



Western Australia

Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021

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Defined terms



Western Australia

Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021

An Act to —

- **make consorting unlawful between certain offenders; and**
- **provide for the identification of organisations for the purposes of this Act; and**
- **prohibit the display in public places of insignia of identified organisations; and**
- **provide for the issue of dispersal notices to members of identified organisations and make any consorting contrary to those notices unlawful; and**
- **provide for police powers relating to unlawful consorting and insignia of identified organisations; and**
- **make consequential and other amendments to the *Community Protection (Offender Reporting) Act 2004* and *The Criminal Code*.**

Part 1 — Preliminary

1. Short title

This is the *Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act (other than section 67) — on a day fixed by proclamation;
- (c) section 67 — on the day after the period of 3 years beginning on the day fixed under paragraph (b).

3. Terms used

In this Act —

authorised officer means a police officer who is, or is acting as, a Commander or an officer of a rank more senior than a Commander;

Commissioner of Police means the person holding or acting in the office of Commissioner of Police under the *Police Act 1892*;

consort, with another person —

- (a) means —
 - (i) to seek, or accept, the company of the other person; or
 - (ii) to be in the company of the other person; or
 - (iii) to communicate directly or indirectly with the other person by any means (including by post, facsimile, telephone, email or any other form of electronic communication);

and

(b) includes consorting with the other person, in any of the ways mentioned in paragraph (a) —

(i) within this State; or

(ii) outside this State (including outside Australia);

dispersal notice has the meaning given in section 36;

family member, of a person, has the meaning given in section 4;

health service has the meaning given in the *Health Services Act 2016* section 7;

identifying reference, of an authorised officer, includes the officer's registered number;

Indigenous person means an Aboriginal person or a Torres Strait Islander;

insignia removal notice has the meaning given in section 27(2);

Parliamentary Commissioner means the Parliamentary Commissioner for Administrative Investigations appointed under the *Parliamentary Commissioner Act 1971*;

personal details, in relation to a person, means the following —

(a) the person's full name;

(b) the person's date of birth;

(c) the address where the person is residing;

(d) the address where the person usually resides, if that is different from the address referred to in paragraph (c);

(e) the person's business address;

personal service, of a document on a person, means serving the document by —

(a) handing it to the person; or

(b) if the person refuses to accept it — leaving it near the person and orally drawing the person's attention to it;

prescribed means prescribed by the regulations;

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record —

- (a) means any record of information, irrespective of how the information is recorded or stored or able to be recovered; and
- (b) includes —
 - (i) any thing from which images, sounds or writings can be reproduced, with or without the aid of anything else; and
 - (ii) any thing on which information is recorded or stored, whether electronically, magnetically, mechanically or by some other means;

relevant service method, in relation to service of a document on a person under this Act, means any of the following —

- (a) personal service of the document on the person;
- (b) delivering the document to a physical address nominated by the person;
- (c) delivering the document to an electronic address nominated by the person;

social welfare service includes services provided by governments and charitable organisations for community welfare, financial assistance, housing and temporary accommodation;

unlawful consorting notice has the meaning given in section 9(1);

vehicle has the meaning given in the *Criminal Investigation Act 2006* section 3(1).

4. Family member

- (1) A person is a ***family member*** of another person if the person is any of the following —
 - (a) a spouse or de facto partner of the person;

- (b) a person with whom the person shares parental responsibility for a child;
 - (c) a parent or step-parent of the person;
 - (d) a child or step-child of the person;
 - (e) a grandparent or step-grandparent of the person;
 - (f) a grandchild or step-grandchild of the person;
 - (g) a sibling or step-sibling of the person;
 - (h) a guardian or ward of the person.
- (2) Without limiting subsection (1), a person is a *family member* of another person who is an Indigenous person if, under the customary law and culture of the Indigenous person's community, the person is regarded as a member of the extended family or kinship group of the Indigenous person.

5. Act binds Crown

This Act binds the Crown in right of Western Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

Part 2 — Consorting contrary to unlawful consorting notices

Division 1 — Preliminary

6. Terms used

In this Part —

child sex offence has the meaning given in section 7(1);

conviction —

- (a) means a finding of guilt, or the acceptance of a plea of guilty, in respect of an offence, whether summarily or on indictment; but
- (b) does not include —
 - (i) a finding of guilt, or the acceptance of a plea of guilty, in respect of an offence committed by a person before the person had reached 18 years of age; or
 - (ii) a spent conviction as defined in the *Spent Convictions Act 1988* section 3;

named offender has the meaning given in section 10(b);

relevant offender means —

- (a) a person against whom a conviction has been recorded for 1 or more of the following —
 - (i) an indictable offence;
 - (ii) a child sex offence;
 - (iii) an indictable offence under a law of the Commonwealth;
 - (iv) an offence under a law of the Commonwealth that, if committed in this State, would constitute a child sex offence;

(v) an offence under a law of another State, a Territory or another country that, if committed in this State, would constitute an indictable offence or child sex offence;

(vi) an offence under section 25(2) or 42(1);
or

(b) a person who is declared to be a drug trafficker under the *Misuse of Drugs Act 1981* section 32A(1)(c);

restricted offender has the meaning given in section 9(1).

7. Child sex offence

- (1) A **child sex offence** is an offence listed in Schedule 1.
- (2) A reference in Schedule 1 item 1 or 2 to a provision of *The Criminal Code* includes a reference to the provision as enacted at any time.
- (3) A reference in Schedule 1 item 4 to a provision of *The Criminal Code* includes a reference to the provision as enacted at any time before it was repealed.

8. Objects of Part

The objects of this Part are to disrupt and restrict the capacity of relevant offenders to organise, plan, support or encourage the carrying out of criminal activity.

Division 2 — Unlawful consorting notices

9. Issue of unlawful consorting notice

- (1) An authorised officer may issue a notice (an **unlawful consorting notice**) in respect of a person (a **restricted offender**) if —
 - (a) the person has reached 18 years of age; and

- (b) the person is a relevant offender who —
 - (i) has consorted, or is consorting, with another relevant offender; or
 - (ii) the officer suspects on reasonable grounds is likely to consort with another relevant offender;and
 - (c) the officer considers that it is appropriate to issue the notice in order to disrupt or restrict the capacity of relevant offenders to engage in conduct constituting an indictable offence.
- (2) The reference in subsection (1) to ***conduct constituting an indictable offence*** includes conduct engaged in outside this State (including outside Australia) that, if it occurred in this State, would constitute an indictable offence.
- (3) The unlawful consorting notice may be issued in respect of consorting before, on or after the day on which this section commenced.

10. Content of unlawful consorting notice

An unlawful consorting notice must specify the following —

- (a) the name and residential address of the restricted offender;
- (b) the name of each relevant offender (a ***named offender***) with whom the restricted offender must not consort;
- (c) that consorting on 2 further occasions with any named offender (irrespective of whether the consorting occurs with the same named offender on each occasion or with a different named offender on each occasion) may lead to the commission of a crime under section 17(1);
- (d) the date of issue of the notice;
- (e) the name, rank and identifying reference of the authorised officer who issued the notice;

- (f) that the notice remains in effect for a period of 3 years beginning on the day on which the notice is served unless revoked sooner;
- (g) any other prescribed matters.

