the consorting laws passed in 2012 (sections 93W - Y of the *Crimes Act 1900*) reinstate the effect of heavily criticised laws which applied from the late 1920s until 1979 when they were amended and narrowly confined by the then government. The offence was rarely used between 1979 and 2012.

According to the Premier, the 2012 laws were aimed at "criminal gangs" and may have been a reaction to drive-by shootings and the activities of outlaw motor cycle clubs. However, the legislation is not so restricted and catches people who have never committed or been suspected of a criminal offence. The laws penalise people just for associating with people previously convicted of "indictable offences" – a category not restricted to serious offences. If a person communicates, say by sending text messages, to two convicted offenders on two occasions, s/he may receive an oral warning from a Police officer. If after the warning, s/he sends further text messages to one of the two offenders, s/he may be charged with "habitual consorting", punishable by up to three years imprisonment and/or a fine of up $16,500.00.

The HRC is of the view that this offence clearly breaches Australia's human rights obligations set out by the International Covenant on Civil and Political Rights ("ICCPR"). Australia ratified this treaty in 1980 with the result that Australia as a whole, including its parliaments, has since had an obligation under international law to adhere to its terms.

The HRC's further view is that the consorting provisions may breach Article 22 of the ICCPR which requires States to respect and protect the principle of freedom of association. Further, the offence applies to "indictable offences". The HRC submits that this is too broad, exacerbating the effect of the restriction on association. Many "indictable offences" are dealt with in the Local Court and such offences are often quite minor. For example, common assault, shoplifting and obstructing a police officer are indictable offences in NSW.

The HRC further submits that there is also no automatic defence to the charge. Even a spouse, parent or a child of a previous offender can be charged. There is, in s 93Y, a defence for family members, doctors, teachers, employees and lawyers but significantly, any person in those categories can still be arrested, charged and brought before a court. They then have the onus of proving that their association with the person concerned was "reasonable in the circumstances". This provision reverses the onus of proof. Innocent spouses, parents or children are caught. A lawyer could be charged and have to go to court to prove the reasonableness of acting for the person concerned.

Lawyers who regularly act for convicted persons, may be warned to cease acting for a client, if, for example 40 years ago that client was convicted of shoplifting. If the lawyer ignores the warning, a charge may follow. This may amount to an unjustified interference with the workings of independent courts.

The HRC's view is that the reversal of the onus of proof imposed on families, doctors, lawyers and others involves a second breach of international law, namely the abrogation of the presumption of innocence in Article 14(2) of the ICCPR, also a fundamental principle of Australian criminal law. Under this principle, the prosecution is required to prove all elements of a criminal offence beyond a reasonable doubt. It is not the accused's role to have to prove their innocence, yet that is precisely what a spouse, teacher, lawyer or doctor may have to do, to avoid conviction. The right to silence of those persons is also abrogated.

The HRC's further view is that pursuant to s 93X, priests, ministers of religion and other clergy who may not be employees, are completely unprotected. There is no defence available. They do not have a right to attend court to prove their association was reasonable. Many others such as mere friends and fellow members of charitable organisations, political parties, trade unions, community groups and sporting or social clubs, fall into the same category.

The fact that a defence is available to some persons but not others may breach Article 14(1) of the ICCPR which requires people to be equal before the courts and Article 26 which requires people to have the equal protection of the law without discrimination.

The HRC submits that another human rights breach is the possible contravention of Article 14(3) (b) and (d) of the ICCPR by limiting defendants' rights to communicate with, and/or to be assisted in court by, lawyers of their own choosing.

The HRC also submits that the offence in s 93X could not be introduced in Victoria without the parliament in that State contravening the Victorian Charter of Human Rights and Responsibilities (which is based on the ICCPR) - in the same ways referred to above.

It is the HRC's view that the NSW Parliament should replicate that Charter in NSW to ensure there is a legislative benchmark of human rights and responsibilities in this State for the future.

