

Ombudsman report on the NSW consorting law

The Acting Ombudsman, Professor John McMillan, has completed his report on the operation of the NSW consorting law. The Attorney-General has tabled the report in Parliament.

The Ombudsman's report recommends the adoption of a statutory and policy framework to ensure police apply the consorting law in a way that is focused on serious crime, closely linked to crime prevention, and is not used in relation to minor offending.

“Proper use of the consorting law requires careful judgement on the part of individual police officers” said Professor McMillan. **“That judgement should be informed by reliable intelligence and controlled by rigorous policy and procedures.”**

In 2012, the NSW consorting law was modernised. It is now an offence for a person to continue to communicate or associate with at least two 'convicted offenders' following receipt of a police warning in relation to each offender. 'Convicted offender' is defined broadly and may include a person convicted of a relatively minor offence such as shoplifting. The offence has a maximum penalty of three years' imprisonment and/or a \$16,500 fine.

The new consorting law was introduced as part of a suite of changes designed to assist police to tackle organised crime and criminal gangs. The consorting law is intended to disrupt and prevent the building or continuation of criminal networks between people and in doing so, prevent crime.

It is a controversial law. There is no legal requirement for the associations targeted by police for consorting to have any link to planning or undertaking criminal activity. Police have significant discretion in deciding who they will warn, who will be warned about, and whether to bring charges.

The Ombudsman's report outlines use of the consorting law in relation to members of criminal gangs, but also in relation to people experiencing homelessness, children and young people and people with no criminal record. In some areas the proportion of use in relation to Aboriginal people was high.

The NSW Police Gangs Squad was responsible for the majority of charges under the consorting law and approximately half of all consorting warnings during the three year review period. The Ombudsman's report outlines qualitative evidence to support the police claim that the consorting law had been effectively used to target high-risk criminal gangs.

However, the report discusses some concerns about police use of the consorting law, particularly in commands outside of the NSW Police Force Gangs Squad. These concerns include:

- using the consorting law to address minor or nuisance offending, including less serious summary offences

- applying the consorting law in a way that effectively deterred vulnerable people (including people experiencing homelessness) from spending time in certain public areas and accessing support services
- disproportionately high numbers of Aboriginal people being subjected to the consorting law, both as persons receiving official warnings and those about whom official warnings were made
- consorting warnings breaching the privacy of convicted offenders, by disclosing their convictions to others.

“Worryingly, most of the official warnings that police issued about consorting with a person aged 17 or less were unlawful” said Professor McMillan. The data showed three-quarters of these children and young people did not in fact have an indictable conviction formally recorded in their criminal record.

The Ombudsman’s report makes 20 recommendations intended to increase the fairness of the operation of the consorting law, and reduce the risk of use that may undermine public confidence in the NSW Police Force. The recommendations include:

- amending the law to include an ‘objects’ clause that states the purpose of the consorting law is to prevent serious criminal offending
- expanding the legislated defences to the consorting offence to ensure that it does not prevent people complying with parole conditions; obtaining emergency accommodation; or seeking welfare or support services, such as counselling or drug and alcohol rehabilitation
- statutory time limits for issuing warnings and the period the warning remains in effect
- amending the law so it cannot be used against persons aged 17 years or less.

“Unless these changes are made it is likely that the consorting law will continue to be used to address policing issues not connected to serious and organised crime in a manner that may impact unfairly on disadvantaged and vulnerable people in our community.”

The Ombudsman’s report “*The consorting law, Report on the operation of Part 3A, Division 7 of the Crimes Act 1900, April 2016*” is available on the website of the NSW Ombudsman: www.ombo.nsw.gov.au.