

TASMANIA

POLICE OFFENCES AMENDMENT (CONSORTING) BILL 2018

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement

PART 2 – POLICE OFFENCES ACT 1935 AMENDED

3. Principal Act
4. Section 6 repealed
5. Part II, Division III inserted
 - Division III – Consorting*
 - 20A. Interpretation of Division III
 - 20B. Object of Division III
 - 20C. Consorting
 - 20D. Official warnings
 - 20E. Review of decision to authorise giving of official warning
 - 20F. Review of Division
6. Section 55 amended (Arrest)

PART 3 – JUDICIAL REVIEW ACT 2000 AMENDED

7. Principal Act
8. Schedule 1 amended (Decisions to which Act does not apply)

PART 4 – CONCLUDING PROVISION

9. Repeal of Act

POLICE OFFENCES AMENDMENT (CONSORTING) BILL 2018

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
20 September 2018

*(Brought in by the Minister for Police, Fire and Emergency
Management, the Honourable Michael Darrel Joseph
Ferguson)*

A BILL FOR

**An Act to amend the *Police Offences Act 1935* in relation to
consorting and for related purposes**

Be it enacted by Her Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Police Offences
Amendment (Consorting) Act 2018*.

2. Commencement

This Act commences on the day on which this
Act receives the Royal Assent.

Police Offences Amendment (Consorting) Act 2018
Act No. of 2018

s. 3

Part 2 – Police Offences Act 1935 Amended

PART 2 – POLICE OFFENCES ACT 1935 AMENDED

3. Principal Act

In this Part, the *Police Offences Act 1935** is referred to as the Principal Act.

4. Section 6 repealed

Section 6 of the Principal Act is repealed.

5. Part II, Division III inserted

After section 20 of the Principal Act, the following Division is inserted in Part II:

Division III – Consorting

20A. Interpretation of Division III

In this Division –

consort means consort in person or by any other means, including by electronic or other forms of communication;

convicted offender means a person who has been convicted of a serious offence and who has attained the age of 18 years;

*No. 44 of 1935

Police Offences Amendment (Consorting) Act 2018
Act No. of 2018

Part 2 – Police Offences Act 1935 Amended

s. 5

dependant, in relation to a defendant, means a family member of the defendant who is wholly or mainly dependent on the defendant;

family member, in relation to a defendant, means –

- (a) the spouse of the defendant; or
- (b) if the defendant is in a significant relationship with a person, within the meaning of the *Relationships Act 2003*, that person; or
- (c) a child of the defendant; or
- (d) a parent of the defendant; or
- (e) a sibling of the defendant, including a half-brother or half-sister of the defendant; or
- (f) a relative, or step-relative, of the defendant, who lives with the defendant;

health care worker means a State Service employee, or other person, who is employed or

Police Offences Amendment (Consorting) Act 2018
Act No. of 2018

s. 5

Part 2 – Police Offences Act 1935 Amended

engaged to provide health advice or health care;

official warning means a warning, authorised under section 20D(1) to be given, that has not been revoked under section 20D(6)(b) or section 20E(4)(b);

serious offence means –

- (a) an indictable offence, whether the offence is tried on indictment or summarily; and
- (b) an offence under the *Firearms Act 1996*; and
- (c) an offence under the *Misuse of Drugs Act 2001*; and
- (d) an offence under the *Sex Industry Offences Act 2005*; and
- (e) an offence under Part 8 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*; and
- (f) an offence, under a law of the Commonwealth, another State, a Territory,

Police Offences Amendment (Consorting) Act 2018
Act No. of 2018

Part 2 – Police Offences Act 1935 Amended

s. 5

or another country, that, if the offence had occurred in this State, would be an offence referred to in another paragraph of this definition.

20B. Object of Division III

The object of this Division is to prevent serious criminal activity by deterring convicted offenders from establishing, maintaining and expanding criminal networks.

20C. Consorting

- (1) A convicted offender must not habitually consort with another convicted offender within 5 years after having been given under section 20D(2) an official warning in relation to the other convicted offender.