The HRC submits that s 93X should be repealed. The HRC respectfully suggests that amendments cannot cure its fundamental defects. However if repeal is unrealistic, the HRC suggests the section be restricted to "organised crime offences" and include a general defence of "reasonable excuse", similar to the position in Victoria. The HRC notes that the maximum penalty in Victoria is two years imprisonment and submits that the maximum penalty in NSW should not be more than that.

Are the consorting provisions necessary?
1. What gaps, if any, do the new consorting provisions fill that the suite of laws and powers regarding limiting associations do not already cover?

The CLC and JJC have had an opportunity to read the submission by the Shopfront Youth Legal Centre ("Shopfront") and the NSW Council for Civil Liberties ("Civil Liberties"). These submissions are attached. The CLC and JJC endorse the answer to question 1 submitted by Shopfront and Civil Liberties.

Are the consorting provisions too broad?
2. What checks and balances, if any, should be in place to ensure personal relationships between people who are not involved in any criminal activities are not criminalised by the new consorting provisions?

The CLC and JJC endorse the answer to question 2 by Shopfront.

3. Should police be required to show the associations that are the subject of official warnings are linked to current or suspected criminal activity?

Yes. See the CLC and JJC answer to question 2 above.

4. Should police be required to hold a reasonable belief the issuing of consorting warnings is likely to prevent future offending?

Yes. See the CLC and JJC answer to questions 2 and 3 above.

5. Should the targeting of people for consorting be left wholly to police discretion or should the provisions be limited to people convicted of certain categories of offences as legislated in other jurisdictions? What offence categories would be appropriate?

The CLC and JJC endorse the answer provided by Shopfront.

6. Is it appropriate for police to target people for consorting who are suspected of involvement in less serious offences, such as shoplifting?

No. See the CLC and JJC answer to question 5 above. The CLC and JJC maintain that such offences should not be targeted by the police for use in the consorting laws.

7. Should convictions for certain offences or offence categories be excluded from defining a person as a convicted offender, and if so, which ones?

The CLC and JJC endorse Shopfront's answer to this question.

The CLC and JJC further submit that an appropriate way of dealing with this issue is to limit consorting to those convicted of an offence carrying a sentence of 10 years or more.

8. Should NSW consorting provisions include a requirement that a convicted offender must be convicted of an indictable offence within a specified timeframe? If such a requirement is included, what would be the appropriate timeframe?

The CLC and JJC endorse Shopfront's answer to the question.

9. Should there be a limit governing the period of time during which the occasions of consorting must occur included in the offence? If so, what timeframe?

Yes. The CLC and JJC submit that six months would be an appropriate timeframe.

10. Should official police warnings remain valid for a specified timeframe, such as 12 months or two years? If so, what timeframe?

The CLC and JJC submit that official warnings should remain valid for a period of 12 months.

Use in relation to disadvantaged and vulnerable groups
11. What, if any, protections should be put in place to ensure that Aboriginal people are not unfairly affected by the consorting provisions?

The CLC and JJC refer to their comments made in the introduction of this submission that specifically relate to the impact of consorting provisions on Aboriginal people. The CLC and JJC also endorse the comments made in Shopfront's answer to this question.

12. One of the defences listed in section 93Y of the Crimes Act is 'consorting with family members'. Should 'family' be defined within the legislation or in the Consorting SOPs and if so, what definition of 'family' should be adopted?

The CLC and JJC submit that the definition of "family" should be extended and be construed within the context of the matter. The CLC and JJC further submit that the cultural aspect of the word "family" needs to be considered. Where there is a matter relating to an Aboriginal or Torres Strait Islander's identity, culture and heritage, the CLC and JJC supports the Civil Liberties' comments that this should include:

a) Connections with and obligations to extended family;
b) Traditional ties to place;
c) Mobile and flexible living arrangements; and
d) Any other relevant cultural issue or obligation.

