



LEGISLATIVE COUNCIL

STANDING COMMITTEE ON SOCIAL ISSUES

# Gay and Transgender hate crimes between 1970 and 2010

## Interim report



Report 52

February 2019

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## Terms of reference

That with reference to the May 2018 report of ACON *In Pursuit of Truth and Justice* and the progress made by NSW Police Force through Strike Force Parrabell, the Standing Committee on Social Issues inquire into and report on the response to Gay and Transgender hate crimes between 1970 and 2010 and current developments in policy and practice in relation to such crimes, and in particular:

- (a) the violent crimes committed in New South Wales between 1970 and 2010 where the victim of that crime was a member of the LGBTIQ community and where the relevant crime was the subject of a report to the NSW Police Force, including:
  - (i) whether there existed impediments within the criminal justice system that impacted the protection of LGBTIQ people in New South Wales and the delivery of justice to victims of LGBTIQ hate crimes and their families, with reference to case studies of particular matters including but not limited to Alan Rosendale, Scott Johnson, John Russell and Ross Warren,
  - (ii) to the extent that past impediments are identified, how effectively these have been addressed by current policy and practice,
- (b) in relation to LGBTIQ hate crimes more generally:
  - (i) what role the so-called 'Gay panic' defence played in the culture of LGBTIQ hate crimes between 1970 and 2010,
  - (ii) how the so-called 'Gay panic' defence impacted the delivery of justice and the treatment of Gay men during LGBTIQ hate crime investigations and court proceedings, and
- (c) any other related matter.

The terms of reference were referred to the committee by the Legislative Council on 19 September 2018.<sup>1</sup>

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<sup>1</sup> *Minutes*, Legislative Council, 19 September 2018, pp 2926-2927.

## Committee details

### Committee members

<b>The Hon Shayne Mallard MLC</b>	Liberal Party	<i>Chair</i>
<b>The Hon Greg Donnelly MLC</b>	Australian Labor Party	<i>Deputy Chair</i>
<b>Ms Cate Faehrmann MLC*</b>	The Greens	
<b>The Hon Trevor Khan MLC**</b>	The Nationals	
<b>Revd the Hon Fred Nile MLC</b>	Christian Democratic Party	
<b>The Hon Mark Pearson***</b>	Animal Justice Party	
<b>The Hon Penny Sharpe MLC</b>	Australian Labor Party	
<b>The Hon Natalie Ward MLC****</b>	Liberal Party	

\* Ms Cate Faehrmann MLC was a participating member from 5 November 2018 for the duration of the inquiry.

\*\* The Hon Trevor Khan MLC substituted for the Hon Wes Fang MLC from 19 September 2018 for the duration of the inquiry.

\*\*\* The Hon Mark Pearson MLC was a participating member from 26 September 2018 for the duration of the inquiry.

\*\*\*\* The Hon Natalie Ward MLC substituted for the Hon Peter Phelps MLC from 26 September 2018 for the duration of the inquiry.

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## Chair's foreword

*When people's lives are erased it is essential to those left behind that their stories are not.*

- Ms Sue Thompson, inquiry participant

This inquiry marks the first parliamentary examination of a distressing time in our history for the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) community. It has sought to understand the LGBTIQ experience of hate crime and, in doing so, has given the opportunity for the stories of victims and their families to be told – often stories of brutality, tragedy and injustice. The committee was deeply moved by these stories but also encouraged by the strength and resilience of those telling them.

For many decades, pervasive prejudices against LGBTIQ people ran deeply in society. Even with legislative change following the decriminalisation of homosexuality in 1984, bias attitudes were still being perpetuated within the broader community with a legacy that is still keenly experienced today. The ensuing violence and crime against gay and transgender people, particularly in the 1970s, 1980s and 1990s, was shocking, abhorrent and all too common. Amidst this stood a NSW Police Force and a broader criminal justice system with a culture influenced by the social values of the time.

Over the course of this inquiry, the committee came to hear the experiences of those who lived through that time, and received evidence exploring the barriers to justice for victims. Drawing from this evidence, the committee makes the first of two key findings – that the prevailing acceptance of and indifference towards violence and hostility directed at gay men, principally during the period prior to the mid-1990s, impacted on the protection of and delivery of justice to victims of hate crime.

The committee's second finding relates to the responsibility of the NSW Police Force to ensure that all its interactions with the public, including the LGBTIQ community, are conducted with both respect and professionalism. During the inquiry, the committee learnt that, while historic attitudes to gay and transgender people influenced the way in which victims of hate crime were treated and their cases investigated, time has brought about significant change in the way the LGBTIQ community is now engaged and regarded, especially within the criminal justice system. In particular, the committee is aware that great efforts have been made by the police to bridge the gap that once existed with the LGBTIQ community, in recognition of its responsibility to treat all people with professionalism and respect. We also acknowledge that there is still more work to do improving the relationship between the police and the LGBTIQ community.

There are many more stories to be told about the LGBTIQ experience of hate crime, such that as we began to hear from victims, their families, advocates and others during this inquiry, it became very clear that we would not have sufficient time to thoroughly examine all aspects of the terms of reference. Granted that historic cases of gay hate crime should be revisited, what is the most appropriate mechanism for this review? Are LGBTIQ hate crimes being reported today and if not, why not? What of the under-reported experiences of trans people and young LGBTIQ people, among the most vulnerable of our community? Are there contemporary bias crimes that we need to consider? What of the experiences of the LGBTIQ community in rural and regional New South Wales? These are just some of many questions that require further exploration. To this end, the committee makes the principal recommendation that the NSW Legislative Council re-establish this inquiry in the 57<sup>th</sup> Parliament.