11. Service of unlawful consorting notice

- (1) An authorised officer must, as soon as practicable after issuing an unlawful consorting notice, ensure that a police officer serves the notice on the restricted offender —
 - (a) orally; or
 - (b) in writing, by personal service.
- (2) The police officer must explain to the restricted offender, in language likely to be understood by the restricted offender —
 - (a) the restricted offender's obligations under the notice; and
 - (b) the consequences that may follow if the restricted offender fails to comply with those obligations.
- (3) Failure to comply with subsection (2) does not invalidate an unlawful consorting notice.
- (4) An unlawful consorting notice expires if it is not served within 2 months after it is issued.

12. Further service of unlawful consorting notice when served orally

- (1) If an unlawful consorting notice is served orally, a police officer must, within 72 hours after the notice is served —
 - (a) confirm the notice in accordance with subsection (2); and
 - (b) make a record of the particulars of the confirmation of the notice.
- (2) For the purposes of subsection (1)(a), the police officer must serve, by a relevant service method, a written record of the

unlawful consorting notice containing the particulars referred to in section 10.

- (3) An unlawful consorting notice that is not confirmed in accordance with subsection (2) expires 72 hours after it is served.

13. Duration of unlawful consorting notice

- (1) An unlawful consorting notice takes effect when the notice is served on the restricted offender.
- (2) The unlawful consorting notice remains in effect for a period of 3 years beginning on the day on which it takes effect, unless the notice —
 - (a) expires in accordance with section 12(3); or
 - (b) is revoked sooner under section 15(4).

14. Correcting mistakes in unlawful consorting notice

- (1) An authorised officer may correct an unlawful consorting notice if the notice contains —
 - (a) a clerical mistake; or
 - (b) a mistake arising from an accidental slip or omission; or
 - (c) a material mistake in the description of any person, thing or matter referred to in the notice.
- (2) The authorised officer must, as soon as practicable after an unlawful consorting notice is corrected under this section —
 - (a) ensure that the restricted offender is notified of the correction by a relevant service method; and
 - (b) make a record of the particulars of the correction of the notice.
- (3) An unlawful consorting notice corrected under this section has the same validity and effect as if the mistake had not been made.

15. Revocation of unlawful consorting notice

- (1) A restricted offender may apply to the Commissioner of Police to revoke an unlawful consorting notice.
- (2) The application must be made —
 - (a) in writing; and
 - (b) during the period that the unlawful consorting notice is in effect.
- (3) The Commissioner of Police must determine the application within 60 days after the application is made.
- (4) The Commissioner of Police must, by written notice (a ***revocation notice***), revoke an unlawful consorting notice if the Commissioner is, on an application under subsection (1) or on the Commissioner's own initiative, satisfied that —
 - (a) the unlawful consorting notice was invalidly issued because the requirements under section 9(1) for issuing the unlawful consorting notice were not met; or
 - (b) the unlawful consorting notice was validly issued but the requirements under section 9(1) for issuing the unlawful consorting notice are no longer met due to a change in the circumstances.
- (5) The revocation notice takes effect when it is made.
- (6) The revocation notice must specify the following —
 - (a) the name and residential address of the restricted offender;
 - (b) details that identify the unlawful consorting notice;
 - (c) the date on which the revocation notice is made;
 - (d) that the revocation notice takes effect when it is made;
 - (e) any other prescribed matters.

- (7) The Commissioner of Police must, as soon as practicable after making a notice —
 - (a) serve or cause to be served, by a relevant service method, the revocation notice on the restricted offender; and
 - (b) make a record of, or cause to be recorded, the particulars referred to in subsection (6).

16. Variation of unlawful consorting notice

- (1) A restricted offender may apply to the Commissioner of Police to vary an unlawful consorting notice to remove a named offender.
- (2) The application must be made —
 - (a) in writing; and
 - (b) during the period that the unlawful consorting notice is in effect.
- (3) The Commissioner of Police must determine the application within 60 days after the application is made.
- (4) The Commissioner of Police must, by written notice (a **variation notice**), vary an unlawful consorting notice to remove a named offender if the Commissioner is, on an application under subsection (1) or on the Commissioner's own initiative, satisfied that —
 - (a) the requirements under section 9(1) for issuing the unlawful consorting notice are no longer met in respect of the named offender due to a change in the circumstances; and
 - (b) the unlawful consorting notice still specifies at least 1 named offender.
- (5) The variation notice takes effect when it is made.

- (6) The variation notice must specify all of the following —
 - (a) the name and residential address of the restricted offender;
 - (b) the named offender being removed from the unlawful consorting notice;
 - (c) details that identify the unlawful consorting notice;
 - (d) the date on which the variation notice is made;
 - (e) that the variation notice takes effect when it is made;
 - (f) any other prescribed matters.
- (7) The Commissioner of Police must, as soon as practicable after making a variation notice —
 - (a) serve or cause to be served, by a relevant service method, the notice on the restricted offender; and
 - (b) make a record of, or cause to be recorded, the particulars referred to in subsection (6).

17. Offence of consorting contrary to unlawful consorting notice

- (1) A person commits a crime if —
 - (a) an unlawful consorting notice is served on the person; and
 - (b) during the period that the notice is in effect, the person consorts with a named offender on 2 or more occasions.

Penalty for this subsection: imprisonment for 5 years.

Summary conviction penalty for this subsection: imprisonment for 2 years.

- (2) For the purposes of subsection (1), it does not matter whether the consorting occurred with the same named offender on each occasion or with a different named offender on each occasion.
- (3) Nothing in subsection (1) requires the prosecution to prove —
 - (a) that the consorting occurred for a particular purpose; or

- (b) that the consorting would have led to engaging in conduct constituting an indictable offence.

18. Defences to charge of consorting contrary to unlawful consorting notice

- (1) It is a defence to a charge of a crime under section 17(1) to prove that the consorting —
 - (a) occurred between persons who are family members; and
 - (b) was reasonable in the circumstances.
- (2) It is a defence to a charge of a crime under section 17(1) to prove that the consorting —
 - (a) occurred in the course of 1 or more of the following —
 - (i) engaging in a lawful occupation, trade or profession;
 - (ii) attendance at an educational institution to take part in secondary education or a higher education course registered under the *Higher Education Act 2004* section 23(3) or an approved VET course as defined in the *Vocational Education and Training Act 1996* section 5(1);
 - (iii) receiving a health service or social welfare service;
 - (iv) obtaining a service mentioned in subparagraph (iii) for a person who is dependent upon the person charged for care and support;
 - (v) the provision of legal advice;
 - (vi) lawful custody;
 - (vii) complying with a written law, an order made by a court or tribunal, or any other order, direction or requirement made under a written law;
 - (viii) activities undertaken by members of an organisation of employees registered under the

Industrial Relations Act 1979 Part II Division 4,
or the *Fair Work (Registered Organisations)
Act 2009* (Commonwealth), for the purposes of
the business of the organisation;

- (ix) if the person charged is an Indigenous person —
fulfilling a cultural practice or obligation of the
customary laws or traditions of the Indigenous
person's community;

and

- (b) was necessary in the circumstances.

- (3) Consorting referred to in subsection (1) or (2) is not reasonable
or necessary (as the case may be) if a purpose of the
consorting —

- (a) is to avoid the operation of an unlawful consorting
notice; or
- (b) relates to criminal activity.