The CLC and JJC agree with the position of Civil Liberties that an extended definition of family, together with a fairer approach from police, should be applied when consorting relates to Aboriginal or Torres Strait Islander persons.

The CLC and JJC endorse Shopfront's answer to this question.

14. Should young people sentenced for certain classes of offences be included in the definition of 'convicted offender' even where no indictable conviction has been recorded by the Children's Court? If yes, what types or classes of offences?

The CLC and JJC endorse Shopfront's answer to this question.

15. Should the circumstances in which an official warning can be issued about a young person be restricted due to privacy considerations?

The CLC and JJC endorse Shopfront's answer to this question.

16. What, if any, safeguards should be included within the legislation or police policy with regard to the use of consorting provisions against homeless people?

The CLC and JJC endorse the answer provided by Civil Liberties.

The CLC and JJC submit that "reasonable cause" should be grounds for a general defence.

Issues relating to the offence
17. Should the description of an official warning in section 93X be amended to clarify that it is only an offence to continue to associate with a named convicted offender?

Yes.

18. What further guidance, if any, should be provided in the Consorting SOPs regarding the content and format of an official warning?

The CLC and JJC submit that there should be further guidance provided in the Consorting SOPs regarding the content and format of an official warning. The view of the CLC and JJC is that an oral warning in addition to some notice should be provided by police.

19. What practical strategies can police adopt to assist people who may have difficulty understanding the content of official warnings?

The CLC and JJC view is that the police have to be satisfied that the person receiving the warning understands it. Further, the CLC and JJC view is that a defence should be available to a person who did not understand the warning.

20. Should the consorting provisions require police officers to provide official warnings in writing, in addition to giving an oral warning?

Yes. The CLC and JJC view is that a written warning should also include details such as the police officer's name, badge number and police station.

21. Should police officers be able to issue official warnings pre-emptively? If yes, in what circumstances would it be appropriate for police officers to issue warnings in this way?

22. What guidance, if any, should be provided to police officers about the timeframe between an incident of consorting and the issuing of an official warning?

23. Are there any practical ways police can reduce the impact on people's privacy when issuing official warnings?

The CLC and JJC endorse the answers provided by Civil Liberties to questions 21, 22 and 23. The CLC and JJC are of the view that the police are unable at times to give a warning immediately, therefore require flexibility in relation to when they provide the warning. However this needs to be as soon as reasonably practicable.

The CLC and JJC submit that it is not possible to reduce the impact on people's privacy when issuing official warnings; therefore it is important to impose limits. The

nature of the offences should also be made clear. The CLC and JJC further view is that a spent conviction should not be able to give rise to a warning.

24. Should the consorting provisions provide for a process for review of official warnings? If yes, what kind of review process would be appropriate?

Yes. The CLC and JJC view is that there should be an internal review with the opportunity to then go to the NSW Civil and Administrative Tribunal ("NCAT"). The further view of the CLC and JJC is that provision should be made for the internal review to occur within a certain period of time. If there is no response, the warning is deemed to have been revoked.

The CLC and JJC also endorse the answer provide by Civil Liberties.

25. Should police formally establish an internal review process to assess the validity of warnings upon the request of the person warned?

Yes. See the CLC and JJC response to question 24.

26. Should the defences to consorting be expanded to include any of the following:
• consorting between people who live together
• consorting between people who are in a relationship
• consorting that occurs in the provision of therapeutic, rehabilitation and support services
• consorting that occurs in the course of sporting activities
• consorting that occurs in the course of religious activities
• consorting that occurs in the course of genuine protest, advocacy or dissent?

The CLC and JJC endorse Shopfront's answer to this question. The CLC and JJC view is that the defences to consorting should be expanded. In relation to the above list provided in question 26, the CLC and JJC view is that the word "recreational" can be added to "sporting" activities. Further, the word "cultural" should be added to "religious".

27. Should the list of defences be an inclusive list instead of an exhaustive list?

The CLC and JJC view is that it should be an inclusive list.