The committee also makes other recommendations in support of this principal recommendation as well as its key findings, including that the NSW Police Force ensure that all officers have the skills and knowledge to engage with LGBTIQ people respectfully and equally.

Many individuals and organisations have worked with passion and perseverance over the years in the pursuit of justice for victims of LGBTIQ hate crime and their families. It is always fraught to single out individuals or organisations for praise. However I particularly draw attention to ACON and their community advocacy and leadership producing the historic report *In Pursuit of Truth & Justice*, which strongly informed this inquiry. I also acknowledge Mr Steve Page as a serving police officer in the early 2000s who connected the pattern of gay hate murders in the eastern suburbs, triggering a coroner's report that overturned former findings of suicide or misadventure. In doing this he precipitated a culture change in the NSW Police Force and provided much needed emotional closure for many of the family and friends of the gay hate crime victims. I commend their efforts and extend our deepest appreciation for the work they have done and continue to do.

I would like to thank my fellow committee members for their participation and considered engagement throughout this important inquiry. This consensus report is testament to the collaborative efforts of this committee. I would also like to thank the committee secretariat for their hard work and professional support.

Finally, I would like to thank the many people who contributed to this inquiry and shared their experiences and stories. The committee is deeply grateful for your time, energy and continued advocacy.



Hon Shayne Mallard MLC  
**Committee Chair**

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## Findings

### **Finding 1**

42

That a prevailing acceptance of and indifference towards violence and hostility directed at gay men principally during the period prior to the mid-1990s impacted on the protection of and delivery of justice to victims of hate crime, including but not limited to Mr Alan Rosendale, Mr Scott Johnson, Mr John Russell and Mr Ross Warren.

### **Finding 2**

51

That the NSW Police Force is responsible for ensuring that all interactions by police with the general public and the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) community is done with both respect and professionalism. These are, and continue to be, key priorities for the NSW Police Force.

## Recommendations

### **Recommendation 1**

**43**

That the NSW Legislative Council re-establish the inquiry into Gay and Transgender hate crimes between 1970 and 2010 in the 57<sup>th</sup> Parliament and the terms of reference for further inquiry and report be subject to a decision of the House.

### **Recommendation 2**

**43**

That all evidence received and records produced by the Standing Committee on Social Issues during its inquiry into Gay and Transgender hate crimes between 1970 and 2010 in the 56<sup>th</sup> Parliament, be made available to the Standing Committee on Social Issues for further inquiry and report in the 57<sup>th</sup> Parliament.

### **Recommendation 3**

**51**

That the NSW Police Force ensure that all officers have the skills and knowledge to engage with lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) people respectfully and equally.

### **Recommendation 4**

**56**

That, should the inquiry be re-established consistent with Recommendation 1, the committee invite witnesses to address the issue of the appropriate mechanism for independent review of past gay and transgender hate crimes.

## Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 19 September 2018.

The committee received 36 submissions and one supplementary submission.

The committee received a private briefing from Everymind and ACON to discuss best practice in the use of language and questioning techniques when speaking with people who have experienced trauma.

The committee held three public hearings at Parliament House in Sydney.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.

## Procedural issues

Owing to the nature of the hate crimes being considered by the inquiry, the committee made a number of adjustments to standard practice, particularly for committee hearings.

The hearing room layout was adapted to foster a less confrontational environment for witnesses, counsellors were present at hearings, and support pamphlets were made available.

The committee also passed a resolution on the use of offensive terminology during the inquiry, which included provisions for the publication of offensive expressions, and the use of warnings in committee hearings and on the committee's website that evidence could contain strong or offensive language.

### **Strong or offensive language used in evidence**

Owing to the nature of the hate crimes being considered by this inquiry, some of the evidence discussed in this report during hearings and in submissions may include strong or offensive language, or contain distressing content.

### **Seeking support**

ACON, QLife and Lifeline provide counselling services for LGBTI community members who have experienced violence, as well as survivors' friends and loved ones. Please call: ACON on (02) 9206 2000, QLife on 1800 184 527, or Lifeline on 13 14 11. For more information visit: [acon.org.au/mentalhealth](http://acon.org.au/mentalhealth), [qlife.org.au](http://qlife.org.au) or [lifeline.org.au](http://lifeline.org.au).

# Chapter 1 Background

This chapter briefly outlines the nature and purpose of the inquiry, and the terminology used in the report. It also discusses the social views and attitudes towards homosexuality as well as the HIV/AIDS epidemic and its likely role in further stigmatising gay men and inciting further violence. The chapter concludes with an overview of the key responses to gay and transgender hate crime in New South Wales to date, including the NSW Police Force operations *Taradale* and *Parrabell*, and a recent report by ACON on prejudice killings.

## Nature and purpose of the inquiry

- 1.1 The inquiry was established in recognition that hate crimes committed against lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) communities have taken place across a range of contexts over a sustained period of time.
- 1.2 In the wake of recent reports documenting these crimes, the inquiry aimed to investigate whether there existed impediments within the New South Wales criminal justice system that impacted the protection of LGBTIQ people, and the delivery of justice to victims of LGBTIQ hate crimes and their families. Where impediments existed, the inquiry sought to determine whether they have been effectively addressed by current policy and practice.
- 1.3 While acknowledging the range of experiences of victims of LGBTIQ hate crimes, the inquiry focused, in particular, on those crimes that resulted in violent death or disappearance. By highlighting these cases, including those referred to in the terms of reference, the inquiry sought to understand not only the circumstances of these crimes, but the response they drew from the criminal justice system, particularly the NSW Police Force.
- 1.4 During the inquiry, it became clear to the committee that thoroughly examining all aspects of the terms of reference, including taking evidence from survivors of historical gay and transgender hate crimes across the state, would require consultation and activity beyond the current timeframe. It is therefore the intention of the committee to resume this inquiry in the new parliament. Recommendations to this effect are made in chapter 3.
- 1.5 In the meantime, the evidence gathered to date forms the basis of this report into gay and transgender hate crimes between 1970 and 2010.