Division 3 — Police powers

19. Police powers relating to unlawful consorting notices

- (1) A police officer who suspects on reasonable grounds that
someone is a person on whom an unlawful consorting notice
must be served under section 11(1) may do all or any of the
following —
 - (a) require the person to stop;
 - (b) require the person to provide their personal details;
 - (c) require the person to accompany the officer to a police
station or other place to serve on the person the notice;
 - (d) require the person to remain at a police station or some
other particular place for as long as is reasonably
necessary, but no longer than 2 hours, to serve on the
person the notice;
 - (e) serve on the person the notice;

- (f) if the notice is served orally — confirm the notice under section 12(1)(a).
- (2) For the purposes of exercising the powers in subsections (1), (4) and (6), the police officer may —
 - (a) in respect of a vehicle in which the officer suspects on reasonable grounds the person is located —
 - (i) enter the vehicle; and
 - (ii) keep the vehicle at a particular place for as long as is reasonably necessary, but no longer than 2 hours, in order to serve on the person an unlawful consorting notice;
 - and
 - (b) use reasonable force.
- (3) If the police officer suspects on reasonable grounds that a personal detail provided by the person in response to a requirement under subsection (1)(b) is false, the officer may require the person to produce evidence of the correctness of the detail.
- (4) If the person refuses or fails to comply with a requirement under this section, the police officer may convey the person to, and detain the person at, a place for as long as is reasonably necessary, but no longer than 2 hours, to serve on the person an unlawful consorting notice.
- (5) The person is taken to be in lawful custody while the person is being conveyed to, and detained at, a place.
- (6) If a police officer suspects on reasonable grounds that a restricted offender is consorting with a named offender, the officer may require the restricted offender —
 - (a) to leave a place, or a part of a place, specified by the officer; or
 - (b) to go beyond a reasonable distance from a place, or a part of a place, specified by the officer; or

- (c) to comply with a requirement of the officer under paragraph (a) or (b) for a reasonable period specified by the officer that does not exceed 24 hours.
- (7) Subsection (6) does not apply if the police officer is satisfied that the circumstances referred to in section 18 would give the restricted offender a defence to a charge of a crime under section 17(1) in relation to the consorting.

20. Offence of failure to comply with directions of police officer

- (1) A person who, without reasonable excuse, fails to comply with the requirement of a police officer under section 19(1)(a), (c) or (d) or (6) commits an offence.

Penalty for this subsection: imprisonment for 12 months and a fine of \$12 000.

- (2) A person who is required by a police officer in accordance with section 19(1)(b) to provide their personal details commits an offence if the person, without reasonable excuse —

- (a) fails or refuses to comply with the requirement; or
 - (b) provides any personal detail that is false in a material particular.

Penalty for this subsection: imprisonment for 12 months and a fine of \$12 000.

- (3) A person who is required by a police officer in accordance with section 19(3) to produce evidence of the correctness of a personal detail commits an offence if the person, without reasonable excuse —

- (a) fails or refuses to comply with the requirement; or
 - (b) produces evidence that is false in a material particular.

Penalty for this subsection: imprisonment for 12 months and a fine of \$12 000.

- (4) It is not a defence to a charge of an offence under subsection (2) or (3) that information required to be given would or might incriminate the person.

Part 3 — Prohibited insignia and consorting contrary to dispersal notices

Division 1 — Preliminary

21. Terms used

In this Part —

display, of insignia of an identified organisation in a public place, has a meaning affected by section 24;

identified organisation means an organisation named in Schedule 2;

insignia, of an identified organisation, has the meaning given in section 22;

member, of an identified organisation, means a person —

- (a) who has been accepted as a member of the organisation, whether informally or through a process set by the organisation; or
- (b) who identifies in any way as belonging to the organisation; or
- (c) whose conduct in relation to the organisation would reasonably lead another person to consider the person to be a member of the organisation;

named person has the meaning given in section 37(b);

owner, of a relevant place, means —

- (a) if the place comprises, or is on, land that is subject to the *Transfer of Land Act 1893* or the *Land Administration Act 1997* — a proprietor of the land as defined in the *Transfer of Land Act 1893* section 4(1);
- (b) if the place comprises, or is on, land that is subject to the *Registration of Deeds Act 1856* — the holder of an estate or interest in the land that is registered by memorial under that Act;

place includes a vehicle;

prohibited thing —

- (a) means a thing marked with insignia of an identified organisation; but
- (b) does not include a tattoo or other body marking that comprises or includes insignia of an identified organisation;

public place —

- (a) includes a place to which the public, or a section of the public, is entitled to have lawful access, whether on payment of money, through membership of a club or other body, or otherwise; but
- (b) does not include a place to which only members of an identified organisation, or their associates, are entitled to have lawful access;

relevant place means a place where a prohibited thing is situated;

required person has the meaning given in section 27(3);

restricted person has the meaning given in section 36.

22. Insignia of identified organisation

- (1) The following are *insignia* of an identified organisation —
 - (a) the name of the organisation;
 - (b) the logo or patch of the organisation;
 - (c) another image, symbol, abbreviation, acronym or other form of writing or mark that indicates membership of, or an association with, the organisation.
- (2) In addition, the following are taken to be *insignia* of every identified organisation —
 - (a) the symbol “1%”;
 - (b) the symbol “1%er”.

23. Objects of Part

(1) In this section —

organisation-related activity means —

- (a) the display of insignia of identified organisations in public places; or
- (b) the consorting of members of identified organisations in public places;

potential to cause public harm means the potential to —

- (a) cause members of the public to feel threatened, fearful or intimidated; or
- (b) have an undue adverse effect on the health or safety of members of the public; or
- (c) increase the likelihood of public disorder or acts of violence.

(2) The objects of this Part are —

- (a) to ensure that members of the public may lawfully use and pass through public places without experiencing fear or intimidation because of organisation-related activity that has the potential to cause public harm; and
- (b) to reduce the likelihood of public disorder or acts of violence in public places; and
- (c) to reduce the membership of identified organisations, members of which might engage in organisation-related activity that has the potential to cause public harm.

Division 2 — Prohibited insignia

Subdivision 1 — Display of insignia of identified organisations in public places prohibited

24. Display of insignia of identified organisation in public place

- (1) A person is taken to *display* insignia of an identified organisation in a public place if the person —
- (a) wears, carries or otherwise possesses or controls a prohibited thing in a manner that insignia of an identified organisation would be visible to another person in the public place; or
 - (b) has a tattoo or other body marking that —
 - (i) comprises or includes insignia of an identified organisation; and
 - (ii) is left uncovered in a manner that insignia of an identified organisation would be visible to another person in the public place.
- (2) Subsection (1) applies whether the thing or person marked with insignia of an identified organisation is physically —
- (a) in the public place; or
 - (b) in some other place from where the insignia would be visible to another person in the public place.

25. Offence of displaying insignia of identified organisation in public place

[(1) deleted]

- (2) A person commits an offence if the person displays insignia of an identified organisation in a public place.

Penalty for this subsection:

- (a) in the case of an individual — imprisonment for 12 months and a fine of \$12 000;

(b) in the case of a body corporate — a fine of \$60 000.