Penalty: Fine not exceeding 150 penalty units or imprisonment for a term not exceeding 3 years, or both.

- (2) For the purposes of this section, a convicted offender does not habitually consort with another convicted offender unless the convicted offender consorts with the other convicted offender on at least 2 occasions within the 5-year period after having been given under

Police Offences Amendment (Consorting) Act 2018
Act No. of 2018

s. 5

Part 2 – Police Offences Act 1935 Amended

section 20D(2) an official warning in relation to the other convicted offender.

(3) It is a defence to a charge of consorting under subsection (1) if the defendant satisfies the court that the consorting was any of the following kinds of consorting and was reasonable in the circumstances:

(a) consorting with a family member;

(b) consorting that occurred in the course of –

(i) genuinely conducting a lawful business; or

(ii) being genuinely engaged in lawful employment –

during work hours that were reasonable operating hours for that type of business or employment;

(c) consorting that occurred in the course of –

(i) attending premises genuinely for the purpose of receiving education or training that is recognised, or provided, under a law relating to training or education; or

Police Offences Amendment (Consorting) Act 2018
Act No. of 2018

Part 2 – Police Offences Act 1935 Amended

s. 5

-
- (ii) attending premises with a dependant of the defendant who is receiving education or training that is recognised, or provided, under a law relating to training or education;
 - (d) consorting that occurred in the course of the defendant attending –
 - (i) a hospital, health clinic or dental surgery or a medical practice operated by a medical practitioner; or
 - (ii) a clinic, or offices, at or from which the services of a health care worker are provided; or
 - (iii) the professional suite of a person who is registered under the Health Practitioner Regulation National Law (Tasmania) and is providing services to which the person's registration relates –

for the purposes of the defendant receiving services, or enabling a dependant of the defendant to

Police Offences Amendment (Consorting) Act 2018
Act No. of 2018

s. 5

Part 2 – Police Offences Act 1935 Amended

receive services, in relation to which a person may be registered under the Health Practitioner Regulation National Law (Tasmania) or employed or engaged as a health care worker;

- (e) consorting that occurred in the course of the defendant attending the professional suite or office of a person who is registered or authorised under a law to work as a counsellor, psychotherapist or social worker, for the purposes of –
 - (i) receiving services from that person that are related to that registration or authorisation; or
 - (ii) accompanying a dependant of the defendant who is attending the suite or office for the purpose of the dependant receiving services from that person that are related to that registration or authorisation;
- (f) consorting that occurred in the course of obtaining, or attempting to obtain, legal advice from an Australian legal practitioner;

Police Offences Amendment (Consorting) Act 2018
Act No. of 2018

Part 2 – Police Offences Act 1935 Amended

s. 5

- (g) consorting that occurred in lawful custody or in the course of complying with a court order, a parole order or a probation order.

20D. Official warnings

- (1) A commissioned police officer, if satisfied that it is desirable to do so in furtherance of the objects of this Division, may authorise a convicted offender to be given a notice in writing (an *official warning*) specifying that –
 - (a) another convicted offender, named in the notice, is a convicted offender; and
 - (b) it is an offence to consort with the convicted offender within 5 years after having been given an official warning in relation to the offender.
- (2) A police officer may, in person, give an official warning to a person to whom the official warning was authorised under subsection (1) to be given.
- (3) A person to whom an official warning has been given under subsection (2) may, within 28 days, by notice to the Commissioner, request a review of the decision to authorise the official warning to be given to the person.

Police Offences Amendment (Consorting) Act 2018
Act No. of 2018

s. 5

Part 2 – Police Offences Act 1935 Amended

- (4) The Commissioner must, as soon as practicable after receiving from a person a notice under subsection (3) in relation to an official warning, require a police officer, who is of a higher rank than the commissioned police officer who authorised the official warning to be given, to review the decision to authorise the official warning to be given.
- (5) A police officer who is, under subsection (4), required by the Commissioner to review a decision to authorise an official warning to be given must, as soon as practicable, review the decision.
- (6) A police officer must, as soon as practicable after carrying out, in accordance with subsection (5), a review of a decision to authorise an official warning to be given to a person, give to the person –
 - (a) a notice in writing –
 - (i) specifying that the police officer has conducted a review of the decision to authorise the giving of an official warning to the person; and
 - (ii) specifying that the police officer is of the opinion that the decision to