## Conduct of the inquiry

- 1.6 In preparation for this inquiry, the committee participated in a workshop led by Everymind and ACON to discuss best practice in the use of language and questioning techniques when speaking with people who have experienced trauma. The materials distributed during this workshop have been published on the inquiry website.
- 1.7 Following this workshop, the committee adopted various practices for the course of this inquiry. The layout of the room in which hearings took place was changed so that members and witnesses were seated in closer proximity to one another. Witnesses were provided with the opportunity either to view the hearing room beforehand or were provided with a picture of the

room layout so that they knew what to expect and could ask questions or raise concerns before the hearing.

- 1.8** Consistent with committee practice adopted in other inquiries that involve potentially vulnerable witnesses, and with the encouragement of Everymind and ACON, the committee also arranged for counsellors from Twenty10 and ACON to be available during hearings to provide support to witnesses, the audience, members or staff. A breakout room was also made available. The committee takes this opportunity to extend its thanks to those volunteers for offering their time and skills to support people during this inquiry.
- 1.9** Brochures containing contact details for support services were also made available in the hearing room and published on the inquiry website. In addition, the Chair made regular statements throughout each hearing to advise those experiencing distress while viewing the hearings over the Parliament's live web streaming service how to access support. Statements were also made by the Chair during the hearing and on the Parliament's website to warn people that, owing to the nature of the hate crimes being considered by this inquiry, some of the evidence received during hearings and in submissions may include strong or offensive language.
- 1.10** Everymind, who collaborate with the Australian media and other sectors to encourage responsible, accurate and sensitive portrayal of mental illness and suicide, also offered to liaise with their media network to ensure that the committee's proceedings were reported in a safe and respectful manner.

### **Committee comment**

- 1.11** The committee considered the workshop provided by Everymind and ACON to be beneficial and takes this opportunity to extend its appreciation to those organisations for their assistance. The committee strongly encourages the Parliament of NSW to make similar workshops available to other staff and members of Parliament for future inquiries.
- 1.12** The committee also strongly encourages the Legislative Council to ensure that its committees actively consider making counselling and support services available for inquiries that take evidence from vulnerable witnesses.

### **Terminology**

- 1.13** While the inquiry's terms of reference refer to 'gay and transgender hate crimes', the inquiry's scope was not limited by these terms and extended to the experiences of LGBTIQ communities more broadly.
- 1.14** For the purposes of this inquiry, a gay and/or transgender hate crime is thus defined as LGBTIQ-related murder, physical and verbal violence. Such crimes are defined in this way as people may be victimised not only because they are LGBTIQ or belong to LGBTIQ communities, but because of circumstances which make LGBTIQ people more vulnerable to being victimised.

- 1.15** It should also be noted that this report refers to gay and transgender or LGBTIQ 'hate crimes'. Some inquiry participants, such as the NSW Police Force and Flinders University, have also referred to such crimes as 'bias motivated crimes' or 'bias crimes'.<sup>2</sup>
- 1.16** While this report makes no material distinction between 'hate crimes' and 'bias crimes', the issue of defining and measuring 'bias crimes' was raised during the inquiry. This issue is examined in further detail in chapter 3.
- 1.17** For the purpose of this inquiry homophobia will be defined as a hatred or fear of homosexuals and homosexuality.
- 1.18** For the purpose of this inquiry transphobia will be defined as a hatred or fear of transsexual/transgender people.

### Views and attitudes towards the LGBTIQ community over time

- 1.19** Sex between gay men was a criminal act under the *Crimes Act 1900* until 1984 in New South Wales. This was the case 'whether they occurred in public or in private and whether they were consensual or not'.<sup>3</sup>
- 1.20** Despite this, in July 1970, the first Australian gay movement – Campaign Against Moral Persecution (CAMP) – was established in Sydney.<sup>4</sup> CAMP had several objectives, two of which included changing the law regarding homosexuality and 'challeng[ing] and eliminate[ing] ... homophobia in Australian society'.<sup>5</sup>
- 1.21** ACON noted that around this same time 'a commercial gay scene was emerging in Sydney, located around Oxford Street. It was close to Kings Cross and the long existing 'camp' nightlife there'.<sup>6</sup>
- 1.22** According to ACON the police 'had never been sympathetic' to gay people being open about their sexuality on the streets of Sydney as observed by the events of June 1978, when the first Sydney Gay and Lesbian Mardi Gras was held. The parade began peacefully but resulted in violence between participants and police, with 'police wading into the marchers with their batons, leading to 53 arrests'.<sup>7</sup>
- 1.23** Indeed, illegality and heavy handed policing coupled with longstanding negative social views towards homosexuals led many gay men to frequent beats, a 'public outdoor or indoor area

<sup>2</sup> Submission 20, NSW Police Force, p 1; also see Submission 12, Flinders University, pp 3, 5 and 7.

<sup>3</sup> Submission 19, Dr Andy Kaladelfos, Dr Bianca Fileborn, Dr Yorick Smaal, Associate Professor Lisa Featherstone, and Associate Professor Shirleene Robinson, p 2.

<sup>4</sup> Submission 1, Mr Thomas Poberezny-Lynch, p 19; ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20th Century* (2018), p 11.

<sup>5</sup> Submission 1, Mr Thomas Poberezny-Lynch, p 19; ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20th Century* (2018), p 11.

