

RULE OF LAW

INSTITUTE OF AUSTRALIA

What sort of legal system do we have? Consorting Laws in NSW

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What sort of a legal system do we have when a person can be sent to jail for going shopping with his mates?

What sort of a legal system do we have when it need not be suggested (let alone proven) that the person was planning some criminal activity?

What sort of a legal system do we have when the person need not be a bikie, need not own a bike and the persons he associated need not be bikies?

The answer is the legal system of New South Wales.

The full horror of the new consorting laws was played out at Inverell, far from the bikie gangs and shootings of the cities when Charles Foster was the first person found guilty under the new consorting laws and sent to jail for 12 months, with a non-parole period of 9 months.

These laws which are contained in the Crimes Amendment (Consorting and Organised Crime) Act 2012 came into force on 9 April 2012.

They apply where a person habitually consorts with convicted offenders on at least two occasions.

Consorting means no more than associating or keeping company. It does connote associating for an unlawful or criminal purpose. Attending legitimate gatherings, such as business or social activities is consorting. There is also no implication in the term that the association be of any particular length. It can be extremely short.

It is not necessary that the consorting take place jointly. You do not have to physically meet. You can consort over the telephone or by email.

The convicted person may have only one conviction and that may be 25 years ago for shoplifting or some corporate or tax offence. Since then he or she may have become a highly respected law abiding citizen.

There are certain limited exemptions. But then they are only exempted if the magistrate considers that the consorting was reasonable in the circumstances – what does that mean?

A person found guilty of consorting may be sent to jail for up to 3 years.

We do not know here whether there was some underlying reasonable concern of the police. But that needs to prove in the normal way, not rely on their suspicion of an unstated concern.

The magistrate who convicted Mr Foster is reported as saying the consorting law highlights the concern of the community in relation to “individuals that have a criminal propensity” of associating with people who have been convicted of an indictable offence. How do you determine who has such criminal propensity?

If you are truly interested in keeping the person away from criminals why not make appropriate orders that he keep a certain distance from them, why send him to jail.

By sending the person consorting to jail, what is achieved? It is said that you keep him away from associating with some criminals – but he is sent to jail where there are only criminals. It is said that you break up gangs, but what evidence was there that Mr Foster was part of a criminal gang or even wanted to join one? And what effect is all of this on the persons with whom he has consorted? It makes a pariah of them, isolating them in their community and thereby presenting a greater threat.

The sentencing of Mr Foster to 12 months in jail certainly sends a clear message to the community. That is the consorting law is bad and the sentence harsh and oppressive.

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