- (3) Subsection (2) does not apply to an individual who has not reached 18 years of age.

[(4)-(6) deleted]

[Section 25 amended: No. 9 of 2023 s. 45.]

25A. Liability of officers for offence by body corporate

The Criminal Code section 41 (which provides for the criminal liability of officers of a body corporate) applies to an offence under section 25(2) of this Act.

[Section 25A inserted: No. 9 of 2023 s. 46.]

26. Defences to charge of displaying insignia of identified organisation in public place

- (1) It is a defence to a charge of an offence under section 25(2) to prove that the display was —
- (a) for any of the following purposes —
 - (i) a genuine artistic or educational purpose;
 - (ii) law enforcement;
 - (iii) the performance of a legal practitioner's functions or the receipt of legal advice;
 - and
 - (b) in the circumstances, reasonable for that purpose.
- (2) It is a defence to a charge of an offence under section 25(2) to prove that the display was for the purposes of collecting, preparing for the sale or distribution of, or selling or distributing —
- (a) material having the character of news, current affairs or a documentary; or
 - (b) material consisting of commentary or opinion on, or analysis of, news, current affairs, or a documentary.

- (3) It is a defence to a charge of an offence under section 25(2) to prove that the accused did not know that the accused was displaying insignia of an identified organisation.
- (4) It is a defence to a charge of an offence under section 25(2) to prove that the insignia was being displayed only —
 - (a) to indicate membership of, or an association with, an organisation other than an identified organisation; or
 - (b) for a purpose or meaning other than as insignia of an identified organisation.
- (5) It is a defence to a charge of an offence under section 25(2) to prove that the display —
 - (a) was authorised by or under a written law or a law of the Commonwealth (an *authorising law*); and
 - (b) was for the purposes of the authorising law.

Subdivision 2 — Insignia removal notices

27. Issue of insignia removal notice

- (1) In this section —

interested person, in relation to a relevant place, means a person who —

 - (a) is a lessee or hirer of the place, whether or not actually occupying the place; or
 - (b) is actually occupying, or is entitled to the possession of, the place.
- (2) An authorised officer may issue a written notice (an *insignia removal notice*) if the officer reasonably suspects that a prohibited thing is being displayed in a public place from a relevant place.

- (3) The insignia removal notice must be addressed to each of the following (a *required person*) —
- (a) the owner of the relevant place, or each owner of the relevant place if there are 2 or more, by name;
 - (b) any other interested person in relation to the relevant place, or each other interested person in relation to the relevant place if there are 2 or more, without naming the person but with an explanation of the term “interested person”.

28. Content of insignia removal notice

The insignia removal notice must contain —

- (a) a statement to the effect that —
 - (i) the authorised officer reasonably suspects that a prohibited thing is being displayed in a public place from the relevant place; and
 - (ii) within 14 days after the day on which the notice is served, the prohibited thing must be removed or modified to the extent necessary to satisfy the Commissioner of Police that the prohibited thing is no longer being displayed in a public place;
- and
- (b) an explanation of the effect of section 34; and
 - (c) an explanation of the right of a required person to apply to the Commissioner of Police under section 32 for a revocation of the notice.

29. Service of insignia removal notice

- (1) An authorised officer must, as soon as practicable after issuing an insignia removal notice, ensure that the notice is served in accordance with this section.
- (2) The insignia removal notice must be served by a police officer —

- (a) by personal service on each required person; or
 - (b) if, despite all reasonable steps being taken, paragraph (a) cannot be complied with — by personal service on a person who appears —
 - (i) to be actually occupying the relevant place; and
 - (ii) to have reached 18 years of age;
 - or
 - (c) if, despite all reasonable steps being taken, neither paragraph (a) nor (b) can be complied with — by affixing the notice to the front entrance, or another part, of the relevant place where it can be easily seen.
- (3) An insignia removal notice expires if it is not served within 7 days after it is issued.

30. Duration of insignia removal notice

- (1) An insignia removal notice takes effect when the notice is served in accordance with section 29(2).
- (2) The insignia removal notice remains in effect until the insignia of the identified organisation has been removed or modified to the extent required by the notice, unless the notice is revoked sooner under section 32(4).

31. Correcting mistakes in insignia removal notice

- (1) An authorised officer may correct an insignia removal notice if the notice contains —
 - (a) a clerical mistake; or
 - (b) a mistake arising from an accidental slip or omission; or
 - (c) a material mistake in the description of any person, thing or matter referred to in the notice.
- (2) The authorised officer must, as soon as practicable after an insignia removal notice is corrected under this section —

- (a) ensure that the required person is notified of the correction by a relevant service method; and
 - (b) make a record of the particulars of the correction of the notice.
- (3) An insignia removal notice corrected under this section has the same validity and effect as if the mistake had not been made.

32. Revocation of insignia removal notice

- (1) A required person may apply to the Commissioner of Police to revoke an insignia removal notice.
- (2) The application must be made —
 - (a) in writing; and
 - (b) during the period that the insignia removal notice is in effect.
- (3) The Commissioner of Police must determine the application within 72 hours after the application is made.
- (4) The Commissioner of Police must, by written notice (the ***revocation notice***), revoke an insignia removal notice if the Commissioner is, on an application under subsection (1) or on the Commissioner's own initiative —
 - (a) satisfied that the insignia removal notice was invalidly issued because the requirements under section 27(2) for issuing the notice were not met; or
 - (b) satisfied that the insignia removal notice was validly issued but not satisfied that a prohibited thing was being displayed in a public place from a relevant place.
- (5) The revocation notice takes effect when it is made.
- (6) The revocation notice must specify all of the following —
 - (a) the name and residential address of the required person;
 - (b) details that identify the insignia removal notice;
 - (c) the date on which the revocation notice is made;

- (d) that the revocation notice takes effect when it is made;
 - (e) any other prescribed matters.
- (7) The Commissioner of Police must, as soon as practicable after making a revocation notice —
 - (a) serve or cause to be served, by a relevant service method, the notice on the required person; and
 - (b) make a record of, or cause to be recorded, the particulars referred to in subsection (6).

33. Offence of hindering removal or modification of prohibited things under insignia removal notice

- (1) A person who does anything intending to prevent, obstruct, or delay the removal or modification of a prohibited thing in accordance with an insignia removal notice commits an offence.
Penalty for this subsection: imprisonment for 12 months and a fine of \$12 000.
- (2) Subsection (1) applies to the removal or modification of a prohibited thing by a person who —
 - (a) is, or is acting for or on the instructions of, a required person; or
 - (b) is acting under section 34(4).

Subdivision 3 — Police powers

34. Police powers relating to insignia removal notice

- (1) This section applies if —
 - (a) an insignia removal notice is served on a person in respect of insignia of an identified organisation displayed from a relevant place; and
 - (b) within 14 days (or any greater period allowed by the Commissioner of Police under subsection (2)) after the service of the notice (the *time allowed*), the insignia of the identified organisation is not removed or modified to

the extent necessary to satisfy the Commissioner that the insignia is not being displayed in a public place.