<sup>6</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20th Century* (2018), p 32.

<sup>7</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20th Century* (2018), p 33.



where "men go to have consensual, non-commercial casual sex with other men. [These] activities can be seen as either a scandal, or a kind of liberation"<sup>8</sup>.

- 1.24** Mr Nicolas Parkhill, Chief Executive Officer, ACON, explained that for many men 'who at that time were not open and out ... beats also provided a space for people to meet other people and social engagement as well. It was not just around sexual liaison'.<sup>9</sup>
- 1.25** While '[t]here had long been a push to change the law that criminalised love and sex between consenting male adults [which] ... intensified after a similar law was changed in Britain in 1967',<sup>10</sup> as described by ACON, the changing social climate of the 1970s soon provided the impetus for a legislative one.
- 1.26** Throughout the period leading up to 1984, support for law reform concerning the criminalisation of homosexuality increased, culminating in the amendment of the *Crimes Act 1900* to decriminalise male acts of homosexuality between consenting adults.<sup>11</sup> The *Crimes Act 1900* was amended to include after section 78F, a definition of homosexual intercourse and in sections 79 and 80, the omission of imprisonment for fourteen years for 'the abominable crime of buggery ... with mankind' and imprisonment for five years for 'attempts to commit the said abominable crime, or assaults any person with intent to commit the same with or without the consent of such person'.<sup>12</sup>
- 1.27** Notwithstanding these legislative changes, community views regarding homosexuality were slower to shift. Dr Allen George, Lecturer in Socio-legal Studies, Faculty of Arts and Social Science, University of Sydney told the committee that despite decriminalisation, a social, moral and political stigma around LGBTIQ communities continued to exist.<sup>13</sup>
- 1.28** By 1984 it was apparent that Australia was facing an HIV/AIDS epidemic with 47 diagnosed cases and 18 deaths by the end of 1984 and by 1985, 4500 men in inner-suburban Sydney and Melbourne had tested HIV positive.<sup>14</sup> Dr George explained that while decriminalisation 'sort of removed a stigma' surrounding gay men, a 'new medicalised stigma' in the form of the HIV/AIDS soon replaced this.<sup>15</sup>

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<sup>8</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20th Century* (2018), p 15, quoting Mr Garry Wotherspoon (2017).

<sup>9</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 9 November 2018, p 7.

<sup>10</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20th Century* (2018), p 33.

<sup>11</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20th Century* (2018), pp 33-34; New South Wales Government, NSW Legislation, *Crimes Act 1900 No 40*, Historical Notes, <https://www.legislation.nsw.gov.au/acts/1984-7.pdf>.

<sup>12</sup> New South Wales Government, NSW Legislation, *Crimes Act 1900 No 40*, Historical Notes, <https://www.legislation.nsw.gov.au/acts/1984-7.pdf>.

<sup>13</sup> Evidence, Dr Allen George, Lecturer in Socio-legal Studies, Faculty of Arts and Social Science, University of Sydney, 28 November 2018, pp 1-2, referring to .

<sup>14</sup> Padula, M. 2006, 'The AIDS Grim Reaper (A)', The Australian and New Zealand School of Government, Case Program 2006-90, pp 1-2, as cited in Answers to questions on notice, Dr Allen George, Lecturer in Socio-legal Studies, Faculty of Arts and Social Science, University of Sydney, 20 December 2018, p 1.

<sup>15</sup> Evidence, Dr Allen George, Lecturer in Socio-legal Studies, Faculty of Arts and Social Science, University of Sydney, 28 November 2018, p 3.

- 1.29 A number of inquiry participants drew what they considered to be a connection between the Grim Reaper AIDS campaign and the further stigmatisation of and violence towards gay and transgender people in the late 1980s and 1990s.

### **Grim Reaper AIDS campaign**

- 1.30 In April 1987, the Commonwealth Government released the Grim Reaper television advertisement campaign which focused on the 'danger AIDS represented' and that prevention was the only cure. The advertisement:

... depicted the Grim Reaper at a bowling alley with pins represented by average Australians including mothers and young children. A foreboding voice-over warned that, 'At first, only gays and IV drug users were being killed by AIDS, but now we know every one of us could be devastated by it,' while the Reaper bowled, striking down his victims.<sup>16</sup>

- 1.31 According to a number of inquiry participants, including Dowson Turco Lawyers, the Grim Reaper campaign caused widespread discrimination and incited fear of gay men:

... the misinformation conveyed in the 1987 Grim Reaper campaign led to further stigmatisation of gay men and perpetuated a stereotype that caused widespread discrimination. The campaign incited fear in the general Australian public of not only the disease itself, but gay men who were deemed responsible for spreading HIV.<sup>17</sup>

- 1.32 When questioned as to whether the HIV/AIDS epidemic fuelled gay bashing, Mr Nicolas Parkhill, Chief Executive Officer, ACON, reflected that it 'certainly would have played a role':

We only have to look at the time with the grim reaper ad, with just recent decriminalisation of homosexuality in certain States, that it was not a safe time at all. That fear and stigma that surrounded HIV and the news reports that were playing out at that time, calls for people living with HIV to be quarantined, it was adding to a pre-existing homophobic or transphobic attitude that really created a greater divide and made it more difficult.<sup>18</sup>

<sup>16</sup> Padula, M. 2006, 'The AIDS Grim Reaper (A)', The Australian and New Zealand School of Government, Case Program 2006-90, p 3, as cited in Answers to questions on notice, Dr Allen George, Lecturer in Socio-legal Studies, Faculty of Arts and Social Science, University of Sydney, 20 December 2018, p 1.