28. Should a general defence of reasonable excuse be included in addition, or as an alternative, to the current list of defences?

The CLC and JJC view is that a reasonable excuse defence should be added to the existing defences.

29. Should definitions of 'family members' and 'health service' be included in section 93Y? If yes, how should these terms be defined?

Yes. The CLC and JJC refer to their answer provided to question 12. The view of the CLC and JJC is that the word "family" needs to be broadly defined to also include people living in a "domestic relationship". The CLC and JJC further view is that "health service" should also be defined broadly to include other professional or therapeutic services and activities, including social workers.

30. What guidance, if any, should be provided to police about how they should exercise their discretion in relation to the defences?

The CLC and JJC view is that guidance should be provided to police in relation to exercising discretion. The CLC and JJC submit that the whole circumstances need to be addressed; defences need to be raised as well as the issue of recording details (referred to under question 20 above).

31. Should the consorting provisions be amended to provide that the prosecution must satisfy the court that the consorting was not reasonable in the circumstances?

Yes. The CLC and JJC submit that, if there are going to be consorting laws, it should be for the prosecution to prove that the consorting was not reasonable in the circumstances.

Evaluating the effect of the consorting provisions
32. Do you have any suggestions regarding how to approach evaluation of the effectiveness of official warnings and the consorting provisions in your local area?

The CLC and JJC view is that a general method of evaluation is for BOCSAR to compare rates of reoffending against the general population's rates of offending.

33. If you have received an official warning for consorting or been the subject of a warning issued to others, what impact did this have on you?

The Committees are not in a position to comment.

34. What behaviour, if any, have you changed as a result of receiving an official warning or being the subject of a warning?

The Committees are not in a position to comment.

35. If you are involved in providing a service to vulnerable or disadvantaged people or ex-prisoners:
• Have clients of your service been affected by the consorting provisions and, if so, how?
• Has there been any impact on your clients' engagement with services and supports?
Please describe the impact of the provisions on your clients.

The Committees endorse the answer provided by Shopfront.

36. How could any potential adverse effects of the consorting provisions on vulnerable people or ex-prisoners be mitigated?

The Committees' strongly held view is that the consorting provisions should be repealed. The Committees' further view is that the police should consider the benefit of rehabilitating offenders and the need to reintegrate them into the community.

THE LAW SOCIETY
OF NEW SOUTH WALES

COPY

Our ref: JD:CriminalLaw:HumanRights:586904

20 February 2012

The Hon Greg Smith SC MP
Attorney General and Minister for Justice
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Attorney General

Crimes (Criminal Organisations Control) Bill 2012

The Law Society's Criminal Law Committee and the Human Rights Committee (Committees) are writing to voice their strong concerns about the provisions contained in the *Crimes (Criminal Organisations Control) Bill 2012* ("Bill").

The Committees submit that there is no objective evidence to support the need for the proposed offences, particularly as the Bill will have a broad-ranging effect on individuals' fundamental rights. The Committees' view is that the proposed legislation would criminalise a person's associations and interactions rather than their conduct, and that the Bill constitutes a denial of the fundamental rights of freedom of association, freedom of speech, equal treatment before Courts and tribunals, the presumption of innocence and the entitlement to fair hearings.

The Committees submit that the Bill is unnecessary as the NSW Police Force already has wide powers to fight organised crime. A wide variety of modern powers of investigation are already available to the NSW Police Force, including those allowing the tapping of telephones and computers, satellite tracking, facial identification technology, DNA testing and other investigative techniques not available even 25 years ago. Given this, the Committees submit that this Bill does not add any value. Rather, the Committees submit that a concentrated effort to enforce the existing law is a more effective response to the problem of gangs.

The Committees also note their disappointment that they were not given the opportunity to comment prior to the introduction of the Bill and note the very short time period between the introduction of the Bill and its passage through the Legislative Assembly.

Set out below are the Committees' specific comments in relation to the Bill.

