The new laws passed by the NSW Government to target outlaw motorcycle gangs represent a concerning development, according to Sydney Institute of Criminology legal experts Professor Mark Findlay and Dr Arlie Loughnan.

The new laws provide for enhanced police powers in relation to searches and allow police to seek a court order to make membership of a declared bikie gang illegal and create an offence for its members to associate together. The laws also include powers to confiscate ‘bikie’ assets, a presumption against bail for those convicted of such an offence, and prohibitions on such convicted individuals entering certain ‘high risk’ industries.

‘While it’s understandable that the Government wishes to do something to deal with the recent incidents of ‘bikie’ gang violence, the new laws are not the way to go about it’, said Professor Mark Findlay, Deputy Director, Institute of Criminology, University of Sydney.

‘The provisions related to association in the new Act are of particular concern in the new Act. Despite the recognition that close family member might have a reasonable excuse to associate with the accused, there is still the capacity to bring them into suspicion.’ Professor Findlay said.

‘In dealing with gang-related crime, we have to be aware of fundamental civil rights such as freedom of association. We should not criminalise the many in order to catch the few who may be engaged in violence and drug dealing’, Dr Loughnan said.

‘The new laws have been rushed through Parliament, in the absence of the time for consideration foreshadowed by the Premier earlier in the week. This has meant that we have not studied and responded to the failure of similar legislation in other jurisdictions, such as Holland’, Professor Findlay said. ‘Powers like these are being tested before the courts in Australia and were rejected in the US, Canada and Holland. Has the NSW legislation avoided the evidentiary problems which neutralised the impact of less intrusive laws against bike gangs world-wide?’

‘The laws have been drafted and passed in the absence of thorough research and consideration, and in advance of knowledge of the outcome of the High Court challenge to the South Australian laws on which they are based. Will this Act pass a High Court challenge?’, Professor Findlay said.

‘There are genuine questions to be asked about whether these laws are necessary and whether they will work. The laws have been passed in the wake of the terrible incidents occurring in recent weeks, but a knee-jerk ‘law and order’ reaction to what remain exceptional incidents of crime does not mean that we will be better placed to prevent these kinds of events occurring in the future’, Dr Loughnan said. ‘As best practice policing confirms, good intelligence rather than more police powers enhances the capacity to identify and prevent violence like this in future.’
‘There is a real concern that this Act could have negative consequences in that gangs could be pushed underground, jeopardising the reasonably effective police intelligence network currently in place’, Professor Findlay said.

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