# Consorting Issues Paper: Questions for consideration

You may use this document as a guide to help you with the preparation of your submission.

## Introduction

The Ombudsman is reviewing how police use new consorting provisions in the *Crimes Act 1900* (Part 3A, Division 7, sections 93W–93Y). In this document, we list all of the issues discussed in our issues paper, released in November 2013 and available from our website. You may want to use this document to save your comments and then email or post the document to us. There is no word limit for your submission.

You are welcome to answer some or all of these questions and provide information regarding any other relevant issues. If you would prefer to provide your comments through a telephone call or a meeting with Ombudsman staff, please contact us on **(02) 9286 1000.**

We may mention or quote submissions in our final report. Please advise us if you do not want to be identified in our final report.

**Optional**

Your name:

Organisation:

Contact Details:

## 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?

## Are the consorting provisions too broad?

1. 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?

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

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

1. 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?

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

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

1. 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?

1. 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?

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

## Use in relation to disadvantaged and vulnerable groups

1. What, if any, protections should be put in place to ensure that Aboriginal people are not unfairly affected by the consorting provisions?

1. 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?

1. What protections, if any, should be introduced concerning the use of consorting provisions in relation to young people?

1. 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?

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

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

## Issues relating to the offence

1. 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?

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

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

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

1. 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?

1. 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?

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

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

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

1. 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?

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

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

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

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

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

## Evaluating the effect of the consorting provisions

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

1. 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?

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

1. 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.

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

## Other comments/additional information

**When completed, your submission may be sent:**

By email: [review@ombo.nsw.gov.au](mailto:review@ombo.nsw.gov.au)   
(please include Consorting review in the subject line)

By Fax: 02 9283 2911

By mail: Consorting review

NSW Ombudsman

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Please provide your submission by **Friday 28 February 2014.**