

Commenced 9 March 2017

HABITUALLY CONSORTING: Glossary of terms

Consort: a person consorts with another person if the person associates with the other person in a way that involves seeking out or accepting another person's company. There does not need to be a criminal purpose related to the association. Consorting can be in person or any other way, including electronically.

Habitually consort: a person does not habitually consort with a recognised offender unless the person consorts with the offender on at least two occasions.

Recognised offender: an adult with a recorded conviction (other than a spent conviction) for an indictable offence punishable by at least 5 years imprisonment *or* another prescribed offence under section 77 of the Criminal Code. The prescribed offences under section 77 of the Criminal Code are:

- Offences under sections 61 (Riot), 69 (Going armed to cause fear), 77B (Habitual consorting), 130 (Preventing witnesses from attending), 229H (Knowingly participating in prostitution), 229HC (Engaging in prostitution through business), 229I (Being found in a place used for prostitution), 229K (Having an interest in premises used for prostitution), 317A(2) (Carrying or sending dangerous goods in a vehicle), 327 (Setting mantraps), 355 (Deprivation of liberty), 408D (Obtaining or dealing with identification information), 413 (Assault with intent to steal), 414 (Demanding property with menaces with intent to steal) and 470A (Unlawful deposition of explosive or noxious substances) of the Criminal Code;
- Offences under sections 50 (Possession of weapons), 50B (Unlawful supply of weapons), 57(3) or (4) (Particular conduct involving a weapon in a public place), 58 (Dangerous conduct with a weapon), 61 (Shortening firearms), 62 (Modifying construction or action of firearms), 63 (Altering identification marks of weapons), 69(1A) (Armourers to be licensed), 151B (Protection of informers) and 151D (Power to prohibit publication of proceedings) under the *Weapons Act 1990*;
- An offence against the law of another State or the Commonwealth, or a place outside Australia, that, if the offence had been committed in Queensland it would be a relevant offence;
- An offence against section 102.8 of the *Criminal Code* (Cwth) (Associating with a terrorist organisation); and
- An offence against section 310J of the *Crimes Act 1900* (NSW) (Membership of a terrorist organisation).

Associate of a recognised offender: a person to whom an official consorting warning has been given under the *Police Powers and Responsibilities Act 2000*.



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Fact Sheet 2: HABITUALLY CONSORTING

The new Habitual consorting offence makes it a criminal offence for a person to continue to associate or communicate with people who have previously been convicted of certain indictable offences, after first receiving an official warning from police. This offence commenced on **9 March 2017**.

THE OFFICIAL WARNING

WHAT ARE THE REQUIREMENTS FOR THE OFFICIAL WARNING?

A person must first receive an official warning that a person they are associating or communicating with is a **recognised offender** and that consorting with that person on a **further occasion may lead to the commission of the offence** of Habitual consorting.

The warning can be given **orally or in writing**, but oral warnings must be confirmed in writing within 72 hours otherwise they lapse.

The warning must be in an **approved form**.

Before giving the warning, a police officer must consider whether it is appropriate having regard to the objective of: *disrupting and preventing criminal activity by deterring recognised offenders from establishing, maintaining or expanding a criminal network*.

WHAT ARE THE CONSEQUENCES OF THE OFFICIAL WARNING?

Receiving an official warning makes a person an **associate of a recognised offender** under the *Peace and Good Behaviour Act 1982*. See Fact Sheets 2-5 for details.

THE OFFENCE

WHAT IS THE OFFENCE?

A person commits an indictable offence if:

- a) a person habitually consorts with at least two recognised offenders, whether together or separately; and
- b) at least one of the occasions of consorting with each of the recognised offenders (referred to above) happens after that person has been given an official warning in relation to each of those individuals.

IS THERE A DEFENCE?

Particular acts of consorting must be disregarded if they are reasonable in the circumstances, such as consorting with close family members or while engaged in lawful employment or obtaining education or health services. See section 77C(4) of the Criminal Code.

Proof that the consorting was reasonable in the circumstances lies with the defendant.

WHAT IS THE PENALTY?

The maximum penalty is 3 years imprisonment or 300 penalty units. A person may also receive a control order – see Fact Sheet 1.

WHAT POWERS TO POLICE HAVE?

If a police officer reasonably suspects a person **has consorted, is consorting or is likely to consort** with one or more recognised offender, they may:

- Stop a person and require them to remain at a place so they may:
 - Confirm or deny their suspicion by exercising powers such as obtaining the person's name, address and date or birth; or
 - Give the person an official warning or confirmation of an official warning.
- Search a person or vehicle without a warrant;
- Require a person's name, address and date of birth;
- Require a person's identifying particulars; and
- Give the person a 'move on' direction after issuing a warning.