<sup>17</sup> Submission 34, Dowson Turco Lawyers, p 3.

<sup>18</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 9 November 2018, p 7.

**Figure 1 Grim Reaper campaign image<sup>19</sup>**



### **LGBTIQ community's response to gay hate violence**

- 1.33** During the 1980s, attempts to combat violence by the gay community were initiated through a number of campaigns. Mr Larry Galbraith, former editor, *Sydney Star Observer*, discussed how there were 'constant campaigns, constant reminders, constant attempts to encourage people to report':

... there was the whistle campaign where people were encouraged to carry whistles with them and to blow whistles whenever they were threatened with violence. There was an attempt by some gay men in the early 1980s to organise a pink patrol, basically to provide some sort of visual presence on the streets to help gay men feel safer when they were going out to nightclubs.<sup>20</sup>

- 1.34** Owing to the high rates of crime against LGBTIQ people and what was perceived to be 'inadequate' responses from the police, the LGBTIQ community set up 'its own specialised

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<sup>19</sup> Padula, M. 2006, 'The AIDS Grim Reaper (A)', *The Australian and New Zealand School of Government, Case Program 2006-90*, p 6, as cited in *Answers to questions on notice*, Dr Allen George, Lecturer in Socio-legal Studies, Faculty of Arts and Social Science, University of Sydney, 20 December 2018, p 1.

<sup>20</sup> Evidence, Mr Larry Galbraith, Former Editor, *Sydney Star Observer*, 9 November 2018, p 48.

group to monitor violence, [those being] the Lesbian and Gay Anti-Violence Project, and Dykes on Bikes [who] ran street patrols in the Oxford Street area'.<sup>21</sup>

- 1.35 Mr Galbraith stated that these attempts 'by the community to respond in various ways, sometimes without relying on the police' were based on the fact that 'there was always an uncertainty about how the police would respond'.<sup>22</sup>

### The role of police

- 1.36 In its final report, Strike Force Parrabell unequivocally acknowledged the role of police in marginalising gay and transgender people and the wider LGBTIQ community in the past, stating:

The NSW Police Force is acutely aware of and acknowledges without qualification both its and society's acceptance of gay bashings and shocking violence directed at gay men, and the LGBTIQ community between 1976-2000... It is clear and beyond question that levels of violence inflicted upon gay men in particular were elevated, extreme and often brutal.<sup>23</sup>

...

The NSW Police Force must acknowledge and has, to some extent, acknowledged its part in marginalisation of the LGBTIQ community during the 1970s, 80s and 90s especially.<sup>24</sup>

- 1.37 Societal views and attitudes of the time were said to have been compounded by the leadership approach taken by senior police officers. For example, during the 1950s, the then NSW Police Commissioner Colin Delaney voiced personal views regarding homosexuality that encouraged vigilant detecting and prosecution of homosexual acts and homosexual men by police. In 1958, Commissioner Delaney described homosexuality as "'Australia's greatest menace"; that homosexuals were a "cancer in the community", who threatened to damage society's "moral welfare".<sup>25</sup>
- 1.38 Mr Larry Galbraith, former editor, *Sydney Star Observer* expressed the view that 'one of the most significant impediments' to the criminal justice system which impacted upon the protection of LGBTIQ people in New South Wales 'was a strongly ingrained anti-gay culture within the NSW Police Force which continued into the 1980s and 1990s—and even beyond'.<sup>26</sup>
- 1.39 Mr Galbraith remarked that many of the young policemen who joined in the 1950s and 1960s would have been influenced by the culture that was both ingrained in society and personified by Mr Delaney. Mr Galbraith put forward the view that many of these officers would have 'risen

<sup>21</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20th Century* (2018), p 20, quoting Mr Gary Wotherspoon (2017).

<sup>22</sup> Evidence, Mr Larry Galbraith, Former Editor, *Sydney Star Observer*, 9 November 2018, p 48.

<sup>23</sup> NSW Police Force, *Strike Force Parrabell: Final Report* (2018), p 14.

<sup>24</sup> NSW Police Force, *Strike Force Parrabell: Final Report* (2018), p 16.

<sup>25</sup> Submission 19, Dr Andy Kaladelfos, Dr Bianca Fileborn, Dr Yorick Smaal, Associate Professor Lisa Featherstone, Associate Professor Shirleene Robinson, p 2.

<sup>26</sup> Evidence, Mr Larry Galbraith, Former Editor, *Sydney Star Observer*, 9 November 2018, p 46.

through the ranks to positions where they were influencing the attitudes of the next police generation', therefore further entrenching such views and attitudes towards the gay community. He stated that:

... [t]his in turn influenced the way police acted on crimes against gay men—from responding to gay men who reported assaults against them to being willing to investigate potentially suspicious deaths of gay men.<sup>27</sup>

- 1.40** While Assistant Commissioner Anthony Crandell, Police Education and Training, NSW Police Force acknowledged that the 'police force reflected the community and was no different, with culture and values taking far longer to evolve',<sup>28</sup> Professor Stephen Tomsen, Professor of Criminology and Criminal Justice, School of Social Science and Psychology, University of Western Sydney, argued:

... [the] widespread anti-gay and anti-transgender violence in the last four decades in New South Wales ... has had a profound [impact in] relation to policing and aspects of the criminal justice system rather than just being some mirror of societal values.<sup>29</sup>

- 1.41** The committee heard that these negative attitudes within society coloured some police officers' views and influenced the police force, impacting on the quality of policing more broadly. Commenting within the context of attitudes towards gay beats, for example, Strike Force Parrabell noted in its final report:

fear, moral panic, and moral judgements towards beats usage were very real. It would be naive to assume that these attitudes did not colour the perceptions of police officers as members of the same society so publically against gay men and the LGBTIQ community generally.<sup>30</sup>

