

## **Motorcycle gang laws overwhelmingly target Indigenous Australians, police watchdog reveals** *40% of people subject to NSW consorting laws are Indigenous, internal memo says*



*An internal memo from the NSW police watchdog raises concerns with the high rates of Aboriginal people subject to consorting laws and states it 'will be seeking advice' from police 'about what can be done to reduce the over-representation'.*

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Controversial laws introduced to target outlaw motorcycle gangs in New South Wales are instead overwhelmingly used against Indigenous Australians, an internal memo from the state's police watchdog has revealed.

The state's Law Enforcement and Conduct Commission (LECC) has quietly launched a review of the use of consorting powers, with preliminary findings revealing Aboriginal Australians are dramatically over-represented in the use of the law in NSW.

According to the memo, which has subsequently been circulated to a parliamentary committee investigating high rates of Aboriginal incarceration in NSW, the LECC's analysis found 40% of people subject to consorting laws in NSW between February 2019 and June 2020 were Indigenous.

Indigenous Australians made up 25% of children aged 10 to 18 subject to the laws in the same period.

The memo states the watchdog is “concerned by the high rates of Aboriginal people subject to the consorting laws” and “will be seeking advice” from police “about what can be done to reduce the over-representation”.

Consorting laws were introduced by then-premier Barry O’Farrell in 2012 as part of a suite of new laws in response to a spate of drive-by shootings in western Sydney. The laws were intended to be used to crack down on criminal organisations including the Brothers 4 Life gang.

O’Farrell said at the time: “These new laws will be additional tools in the police armoury to help them protect innocent lives and bring those involved in criminal gangs behind drive-by shootings before the courts.”

The laws allow police to charge people for communicating four or more times with convicted criminals, with an associated jail term of up to three years. The new laws substantially increased penalties for consorting in circumstances where a formal warning had been issued by police, increasing jail sentences from six months to three years.

But concern that police were using the laws outside of what was intended by the legislation have been raised almost since their inception.

In 2012 the ABC revealed the first man to be jailed under the laws was a 21-year-old Inverell man born with an intellectual disability who was sentenced to between nine and 12 months’ jail for a series of shopping trips and walks with three friends who had prior convictions.

In 2016 the NSW ombudsman released a damning report which found police were using the laws for minor crimes and targeting a number of vulnerable groups including Aboriginal people, children and the homeless.

The three-year review found an “exceptionally high police error rate” in the use of the laws against young people in particular, finding that more than three-quarters of warnings issued about children were “unlawful as they relied on a mistaken belief that the person was a ‘convicted offender’ at the time”.

The new data from the LECC also shows the impact of the laws on Indigenous Australians has not improved since the ombudsman’s review. The 2016 report found Aboriginal people made up 38% of all people issued with an official warning for consorting. The number of Indigenous children subject to the laws had decreased to 25% from almost 60%.

The data has caused outrage among both the opposition and the Greens. The shadow attorney general, Paul Lynch, said the use of the laws by police amounted to a “misuse of power”.

“Consorting laws were aimed at organised criminal activity and drive-by shootings,” he said. “It’s absurd – and a misuse of power – to use these laws to overly target Indigenous Australians and young people.”

“High rates and over representation of Aboriginal people being subject to consorting laws just further entrenches systemic barriers against First Nations people. It leads directly to disproportionate incarceration rates.”

Greens MP David Shoebridge said the figures showed the parliament needed to amend the legislation to restrict the use of consorting laws to serious criminal activity as was originally intended. He also pointed out that Labor had supported the laws in 2012.

“These consorting law changes were pushed through parliament by both the Coalition and Labor as being a weapon against bikie gangs and organised crime,” he said.

“The Greens opposed them because we knew they would unfairly target First Nations people. Now we can see, just like every discretionary police power, it’s the most marginal members of [the] community who face the brunt of them and that starts with Aboriginal people.

“Parliament needs to act on this evidence and restrict the use of consorting laws to cases involving a real risk of serious criminal offending and harm to the community.”

The memo, which was circulated as the watchdog’s commissioner for oversight, Lea Drake, gave evidence to the inquiry, outlines a number of different investigations undertaken by the LECC which showed substantial over policing of Indigenous Australians.

The memo also revealed that the watchdog’s long-awaited strip search report, which will be released next week, found a “high-proportion” of searches were conducted against Indigenous Australians. In 2019-20, for example, 17.8% of all strip searches were conducted on Aboriginal people.

The memo said all of its individual investigations had uncovered a “concerning trend” in over-policing of Indigenous Australians.

“The commission acknowledges the over-representation of Aboriginal people in the criminal justice system is reflective of a problem that has been identified generally in the Australian community about how this system interacts with Aboriginal people, and is not solely derived from interactions with police,” the memo stated.

“Notwithstanding, policing approaches; the types of policing interactions that occur with Aboriginal people and their communities; and the mechanisms employed by the NSW PF to ensure the needs and legal entitlements of Aboriginal people are met, directly impact the current rates of Aboriginal over-representation and must be acknowledged in this current debate.”

Both the NSW police minister, David Elliott, and the NSW police have been contacted for comment.