- (2) The Commissioner of Police may extend the time allowed —
 - (a) on the Commissioner's own initiative; or
 - (b) on an application made by a required person to the Commissioner before the time allowed elapses.
- (3) The Commissioner of Police may cause the insignia of the identified organisation to be removed or modified to the extent required by the insignia removal notice.
- (4) Subsection (3) authorises police officers and agents of the Commissioner of Police, without warrant or further notice, to enter the place and secure it in order to do anything for the purposes of that subsection, and to use any force and employ any equipment necessary.
- (5) The Commissioner of Police may recover from the owner of the relevant place costs incurred by the Commissioner under this section in a court of competent jurisdiction as a debt due to the State.

35. No compensation under this Part

- (1) The provisions of this Part do not entitle any person to compensation.
- (2) Nothing in subsection (1) prevents claims in tort in relation to a place other than those in respect of which an insignia removal notice is given.

Division 3 — Consorting contrary to dispersal notices

Subdivision 1 — Dispersal notices

36. Issue of dispersal notice

A police officer may issue a written notice (a *dispersal notice*) in respect of a person (a *restricted person*) if —

- (a) the person has reached 18 years of age; and
- (b) the police officer reasonably suspects that the person —
 - (i) is a member of an identified organisation; and
 - (ii) has consorted, or is consorting, in a public place with another person who has reached 18 years of age and is a member of an identified organisation;
- and
- (c) a dispersal notice has not already been issued in respect of the restricted person for the suspected consorting.

37. Content of dispersal notice

The dispersal notice must specify the following —

- (a) the name and residential address of the restricted person;
- (b) the name of each person referred to in section 36(b)(ii) (a ***named person***) with whom the restricted person must not consort in a public place;
- (c) that consorting with a named person in a public place is an offence under section 42(1);
- (d) the date of issue of the notice;
- (e) the name, rank and identifying reference of the police officer who issued the notice;
- (f) that the notice remains in effect for a period of 7 days beginning on the day on which the notice is served unless revoked sooner;
- (g) any other prescribed matters.

38. Service of dispersal notice

- (1) A police officer must, as soon as practicable after issuing a dispersal notice, ensure that a police officer serves the notice on the restricted person in writing, by personal service.

- (2) The police officer must explain to the restricted person, in language likely to be understood by the restricted person —
 - (a) the restricted person's obligations under the dispersal notice; and
 - (b) the consequences that may follow if the restricted person fails to comply with those obligations.
- (3) Failure to comply with subsection (2) does not invalidate a dispersal notice.
- (4) A dispersal notice expires if it is not served within 72 hours after it is issued.

39. Duration of dispersal notice

- (1) A dispersal notice takes effect when the notice is served on the restricted person.
- (2) The dispersal notice remains in effect for a period of 7 days beginning on the day on which it takes effect, unless the notice is revoked sooner under section 41(4).

40. Correcting mistakes in dispersal notice

- (1) A police officer may correct a dispersal notice if the notice contains —
 - (a) a clerical mistake; or
 - (b) a mistake arising from an accidental slip or omission; or
 - (c) a material mistake in the description of any person, thing or matter referred to in the notice.
- (2) The police officer must, as soon as practicable after a dispersal notice is corrected under this section —
 - (a) ensure that the restricted person is notified of the correction by a relevant service method; and
 - (b) make a record of the particulars of the correction of the notice.

- (3) A dispersal notice corrected under this section has the same validity and effect as if the mistake had not been made.

41. Revocation of dispersal notice

- (1) A restricted person may apply to the Commissioner of Police to revoke a dispersal notice.
- (2) The application must be made —
 - (a) in writing; and
 - (b) during the period that the dispersal notice is in effect.
- (3) The Commissioner of Police must determine the application within 72 hours after the application is made.
- (4) The Commissioner of Police must, by written notice (the **revocation notice**), revoke a dispersal notice if the Commissioner is, on an application under subsection (1) or on the Commissioner's own initiative —
 - (a) satisfied that the dispersal notice was invalidly issued because the requirements under section 36 for issuing the notice were not met; or
 - (b) satisfied that the dispersal notice was validly issued but not satisfied that the person in respect of whom the notice was issued —
 - (i) was a member of an identified organisation; and
 - (ii) had consorted, or was consorting, in a public place with another person who had reached 18 years of age and was a member of an identified organisation.
- (5) The revocation notice takes effect when it is made.
- (6) The revocation notice must specify all of the following —
 - (a) the name and residential address of the restricted person;
 - (b) details that identify the dispersal notice;
 - (c) the date on which the revocation notice is made;

- (d) that the revocation notice takes effect when it is made;
 - (e) any other prescribed matters.
- (7) The Commissioner of Police must, as soon as practicable after making a revocation notice —
 - (a) serve or cause to be served, by a relevant service method, the notice on the restricted person; and
 - (b) make a record of, or cause to be recorded, the particulars referred to in subsection (6).

42. Offence of consorting contrary to dispersal notice

- (1) A person commits an offence if —
 - (a) a dispersal notice is served on the person; and
 - (b) during the period that the notice is in effect, the person consorts with a named person in a public place.

Penalty for this subsection: imprisonment for 12 months and a fine of \$12 000.

- (2) Nothing in subsection (1) requires the prosecution to prove that the consorting —
 - (a) occurred for a particular purpose; or
 - (b) would have led to the commission of an offence.

43. Defences to charge of consorting contrary to dispersal notice

- (1) It is a defence to a charge of an offence under section 42(1) to prove that the consorting —
 - (a) occurred between persons who are family members; and
 - (b) was reasonable in the circumstances.
- (2) It is a defence to a charge of an offence under section 42(1) to prove that the consorting —
 - (a) occurred in the course of 1 or more of the following —
 - (i) engaging in a lawful occupation, trade or profession;

- (ii) attendance at an educational institution to take part in secondary education or a higher education course registered under the *Higher Education Act 2004* section 23(3) or an approved VET course as defined in the *Vocational Education and Training Act 1996* section 5(1);
 - (iii) receiving a health service or social welfare service;
 - (iv) obtaining a service mentioned in subparagraph (iii) for a person who is dependent upon the person charged for care and support;
 - (v) the provision of legal advice;
 - (vi) lawful custody;
 - (vii) complying with a written law, an order made by a court or tribunal, or any other order, direction or requirement made under a written law;
 - (viii) activities undertaken by members of an organisation of employees registered under the *Industrial Relations Act 1979* Part II Division 4, or the *Fair Work (Registered Organisations) Act 2009* (Commonwealth), for the purposes of the business of the organisation;
 - (ix) if the person charged is an Indigenous person — fulfilling a cultural practice or obligation of the customary laws or traditions of the Indigenous person's community;
- and
- (b) was necessary in the circumstances.
- (3) Consorting referred to in subsection (1) or (2) is not reasonable or necessary (as the case may be) if a purpose of the consorting —
- (a) is to avoid the operation of a dispersal notice; or
 - (b) relates to criminal activity.

Subdivision 2 — Police powers

44. Police powers relating to issue and service of dispersal notices

(1) In this section —

relevant person means a person —

- (a) in respect of whom a dispersal notice may be issued under section 36; or
- (b) on whom a dispersal notice must be served under section 38(1).

(2) A police officer who suspects on reasonable grounds that someone is a relevant person may do all or any of the following —

- (a) require the person to stop;
- (b) require the person to provide their personal details;
- (c) require the person to accompany the officer to a police station or other place to issue or serve on the person the notice;
- (d) require the person to remain at a police station or other place for as long as is reasonably necessary, but no longer than 2 hours, to issue or serve on the person the notice;
- (e) serve on the person the dispersal notice.