- 1.42** According to Mr Garry Wotherspoon, historian and a former academic at the University of Sydney, social and police attitudes to same-sex attraction and the stigma of HIV/AIDS resulted in many gay hate crimes being 'inadequately dealt with by police, often being classified, after what were desultory investigations, as suicides, misadventure or accidents'.<sup>31</sup>

- 1.43** Indeed, Dr George argued that in light of the 'moral panic' surrounding HIV/AIDS at the time, 'police officers were partly involved in setting up an us and them dichotomy again'.<sup>32</sup> In addition, Dr George stated that during this period 'police officers also started to wear rubber gloves when attending events where gays and lesbians were' due to a 'fear of blood ... and that gay men were now contaminated'.<sup>33</sup>

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<sup>27</sup> Evidence, Mr Larry Galbraith, Former Editor, Sydney *Star Observer*, 9 November 2018, p 46.

<sup>28</sup> Evidence, Assistant Commissioner Anthony Crandell, Police Education and Training, NSW Police Force, 9 November 2018, p 13.

<sup>29</sup> Evidence, Professor Stephen Tomsen, Professor of Criminology and Criminal Justice, School of Social Science and Psychology, University of Western Sydney, 27 November 2018, p 38.

<sup>30</sup> NSW Police Force, *Strike Force Parrabell: Final Report* (2018) p 15.

<sup>31</sup> Submission 14, Mr Garry Wotherspoon, p 4.

<sup>32</sup> Evidence, Dr Allen George, Lecturer in Socio-legal Studies, Faculty of Arts and Social Science, University of Sydney, 28 November 2018, p 3.

<sup>33</sup> Evidence, Dr Allen George, Lecturer in Socio-legal Studies, Faculty of Arts and Social Science, University of Sydney, 28 November 2018, p 3.

- 1.44 ACON advised that the 'pervasive homophobia' within the police and legal profession 'negatively and profoundly impacted on if, and how, gay hate crimes were identified, investigated, prosecuted and sentenced'.<sup>34</sup>
- 1.45 ACON referred to anecdotal evidence from community members that historic gay hate crimes were invisible and thus influenced a sense of 'reticence from some to see them as issues of law'. They argued that this was compounded by the fact that 'historical information maintained by NSWPF on potential gay-hate crimes was poorly collected, reviewed without data standards or consultation and poorly maintained'.<sup>35</sup>
- 1.46 Mr Nicholas Stewart, Partner, Dowson Turco Lawyers, remarked that homosexuals 'were thought of as sexual deviants who just simply were not worth investigating when we came to harm'.<sup>36</sup>
- 1.47 Mr Duncan McNab, former NSW Police Force Detective, spoke of what he perceived to be a 'long-term and strong resistance by the NSW Police' to investigating cases previously identified as suicides, citing the cases of Mr Scott Johnson and Mr Alan Rosendale as examples.<sup>37</sup>

### Key responses to gay and transgender hate crimes

- 1.48 In recent years there have been a number of responses to gay and transgender hate crimes that have provided important context for this inquiry. These include Operation Taradale, a 2018 ACON report on prejudice killings and Strike Force Parrabell, which are briefly outlined below.

#### Operation Taradale

- 1.49 Operation Taradale (*Taradale*) was established to examine the connection between the suspected death, disappearance and assault of several gay men.<sup>38</sup> The operation investigated, in particular, the cases of Mr Ross Warren, Mr John Russell, and Mr David McMahan. Other cases were also investigated, including those of Mr Gilles Mattanai and Mr Kritchikorn Rattanajurathaporn.<sup>39</sup> These cases are considered in greater detail in chapter 2.
- 1.50 The operation began in March 2001, initially as an investigation prompted by correspondence from Mrs Kay Warren seeking information about her son's disappearance.<sup>40</sup>
- 1.51 The findings of Operation Taradale later informed a brief of evidence for the coronial inquest into the deaths of Mr John Russell, and the suspected deaths of Mr Ross Warren and Mr Gilles Mattaini.

<sup>34</sup> Submission 23, ACON, p 3.

<sup>35</sup> Submission 23, ACON, p 10.

<sup>36</sup> Evidence, Mr Nicholas Stewart, Partner, Dowson Turco Lawyers, 9 November 2018, p 39.

<sup>37</sup> Submission 4, Mr Duncan McNab, p 1.

<sup>38</sup> Submission 12, Flinders University, p 3.

<sup>39</sup> Evidence, Mr Steve Page, Former Detective Sergeant, NSW Police Force, 28 November 2018, pp 26-27 and p 29.

<sup>40</sup> Evidence, Mr Steve Page, Former Detective Sergeant, NSW Police Force, 28 November 2018, p 26.