1. The Committees submit that to reflect the intention set out in the Attorney General's Agreement in Principle speech and in clause 5(7) in relation to the appointment of "eligible judges", clause 5(3) should be amended.

2. The power to "declare" an organisation is not restricted to motor cycle clubs and can be used against any organisation, including one in which a minority but "significant" number of members "associate for the purpose of serious criminal activity". The consequences of being a "Declared Organisation" are so severe that it would be disproportionate to allow an organisation to be "declared" where only a small minority, but nevertheless "significant" number of members, were involved in criminal activity.

3. While the present Bill seeks to change clause 13 to avoid the issue upon which the High Court declared the previous Act to be invalid (the Judge is now required to give reasons for a declaration under clause 13(2)), clause 13 provides that the rules of evidence do not apply to the hearing of an application for a declaration. Given the serious consequences of the declaration, it is not clear to the Committees why the normal rules of evidence would not apply in these circumstances. It is possible for a declaration to be made based on hearsay or secret evidence only.

4. There is no appeal available from such a declaration.

5. Evidence adduced by the Police Commissioner constituting "criminal intelligence" can be heard in private and may not have been disclosed to the organisation in question or its members prior to the declaration being made. This provision conflicts with accepted notions of procedural fairness and open justice.

6. "Protected submissions" being evidence of persons alleging they fear reprisals can be heard in private and not disclosed. This provision is objectionable on the same basis as the objection in paragraph 4 above.

7. Once a declaration is made, a member can be subjected to a Control Order by a separate proceeding in the Supreme Court. If that Control Order is made against a member of an association, that person cannot communicate with another controlled member on pain of commission of a criminal offence. Even the sending of a text message is caught by the provision concerned. This is objectionable as an infringement of the fundamental right of freedom of association, which under international law, Australia has an obligation to introduce and maintain in its domestic legislation (Article 22, ICCPR).

8. Control Orders, by prohibiting communication between controlled members of the association, including perhaps a majority of members who do not associate for the purposes of serious criminal activity, restrict freedom of speech in a manner that is in contravention of Australia's human rights obligations (Article 19, ICCPR).

9. The criminal offences for breach of a Control Order may also involve further breaches of international law because:

   a) they fail to treat persons equally before the Supreme Court. Only Controlled Persons are prevented from, for example, communicating with other persons or holding certain occupations. This is a breach of Article 14(1) of the ICCPR; and

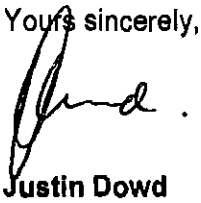
   b) they fail to respect the presumption of innocence by requiring, in sub-clause 26(3) and 26(5), that the accused has the onus of proving certain defences to such charges. This is a breach of Article 14(2) of ICCPR.

10. A Control Order itself is in the nature of a criminal sanction, yet may be made in the absence of a person sought to be controlled and the standard of proof in the proceeding is the "balance of probabilities". Even the appearance of a lack of procedural fairness involved in this procedure may undermine public confidence in the court system.

The Human Rights Committee notes in the absence of comprehensive human rights legislation in Australia, it is even more important to subject Bills to the closest possible scrutiny to ensure that they conform to the (generally accepted) fundamental rights of the ICCPR. These rights largely arise out of the English legal tradition which still underpins our democratic rights. It is submitted that a careful approach to the preparation, drafting, introduction and consideration of legislation which outwardly conflicts with fundamental rights should itself be a fundamental task of the NSW Parliament.

The Committees submit that this Bill should not be supported.

Yours sincerely,



Justin Dowd
President

THE LAW SOCIETY
OF NEW SOUTH WALES

COPY

Our ref: HumanRights:JD:VK:656741

26 October 2012

The Hon. Greg Smith SC MP
Attorney General NSW
Parliament House
Macquarie Street
Sydney NSW 2000

By email: office@smith.minister.nsw.gov.au

Dear Attorney General,

Sections 93X and 93Y of the *Crimes Act 1900* (NSW)

I am writing to express the Law Society's ongoing concern about the consorting offence and associated defences established by the *Crimes Amendment (Consorting and Organised Crime) Act 2012* ("amending Act").