(3) For the purposes of exercising the powers in subsections (2) and (5) and section 45(1), the police officer may —

- (a) in respect of a vehicle in which the officer suspects on reasonable grounds the relevant person is located —
 - (i) enter the vehicle; and
 - (ii) keep the vehicle at a particular place for as long as is reasonably necessary, but no longer than 2 hours, in order to issue or serve on the person a dispersal notice;

and

(b) use reasonable force.

- (4) If the police officer suspects on reasonable grounds that a personal detail provided by the relevant person in response to a requirement under subsection (2)(b) is false, the officer may require the person to produce evidence of the correctness of the detail.
- (5) If the relevant person refuses or fails to comply with a requirement under this section, the police officer may convey the person to, and detain the person at, a place for as long as is reasonably necessary, but no longer than 2 hours, to issue or serve on the person a dispersal notice.
- (6) The relevant person is taken to be in lawful custody while the person is being conveyed to, and detained at, a place under this section.

45. Police powers in relation to dispersal notices that have been served and issued

- (1) If a police officer suspects on reasonable grounds that a restricted person is consorting with a named person in a public place, the officer may require the restricted person —
 - (a) to leave the place, or a part of the place, specified by the officer; or
 - (b) to go beyond a reasonable distance from the place, or a part of the place, specified by the officer; or
 - (c) to comply with a requirement of the officer under paragraph (a) or (b) for a reasonable period specified by the officer that does not exceed 24 hours.
- (2) Subsection (1) does not apply if the police officer is satisfied that the circumstances referred to in section 43 would give the restricted person a defence to a charge of an offence under section 42(1) in relation to the consorting.

46. Offence of failure to comply with directions of police officer

- (1) A person who, without reasonable excuse, fails to comply with the requirement of a police officer under section 44(2)(a), (c) or (d) or 45(1) commits an offence.

Penalty for this subsection: imprisonment for 12 months and a fine of \$12 000.

- (2) A person who is required by a police officer in accordance with section 44(2)(b) to provide their personal details commits an offence if the person, without reasonable excuse —

- (a) fails or refuses to comply with the requirement; or
- (b) provides any personal detail that is false in a material particular.

Penalty for this subsection: imprisonment for 12 months and a fine of \$12 000.

- (3) A person who is required by a police officer in accordance with section 44(4) to produce evidence of the correctness of a personal detail commits an offence if the person, without reasonable excuse —

- (a) fails or refuses to comply with the requirement; or
- (b) produces evidence that is false in a material particular.

Penalty for this subsection: imprisonment for 12 months and a fine of \$12 000.

- (4) It is not a defence to a charge of an offence under subsection (2) or (3) that information required to be given would or might incriminate the person.

Part 4 — Monitoring

47. Terms used

In this Part —

disclose, in relation to information, includes to divulge or communicate to any person or to publish;

investigative purposes means the scrutiny of the exercise of powers conferred under this Act;

personal information has the meaning given in the *Freedom of Information Act 1992* in the Glossary clause 1;

Police Force means the Police Force of Western Australia provided for by the *Police Act 1892*.

48. Parliamentary Commissioner to monitor exercise of powers

- (1) The Parliamentary Commissioner must keep the exercise of powers conferred under this Act under scrutiny.
- (2) Without limiting subsection (1), the Parliamentary Commissioner —
 - (a) must inspect the records of the Police Force in order to ascertain the extent of the Police Force's compliance with Parts 2 and 3; and
 - (b) must report to the Minister about the results of those inspections under section 54(1); and
 - (c) may do anything necessary or incidental to the performance of the functions mentioned in paragraphs (a) and (b).

49. Powers for entry and inspection of records

- (1) The Parliamentary Commissioner may, for investigative purposes and after notifying the Commissioner of Police —
 - (a) enter at any reasonable time premises occupied by the Police Force; and

- (b) access all records of the Police Force at any reasonable time; and
 - (c) make copies of, and take extracts from, records of the Police Force; and
 - (d) take into or onto premises any person, equipment and materials the Parliamentary Commissioner reasonably requires; and
 - (e) direct a police officer to give the Parliamentary Commissioner such assistance as the Parliamentary Commissioner reasonably requires.
- (2) The Commissioner of Police must ensure that a police officer gives the Parliamentary Commissioner any assistance that the Parliamentary Commissioner reasonably requires in connection with an activity under subsection (1).

50. Powers to obtain information relevant to inspections

- (1) The Parliamentary Commissioner may, for investigative purposes, do all or any of the following —
- (a) direct a police officer to produce a document or other thing that is in the officer's possession or under the officer's control;
 - (b) direct a police officer to give such information or answer as is requested in relation to an investigative purpose.
- (2) The Parliamentary Commissioner may —
- (a) inspect a document or other thing produced in response to a direction under subsection (1)(a) and retain it for any reasonable period that the Parliamentary Commissioner considers appropriate; and
 - (b) make a copy of a document produced in response to a direction under subsection (1)(a).

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- (3) A direction under subsection (1)(a) —
 - (a) must specify the time at or within which the document or other thing must be produced; and
 - (b) may require that the document or other thing be produced —
 - (i) at a place specified in the direction; and
 - (ii) by any means specified in the direction.
- (4) A direction under subsection (1)(b) —
 - (a) must specify the time at or within which the information or answer must be given; and
 - (b) may direct that the information or answer —
 - (i) be given orally or in writing; or
 - (ii) be given at, or sent or delivered to, a place specified in the direction; or
 - (iii) in the case of written information or a written answer — be sent or delivered by the means specified in the direction; or
 - (iv) in the case of written information or a written answer — be verified by statutory declaration.
- (5) A place, or a period or the time of day, specified in a direction under subsection (1)(a) or (b) must be reasonable with regard to the circumstances in which the direction is made.

51. Authorised recording, disclosure or use of information

- (1) For the purposes of this Act, the recording, disclosure or use of information is authorised if the information is recorded, disclosed or used in good faith in any of the following circumstances —
 - (a) for the purposes of, or in connection with the performance of, the Parliamentary Commissioner's scrutiny of the exercise of powers conferred under this Act;

- (b) under this Act or another written law;
 - (c) to a court or other person or body acting judicially in the course of proceedings before the court or other person or body;
 - (d) under an order of a court or other person or body acting judicially;
 - (e) if the information recorded, disclosed or used is personal information — with the consent of the individual, or each individual, to whom the information relates;
 - (f) in any other circumstances prescribed for the purposes of this subsection.
- (2) If the recording, disclosure or use of information is authorised under subsection (1) —
 - (a) no civil or criminal liability is incurred in respect of the recording, disclosure or use; and
 - (b) the recording, disclosure or use is not to be regarded as —
 - (i) a breach of any duty of confidentiality or secrecy imposed by law; or
 - (ii) a breach of professional ethics or standards or any principles of conduct applicable to a person's employment.