- 1.52 The coroner observed that every page of the Taradale brief 'contained valuable and important information crucial to understanding the circumstances of the deaths and disappearance of [the victims]'.<sup>41</sup>
- 1.53 The coronial inquest subsequently overturned previous findings in the cases of Mr Warren, who had been deemed missing, and Mr Russell, whose cause of death was ruled as 'misadventure'.<sup>42</sup>

### **ACON report**

- 1.54 In May 2018, ACON released its report *'In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20<sup>th</sup> Century'* (ACON report).<sup>43</sup> The report provides a review of suspected anti-gay and related homicides, and draws thematic conclusions about the violence surrounding these deaths and the culture of violence against LGBTIQ communities more broadly.<sup>44</sup>
- 1.55 Specifically, the ACON report examined 88 cases between 1976 and 2000, almost 30 of which remain unsolved.<sup>45</sup> The case list was compiled between 1990 and 2015, the original sources of which were the monitoring initiated by Ms Sue Thompson, former NSW Police Force Gay and Lesbian Liaison Officer (GLLO) Program Coordinator; research conducted by Professor Stephen Tomsen, Criminologist; and work carried out by the Sydney-based Anti-Violence Project.<sup>46</sup>
- 1.56 The review of these cases was conducted by ACON between 2016 and 2017.<sup>47</sup> Information about these deaths was gathered into individual case 'dossiers' using material from publicly available sources, including case judgements, coronial documents, and journal articles and research reports.<sup>48</sup> The review was conducted independently from other police or coronial inquiries.<sup>49</sup>

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<sup>41</sup> NSW Coroner's Court, *Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini: Findings and Recommendations*, p 9.

<sup>42</sup> NSW Coroner's Court, *Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini: Findings and Recommendations*, p 6.

<sup>43</sup> Submission 23, ACON, p 3; ACON was formerly known as the AIDS Council of NSW.

<sup>44</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20<sup>th</sup> Century* (2018), p 5.

<sup>45</sup> Submission 23, ACON, p 1.

<sup>46</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20<sup>th</sup> Century* (2018), p 7.

<sup>47</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20<sup>th</sup> Century* (2018), p 7.

<sup>48</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20<sup>th</sup> Century* (2018), p 7; see also Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 9 November 2018, p 3.

<sup>49</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20<sup>th</sup> Century* (2018), p 7.

**1.57** The report found that the victims in the cases reviewed 'experienced deliberate and brutal attacks',<sup>50</sup> stating:

Evidence from crime scenes indicates that many victims engaged in significant struggles to protect themselves attempting to stay alive. In many cases, the victims were defenceless, caught off guard and not expecting to be attacked with such extremity. Their last moments, undoubtedly, involved terror and confusion.<sup>51</sup>

**1.58** In particular, findings were made about the location of the crimes, the methods of violence and weapons used, and the motives behind the attacks.<sup>52</sup> It also drew conclusions about the criminal justice system response to these crimes, arguing that institutional homophobia or bias was evident in the way the cases were investigated and prosecuted.<sup>53</sup>

**1.59** According to ACON, the aim of the report was to initiate action – not only for those cases that required 'outstanding justice to be delivered',<sup>54</sup> but for all LGBTIQ people to have 'real access to justice':

The aim of the report was to prompt actions which would assist in the delivery of justice for victims and survivors, [and to] put in place training, tools, processes and other protective mechanisms to ensure similar situations would not happen again. Ultimately, these efforts are aimed at ensuring that LGBTIQ people in NSW are more confident, more trusting in the law enforcement systems and personnel of the State, and in so doing, feel they have real access to justice.<sup>55</sup>

**1.60** Mr Nicolas Parkhill, Chief Executive Officer, ACON, added, '... [T]he intent [of the report] was to really honour these men's lives and, from a community perspective, to share their stories and their experience'.<sup>56</sup>

**1.61** The ACON report thus makes a number of recommendations for action moving forward based on various themes, including deepening the understanding of the past, publicly acknowledging victims and survivors, healing the legacy of violence, enhancing criminal justice system responses, and securing ongoing efforts in violence prevention.<sup>57</sup>

<sup>50</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20<sup>th</sup> Century* (2018), p 13.

<sup>51</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20<sup>th</sup> Century* (2018), p 13.

<sup>52</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20<sup>th</sup> Century* (2018), pp 13-18.

<sup>53</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20<sup>th</sup> Century* (2018), p 20.

<sup>54</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 9 November 2018, p 2.

<sup>55</sup> Submission 23, ACON, p 1.

<sup>56</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 9 November 2018, p 3.

<sup>57</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20<sup>th</sup> Century* (2018), p 6.



### Strike Force Parrabell

- 1.62** Strike Force Parrabell (*Parrabell*) began as Operation Parrabell in 2013, established initially to investigate crimes that were potentially bias-related.<sup>58</sup> At the time, the operation consisted of a single officer working within the Bias Crimes Unit.<sup>59</sup>
- 1.63** In 2015, the operation became a strike force with expanded terms of reference and the secondment of ten detectives over an 18 month period.<sup>60</sup> The overriding objective of *Parrabell* was 'to bring the NSW Police Force and the Lesbian, Gay, Bisexual, Transgender, Intersex and Queer community closer together by doing all that is possible from this point in history'.<sup>61</sup>
- 1.64** *Parrabell's* mission was to conduct a 'thorough investigative review' to determine whether the suspected deaths of 88 men between 1976 and 2000 could be classified as motivated by bias, including gay hate.<sup>62</sup> According to the NSW Police Force, the 88 cases identified for the strike force were originally listed in a submission to the Australian Institute of Criminology.<sup>63</sup> Further discussion about the identification of these 88 cases can be found in chapter 3.
- 1.65** The committee received evidence that, in carrying out its mission, cases were to be reviewed by examining material already available to the NSW Police Force, essentially making the operation a 'desktop' review and not an active investigation.<sup>64</sup> Indeed, Assistant Commissioner Crandell, NSW Police Force, maintained that *Parrabell* was 'a review, not a reinvestigation' of cases – an important distinction to make, he argued, when considering expectations of the strike force and its outcomes.<sup>65</sup> The community response to *Parrabell* and its final report is discussed further in chapter 3.
- 1.66** In its review of the cases, *Parrabell* investigators were also to, where appropriate, 'make recommendations about conducting further enquiries if fresh evidence might be uncovered, or bias of the original investigator was shown or suspected'.<sup>66</sup> In this regard, a 'significant part' of *Parrabell* was to 'explain investigative strategies, deliver findings and make recommendations for improvements to policing'.<sup>67</sup>

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<sup>58</sup> Evidence, Assistant Commissioner Anthony Crandell, Police Education and Training, NSW Police Force, 9 November 2018, p 13.

