

22 January 2020

Reference: 48941/113

Select Committee on the High Level of First Nations People in Custody and
Oversight and review of Deaths in Custody

Dear Committee,

RE: Questions on Notice – Committee proceedings of 7 December 2020,
Evidence of Commissioner Lea Drake – Law Enforcement Conduct
Commission (LECC).

The following are responses to questions taken on notice by Commissioner Lea Drake (LECC) on 7 December 2020 at the Select Committee on the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody;

Question:

The Hon. David Shoebridge: Could I ask you about to what extent is the staffing and/or leadership of the LECC are First Nation staff and/or leaders in the LECC?

Answer:

There is 1 member of staff of the LECC who identifies as a First Nations people. That Commission officer works in a general staffing area.

Questions Relating to Commission Operation Tepito:

Question:

The Hon. PENNY SHARPE: I have one question going back to the data. We heard from the New South Wales police about the way you identified people with the Suspect Target Management Plan. Your analysis suggests that 72 per cent of the investigation of young people that have been identified by the police were possibly Aboriginal or Torres Strait Islander. The police, under their system, said it was around 49 per cent. Is that correct? (p.44)

Answer:

The Commission undertook a search on the NSWPF COPS system using the name, date of birth and CNI of each young person in the Operation Tepito investigation cohort. An 'alerts' section is contained within the NSWPF COPS IT system under which 'possible ATSI' is, or is not, listed.

The cohort contained 307 young people with 'possible ATSI' listed on the 'alerts' in COPS which represents 72 per cent of the total cohort.

The NSWPF, in the *NSW Police Force Response to Operation Tepito – Interim Report*, dated December 2019, on p. 7, advised the Commission that it did not agree with the Commission's calculation of the number of young Aboriginal targets in the investigation cohort.

The NSW Police Force advised it does not rely on self-identification figures as recorded in COPS to calculate the number of people who are Aboriginal and Torres Strait Islander. The NSW Police Force advised:

This method has been shown to be an exaggeration of the actual representation of indigenous persons in crime statistics. There are many instances where a person accidentally (for example, a Pacific Islander thinking that 'Islander' equates to 'Torres Strait Islander') or maliciously, identifies as indigenous in a police interaction.

The statistical standard adopted by BOCSAR, the ABS and internal NSWPF statistics is based on identification in each specific incident. Where identification is inconsistent over time, and algorithm (supplemented by data from the NSWPF custody system) is used to determine the likely indigenous status of an individual. Using this standard approach, it is expected that indigenous people make up 47% (200 of 429) of the cohort, not 72% (307 of 429) as claimed. Importantly, this figure is broadly consistent with information previously supplied to David Shoebridge MLC in GIPA 6021 of 2017 (52% of a similar cohort) and in GIPA 2792 of 2019 (49% of a similar cohort).

The above NSW Police Force response is referenced at p 11 of the *Operation Tepito Interim Report*: <https://www.lecc.nsw.gov.au/news-and-publications/publications/operation-tepito-interim-report-january-2020.pdf>

Question:

The Hon. PENNY SHARPE: Given your evidence that you have a reasonably good interaction with New South Wales police and the Commissioner in relation to getting to the bottom of those issues, is resolving the issue of data something that you have been involved in? (p.44)

Answer:

Chief Commissioner Blanch wrote to the NSWPF in late October 2020 seeking further information and advice about the NSWPF methodology for identifying Aboriginal people. The Commission is awaiting a response.

Questions Relating to Consorting:

Commissioner Drake advised the Select Committee that she could provide advice about how the Commission's information regarding consorting was obtained (p. 44 of Transcript of 7 December 2020).

Response:

The NSWPF provided the Commission with consorting data on 4 August 2020 for the period 28 February 2019 to 30 June 2020 inclusive.

While the data has been provided by the NSWPF, the Commission's finding that 40% of those subject to the consorting law are Aboriginal and Torres Strait Islander is our preliminary analysis, and the NSWPF has not yet had the opportunity to respond. We hope to present this data along with a broader analysis of the consorting data for the first 16 months of operation of the legislative amendments to NSWPF shortly.

Question:

The Hon. PENNY SHARPE: I would like that and I am also very interested in the number of children and young people. The police found that 25 per cent of them were Aboriginal. I am particularly interested, if you have a breakdown in age, in the under-14s that are subject to consorting.

Answer:

The Commission found that for the above, interim reporting period, no child under the age of 14 was subject to the consorting law.

Please do not hesitate to contact myself or this office if further detail or clarification is required.

Thank you for your consideration.

Kind Regards

Gary Kirkpatrick

Executive Director Operations