52. Parliamentary Commissioner may recommend revocation or variation of unlawful consorting notices

- (1) If, as a result of an inspection under this Part, the Parliamentary Commissioner is of the opinion that the requirements under section 9(1) for the issue of an unlawful consorting notice were not met, the Parliamentary Commissioner may recommend to the Commissioner of Police that the notice be revoked under section 15(4).
- (2) If, as a result of an inspection under this Part, the Parliamentary Commissioner is of the opinion that an unlawful consorting

notice should be varied under section 16(4) the Parliamentary Commissioner may recommend to the Commissioner of Police that the notice be varied under that provision.

- (3) A recommendation must —
 - (a) be made in writing; and
 - (b) be made during the period that the notice is in effect; and
 - (c) give the reasons for the Parliamentary Commissioner's opinion under subsection (1) or (2).
- (4) The Commissioner of Police must, as soon as practicable after receiving a recommendation —
 - (a) notify the Minister of the recommendation; and
 - (b) notify the Minister and Parliamentary Commissioner of any action taken by the Commissioner of Police in respect of the recommendation.
- (5) A notification must be made in writing.

53. Commissioner of Police to report on use of police powers to Parliamentary Commissioner

- (1) The Commissioner of Police must keep a register of the following —
 - (a) the issue and service of an unlawful consorting notice under Part 2 Division 2;
 - (b) the revocation of an unlawful consorting notice under section 15(4);
 - (c) the variation of an unlawful consorting notice under section 16(4);
 - (d) the issue and service of an insignia removal notice under Part 3 Division 2 Subdivision 2;
 - (e) the revocation of an insignia removal notice under section 32(4);

- (f) the issue and service of a dispersal notice under Part 3 Division 3 Subdivision 1;
 - (g) the revocation of a dispersal notice under section 41(4);
 - (h) a prosecution for an offence under any provision of Part 2 Division 3 or Part 3 Division 2 or 3;
 - (i) the use of police powers under section 19, 34, 44 or 45;
 - (j) a certificate of service given under section 56.
- (2) The Commissioner of Police must ensure that the information in the register is provided to the Parliamentary Commissioner.

54. Parliamentary Commissioner to report on monitoring activities

- (1) The Parliamentary Commissioner must, as soon as practicable after each anniversary of the day on which this Part comes into operation —
- (a) prepare a report (the *annual report*) on the Parliamentary Commissioner's monitoring activities under this Part during the previous year; and
 - (b) provide a copy of the annual report to the Minister and the Commissioner of Police.
- (2) The annual report —
- (a) may include any observations that the Parliamentary Commissioner considers appropriate to make about the operation of this Act; and
 - (b) must include —
 - (i) any recommendations made by the Parliamentary Commissioner under section 52(1) or (2); and
 - (ii) details of any actions taken by the Commissioner of Police in respect of the recommendations, as notified under section 52(4)(b); and
 - (iii) any information referred to in section 53(2).

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- (3) The annual report must include a review of the impact of the operation of the Act on a particular group in the community if such an impact came to the attention of the Parliamentary Commissioner by virtue of section 48(1).
- (4) The Minister must cause the annual report to be laid before each House of Parliament within 12 sitting days of that House after the Minister receives a copy of the report.
- (5) Nothing in this section prohibits the Parliamentary Commissioner from reporting to the Minister on the Parliamentary Commissioner's monitoring activities under this Part at any time —
 - (a) on the Parliamentary Commissioner's own initiative; or
 - (b) at the request of the Minister.

55. Jurisdiction under *Parliamentary Commissioner Act 1971* not limited

Nothing in this Part limits or affects the jurisdiction or functions of the Parliamentary Commissioner under the *Parliamentary Commissioner Act 1971*.

Part 5 — Miscellaneous

56. Proof of service

- (1) If service of any document is required under this Act, proof of service must be given by certificate in writing.
- (2) The certificate must state that, on the day and at the time and place stated in the certificate, the person giving the certificate served the document in accordance with this Act.
- (3) The certificate must state full particulars of the name and residential address of the person served.
- (4) A certificate under this section is, in the absence of evidence to the contrary, sufficient proof of service of the document on the person stated to have been served.

57. Protection from personal liability

- (1) This section applies in addition to the *Police Act 1892* section 137.
- (2) An action in tort does not lie against a person other than a police officer for anything that the person has done in good faith, in the performance or purported performance of a function under this Act.
- (3) The State is not relieved of any liability it might have for another person having done anything as described in subsection (2).
- (4) Furthermore, nothing in subsection (2) prevents claims in tort in relation to a place other than those in respect of which an insignia removal notice is given.
- (5) The protection given by this section applies even though the thing done as described in subsection (2) may have been capable of being done whether or not this Act had been enacted.

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- (6) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

58. Delegation by Commissioner of Police of revocation or variation functions

- (1) Except as provided in subsections (5) and (6), the Commissioner of Police may delegate the Commissioner's functions under section 15, 16, 32 or 41 (*revocation or variation functions*) to a police officer (the *delegated officer*) who is, or is acting as, an officer of a rank more senior than a Commander.
- (2) The delegation must be in writing signed by the Commissioner of Police.
- (3) The delegated officer cannot delegate revocation or variation functions.
- (4) When the delegated officer is exercising or performing revocation or variation functions, the officer is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) A police officer who issues an unlawful consorting notice or dispersal notice is not eligible to be the delegated officer in relation to the unlawful consorting notice or dispersal notice (as the case requires).
- (6) Despite sections 15(4), 16(4) and 41(4), the delegated officer —
- (a) cannot revoke or vary an unlawful consorting notice or dispersal notice on the delegated officer's own initiative; but
 - (b) may instead revoke or vary an unlawful consorting notice or dispersal notice on the recommendation of the Parliamentary Commissioner.
- (7) Nothing in this section limits the ability of the Commissioner of Police to perform a function through an officer or agent.

59. Delegation by Commissioner of Police of insignia removal function

- (1) Except as provided in subsection (2), the Commissioner of Police may delegate the Commissioner's functions under section 34 (*insignia removal verification functions*) to a police officer (the *delegated officer*) who is, or is acting as, an officer of a rank more senior than a Commander.
- (2) A police officer who issues an insignia removal notice is not eligible to be the delegated officer for the purposes of exercising or performing insignia removal verification functions in relation to the notice.
- (3) Nothing in this section limits the ability of the Commissioner of Police to perform a function through an officer or agent.

60. Delegation by Parliamentary Commissioner

- (1) In this section —
inspecting officer means —
 - (a) the Deputy Parliamentary Commissioner for Administrative Investigations appointed under the *Parliamentary Commissioner Act 1971* section 6A(2);
 - (b) an officer of the Commissioner appointed under the *Parliamentary Commissioner Act 1971* section 9(1).
- (2) Subject to subsection (4), the Parliamentary Commissioner may delegate the Parliamentary Commissioner's functions under Part 4 of this Act to an inspecting officer, or inspecting officers of a class, specified in the instrument of delegation.
- (3) The delegation must be in writing signed by the Parliamentary Commissioner.
- (4) The Parliamentary Commissioner cannot delegate a power to report to the Minister under this Act.

s. 61

- (5) An inspecting officer to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (6) An inspecting officer exercising or performing a power or duty that has been delegated to that inspecting officer under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (7) Nothing in this section limits the ability of the Parliamentary Commissioner to perform a function through an officer or agent.

61. Regulations

The Governor may make regulations prescribing matters —

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for giving effect to the purposes of this Act.