For the reasons set out below, the Law Society respectfully requests that the Government take action to either:

a) Repeal ss.93X and 93Y; or

b) Amend s.93Y to provide that it is for the prosecution to prove that consorting was not reasonable in the circumstances set out in subsections 93Y(a)-(f).

As you are aware, the Law Society did not support the passage of the amending Act. I attach for your reference a copy of the Criminal Law Committee's submission dated 20 February 2012 which stated that that "[o]ffences should be based on conduct worthy of punishment; merely associating with people should not be a crime." The Society reiterates this position, noting that the consorting offences undermine freedom of expression and freedom of association. Further, as the defendant has to bear the onus of proving that his or her "consorting" conduct is reasonable in the circumstances, the Society's view is that changes made by the amending Act may amount to a breach of the presumption of innocence, under which the prosecution is to have the onus of proving every element beyond reasonable doubt.[1]

Since the Criminal Law Committee made its submission, Charlie Foster, a 21 year old intellectually disabled man was convicted of consorting (with three friends and housemates).[2] The Law Society respectfully submits that this outcome strongly indicates that the consorting provisions as they stand are not appropriate, and this can undermine the community's faith in, and respect for, the criminal justice system and the rule of law.

The Law Society is also concerned about the application of the legislation to legal practitioners in the normal course of providing legal services. As noted by the Criminal

[1] Article 14(2) of the *International Covenant on Civil and Political Rights*
[2] The Law Society notes that the conviction has since been overturned and has been sent back to Armidale Local Court for rehearing on fresh evidence.

Law Committee, there is no automatic exemption available under the amending Act; not even for a parent, spouse or child. In particular there is no automatic exemption available to legal or medical practitioners and none at all for religious advisors.

Under the new consorting provisions, any solicitor who "habitually" takes instructions from a client who is a convicted offender may be exposed to the risk of prosecution and imprisonment for three years if they are unable to show that the consorting was reasonable in the course of the provision of legal advice.

"Habitual" is very widely defined to include for example two text messages to each of two different people who have been convicted of indictable offences, which include relatively minor matters which are dealt with summarily but are still indictable (such as obstructing a police officer). The offence might have been committed 50 years ago.

Although sub-section 93Y(e) provides specifically for the circumstance of consorting that occurs in the course of the provision of legal advice, the effect of the changes made by the amending Act is that it is still possible for legal practitioners to be arrested and charged for activities undertaken in the normal course of providing legal services, obliging them to prove their innocence in Court. As noted previously, the penalty is severe – three years imprisonment.

In addition to the untenable position of legal practitioners, the Society's view is that hampering a legal practitioner's ability to take instructions from a client or a witness who has been convicted of any indictable offence may have serious rule of law implications, and may interfere with the right to "communicate with counsel of his own choosing"[3] and the obtaining of legal advice and therefore the right to a fair hearing (in further breach of Article 14 of the *International Covenant on Civil and Political Rights*).

The Law Society's view also is that the consorting amendments undermine the principle of independent Courts as their officers (solicitors and barristers) can potentially be charged for merely undertaking the usual activities involved in the provision of legal services.

For the reasons both set out above and in the earlier submission of the Criminal Law Committee, the Law Society seeks the repeal of ss.93X and 93Y.

If the Government decides to retain s.93X, the Law Society would strongly urge the Government to amend s.93Y to provide that it is for the prosecution to prove that consorting was <u>not</u> reasonable in the circumstances set out in subsections 93Y(a)-(f).

Yours sincerely

Justin Dowd
President

[3] Article 14(3)(b) of the *International Covenant on Civil and Political Rights*

THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: RBG686908

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