Police Offences Amendment (Consorting) Act 2018
Act No. of 2018

Part 2 – Police Offences Act 1935 Amended

s. 5

authorise the giving of the official warning was appropriate; and

- (iii) advising the person that the person may, within 28 days of receiving the notice, apply to a magistrate under section 20E(1) for a review of the decision to authorise the giving of the official warning; or

(b) a notice in writing –

- (i) specifying that the police officer has conducted a review of the decision to authorise the giving of an official warning to the person; and
- (ii) revoking the official warning.

20E. Review of decision to authorise giving of official warning

- (1) A person who has been given a notice under section 20D(6)(a) in relation to an official warning given to the person under section 20D(2) may make an application to the Magistrates Court (Administrative Appeals Division) under the *Magistrates Court (Administrative*

Police Offences Amendment (Consorting) Act 2018
Act No. of 2018

s. 5

Part 2 – Police Offences Act 1935 Amended

Appeals Division) Act 2001 for a review of the decision under section 20D(1) to authorise the giving of the official warning to the person.

- (2) The following provisions of the *Magistrates Court (Administrative Appeals Division) Act 2001* do not apply in relation to an application referred to in subsection (1):
 - (a) Division 1 of Part 4;
 - (b) section 21;
 - (c) Subdivisions 2 and 3 of Division 2 of Part 4.
- (3) For the purposes of section 17 of the *Magistrates Court (Administrative Appeals Division) Act 2001*, the prescribed period, in relation to a decision under section 20D(1) to authorise the giving of an official warning to a person, is 28 days after the day on which a notice was given to the person under section 20D(6)(a) in relation to the official warning.
- (4) The Magistrates Court (Administrative Appeals Division) is to determine an application made under subsection (1) in relation to a decision under section 20D(1) to authorise the giving of an official warning –

Police Offences Amendment (Consorting) Act 2018
Act No. of 2018

Part 2 – Police Offences Act 1935 Amended

s. 5

-
- (a) by confirming the decision to authorise the giving of the official warning; or
 - (b) by revoking the official warning.
 - (5) In dealing with an application for a review under subsection (1), the Magistrates Court (Administrative Appeals Division) –
 - (a) is to ensure that it does not, in the reasons for its decision or otherwise, disclose the existence or content of any criminal intelligence report or other criminal information; and
 - (b) in order to prevent the disclosure of any such report or other information, is to receive evidence and hear argument, in relation to such reports or other criminal information, in the absence of the public, the applicant for the review and the applicant's representative.

20F. Review of Division

- (1) The Ombudsman is to review the operation of this Division, and complete the review, within 4 years after the commencement of this Division.

Police Offences Amendment (Consorting) Act 2018
Act No. of 2018

s. 6

Part 2 – Police Offences Act 1935 Amended

- (2) The Minister is to cause a report on the outcome of the review to be tabled in each House of Parliament within 10 sitting-days of that House after the review is completed.

6. Section 55 amended (Arrest)

Section 55(2D) of the Principal Act is amended by inserting “section 20C(1),” after “15CA(1),”.

Police Offences Amendment (Consorting) Act 2018
Act No. of 2018

Part 3 – Judicial Review Act 2000 Amended

s. 7

PART 3 – JUDICIAL REVIEW ACT 2000 AMENDED

7. Principal Act

In this Part, the *Judicial Review Act 2000** is referred to as the Principal Act.

8. Schedule 1 amended (Decisions to which Act does not apply)

Schedule 1 to the Principal Act is amended by inserting after item 5 the following item:

- 5.** A decision made under section 20D of the *Police Offences Act 1935*.

*No. 54 of 2000

Police Offences Amendment (Consorting) Act 2018
Act No. of 2018

s. 9

Part 4 – Concluding Provision

PART 4 – CONCLUDING PROVISION

9. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.