62. Review of Act

- (1) The Minister must review the operation and effectiveness of this Act, and prepare a report based on the review, as soon as practicable after the 3rd anniversary of the day on which this section comes into operation.
- (2) The review must address the following —
 - (a) whether the objects of the Act remain valid;
 - (b) whether the terms of the Act remain appropriate for securing the objects of the Act;
 - (c) whether the powers exercised under the Act have been exercised in accordance with sections 8 and 23;
 - (d) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (3) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 3rd anniversary.

Part 6 — Other Acts amended

Division 1 — *Community Protection (Offender Reporting) Act 2004* amended

63. Act amended

This Division amends the *Community Protection (Offender Reporting) Act 2004*.

64. Schedule 2 amended

In Schedule 2:

- (a) delete the item relating to s. 557K(4);
- (b) before the item relating to the *Prostitution Act 2000* insert:

*Criminal Law (Unlawful
Consorting and Prohibited
Insignia) Act 2021*

s. 17(1)

Unlawful consorting (if the offender has a conviction for a child sex offence (as defined in the *Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021* section 7) and has consorted with another person who has a conviction for a child sex offence in the course of committing the offence)

Division 2 — *The Criminal Code* amended

65. Act amended

This Division amends *The Criminal Code*.

66. Section 557J deleted

Delete section 557J.

[67. *Has not come into operation.*]

68. Schedule 1 clause 4 inserted

After Schedule 1 clause 3 insert:

4. Transitional provisions for *Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021*

(1) In this clause —

transitional period means the period —

- (a) beginning on the day on which the *Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021* section 9 comes into operation; and
- (b) ending on the day on which the *Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021* section 67 comes into operation.

(2) A police officer cannot give a warning under section 557K(4) of this Code during the transitional period.

(3) If an unlawful consorting notice, as defined in the *Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021* section 3, is issued during the transitional period in respect of a person to whom a warning has been given under section 557K(4) of this Code, the warning ceases to have effect for the purposes of section 557K(4).

Schedule 1 — Child sex offences

[s. 7(1)]

1. An offence under any of the following Chapters of *The Criminal Code* that was committed against, in respect of, or in the sight of, a child —
 - (a) Chapter XXII — Offences against morality;
 - (b) Chapter XXV — Child exploitation material;
 - (c) Chapter XXXI — Sexual offences;
 - (d) Chapter XXXIII — Offences against liberty.
2. An offence under *The Criminal Code* Chapter XXXIIIB that was committed against, or in respect of, a child.
3. An offence under *The Criminal Code* section 557K(6) (child sex offenders not to be in or near places where children are regularly present).
4. An offence under any of the following deleted provisions of *The Criminal Code* that was committed against a child —
 - (a) section 315 (Indecent assaults on males);
 - (b) Chapter XXXIA — Sexual assaults;
 - (c) Chapter XXXII — Abduction.
5. An offence under any of the following provisions of the *Criminal Code* set out in the Schedule to the *Criminal Code Act 1995* (Commonwealth) —
 - (a) Division 272 — Child sex offences outside Australia;
 - (b) Division 273 — Offences involving child abuse material outside Australia;
 - (c) Division 474 Subdivision D — Offences relating to use of carriage service for child abuse material;
 - (d) Division 474 Subdivision F — Offences relating to use of carriage service involving sexual activity with, or causing harm to, person under 16.
6. An offence under the repealed Part IIIA Division 2 of the *Crimes Act 1914* (Commonwealth).

7. An offence under the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* section 59 that was committed in circumstances in which an indecent or obscene article was sold, supplied or offered to a child.
8. An offence under the deleted section 60 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*.
9. An offence under the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* section 101 that was committed in circumstances in which —
 - (a) objectionable material was transmitted or demonstrated to a child; or
 - (b) the objectionable material was child exploitation material as defined in *The Criminal Code* section 217A.
10. An offence under the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* section 102.
11. An offence under the *Prostitution Act 2000* section 5(1), 6(1), 15, 16, 17 or 18 that was committed against, or in respect of, a child.
12. An offence under the deleted section 66(11) of the *Police Act 1892* that was committed in the sight of a child.

Schedule 2 — Identified organisations

[s. 21]

1. 7 10 Crew
2. 77 Crew
3. Bandidos
4. Black Power
5. Black Uhlans
6. Bros
7. City Crew
8. Club Deroes
9. Coffin Cheaters
10. Comanchero
11. Connected Crew
12. Descendants
13. Devil's Henchmen
14. Diablos
15. Finks
16. Foolish Few
17. Fourth Reich
18. Gladiators
19. Gods Garbage
20. Gypsy Joker
21. Hells Angels
22. Highway 61
23. Highwaymen
24. Huns
25. Immortals

- 26. Iron Horsemen
 - 27. Life and Death
 - 28. Lone Wolf
 - 29. Mobshitters
 - 30. Mongols
 - 31. Mongrel Mob
 - 32. Nomads
 - 33. Odin's Warriors
 - 34. Outcasts
 - 35. Outlaws
 - 36. Phoenix
 - 37. Raiders
 - 38. Rebels
 - 39. Red Devils
 - 40. Renegades
 - 41. Rock Machine
 - 42. Satan's Riders
 - 43. Satudarah
 - 44. Southern Independence
 - 45. Vigilantes
 - 46. Vikings
-

Notes

This is a compilation of the *Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021*. For provisions that have come into operation see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021</i> (other than s. 67)	25 of 2021	13 Dec 2021	Pt. 1: 13 Dec 2021 (see s. 2(a)); Act other than Pt. 1 and s. 67: 24 Dec 2021 (see s. 2(b) and SL 2021/219 cl. 2)
<i>Directors' Liability Reform Act 2023</i> Pt. 3 Div. 16	9 of 2023	4 Apr 2023	5 Apr 2023 (see s. 2(j))

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
<i>Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021</i> s. 67	25 of 2021	13 Dec 2021	24 Dec 2024 (see s. 2(c) and SL 2021/219 cl. 2)

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
annual report	54(1)
authorised officer	3
authorising law	26(5)
child sex offence	6, 7(1)
Commissioner of Police	3
conduct constituting an indictable offence	9(2)
consort	3
conviction	6
delegated officer	58(1), 59(1)
disclose	47
dispersal notice	3, 36
display	21, 24(1)
family member	3, 4(1) and (2)
health service	3
identified organisation	21
identifying reference	3
Indigenous person	3
insignia	21, 22(1) and (2)
insignia removal notice	3, 27(2)
insignia removal verification functions	59(1)
inspecting officer	60(1)
interested person	27(1)
investigative purposes	47
member	21
named offender	6, 10
named person	21, 37
organisation-related activity	23(1)
owner	21
Parliamentary Commissioner	3
personal details	3
personal information	47
personal service	3
place	21
Police Force	47
potential to cause public harm	23(1)
prescribed	3
prohibited thing	21
public place	21
record	3
relevant offender	6

relevant person	44(1)
relevant place	21
relevant service method	3
required person	21, 27(3)
restricted offender	6, 9(1)
restricted person	21, 36
revocation notice	15(4), 32(4), 41(4)
revocation or variation functions	58(1)
social welfare service	3
time allowed	34(1)
unlawful consorting notice	3, 9(1)
variation notice	16(4)
vehicle	3