<sup>59</sup> Submission 20, NSW Police Force, p 2.

<sup>60</sup> Evidence, Assistant Commissioner Anthony Crandell, Police Education and Training, NSW Police Force, 9 November 2018, p 13.

<sup>61</sup> NSW Police Force, *Strike Force Parrabell, Final Report* (2018), p 18.

<sup>62</sup> Submission 20, NSW Police Force, p 2.

<sup>63</sup> Submission 20, NSW Police Force, p 2.

<sup>64</sup> Evidence, Assistant Commissioner Anthony Crandell, Police Education and Training, NSW Police Force, 9 November 2018, p 13; Associate Professor Derek Dalton, College of Business, Government and Law, Flinders University, 28 November 2018, p 11.

<sup>65</sup> Evidence, Assistant Commissioner Anthony Crandell, Police Education and Training, NSW Police Force, 9 November 2018, p 13; see also Evidence, Professor Willem de Lint, Professor in Criminal Justice, College of Business, Government and Law, Flinders University, 28 November 2018, p 15; Associate Professor Derek Dalton, College of Business, Government and Law, Flinders University, 28 November 2018, p 15.

<sup>66</sup> Submission 20, NSW Police Force, p 2.

<sup>67</sup> NSW Police Force, *Strike Force Parrabell: Final Report* (2018), p 18.

- 1.67** For 'complete transparency of results and investigative activities', Flinders University was commissioned to conduct an independent academic review of *Parrabell*.<sup>68</sup> This academic review is discussed in further detail later in the chapter.
- 1.68** In June 2018, Strike Force Parrabell released its final report, including the academic review of its findings by Flinders University. The report considered 88 cases but reviewed only 86, with one case having no records or material, and the other being a death outside of New South Wales.<sup>69</sup>
- 1.69** Of the 86 cases reviewed by *Parrabell*, 63 are solved and 23 remain unsolved.<sup>70</sup> Assistant Commissioner Crandell, NSW Police Force, advised that the unsolved cases examined by *Parrabell* would be subject to ongoing review. He stated:
- ... [T]he unsolved homicide team will review all outstanding matters. It rotates on a six-monthly basis. The commander of the homicide unit will write to the families of the victims to say whether or not there is fresh information that has come in or not. That is a constant review.<sup>71</sup>
- 1.70** Notwithstanding this, *Parrabell* considered each of the 86 cases to determine whether the suspected deaths were motivated by bias.
- 1.71** According to the report, *Parrabell* investigators applied 'a general tenet to case classification by answering a simple question: "Is there evidence of a bias crime?"'.<sup>72</sup> The report explained that 'consistent with police methodology, this was the foundational question that allowed greater classification certainty from a policing perspective'.<sup>73</sup>
- 1.72** The report found that not every case could deliver a definitive bias classification as many had 'insufficient information' to make the determination:
- Neither Strike Force Parrabell nor the [Flinders University] Academic Review Team could confidently classify every death as involving, or being devoid of, gay-hate or other bias, leaving a number of cases classified as 'insufficient information'.<sup>74</sup>
- 1.73** Out of the 86 cases reviewed:
- 8 cases found evidence of bias crime
  - 19 cases were suspected bias crimes
  - 34 cases found no evidence of bias crime

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<sup>68</sup> Submission 20, NSW Police Force, p 3.

<sup>69</sup> Evidence, Assistant Commissioner Anthony Crandell, Police Education and Training, NSW Police Force, 9 November 2018, p 13.

<sup>70</sup> Evidence, Assistant Commissioner Anthony Crandell, Police Education and Training, NSW Police Force, 9 November 2018, p 13.

<sup>71</sup> Evidence, Assistant Commissioner Anthony Crandell, Police Education and Training, NSW Police Force, 9 November 2018, p 14.

<sup>72</sup> NSW Police Force, *Strike Force Parrabell: Final Report* (2018), p 21.

<sup>73</sup> NSW Police Force, *Strike Force Parrabell: Final Report* (2018), p 21.

<sup>74</sup> NSW Police Force, *Strike Force Parrabell: Final Report* (2018), p 21.

- 25 cases found insufficient information to determine bias crime.<sup>75</sup>

- 1.74 The report highlighted the 'difficulty in appropriating an intention of bias to an investigator, or team of investigators', and drew attention instead to the question of whether a death was well or poorly investigated 'based on evidence and technology available at the time'.<sup>76</sup> Indeed, according to the report, '[n]o referrals were made by any investigator with reference to a poor investigation or one that did not consider important evidence'.<sup>77</sup>
- 1.75 The report concluded that, while some investigative practices have remained consistent over the period examined, some have evolved over time, highlighting what the NSW Police Force described as 'the movement to modern investigative practices that minimise opportunities for investigator bias to impact upon objective findings and just outcomes'.<sup>78</sup>
- 1.76 *Parrabell* made a number of recommendations in its final report, including recommendations for improvements to the NSW Police Force system of bias crime classification, and to ensure future systems of operation are 'demonstrably competent without risks associated with community uncertainty; investigative thoroughness; or impartiality'.<sup>79</sup>

#### *Academic review by Flinders University*

- 1.77 As part of Strike Force Parrabell, an academic review of its work was commissioned and its findings included in *Parrabell's* final report. The academic review was conducted by Flinders University, led by Associate Professor Derek Dalton and Professor Willem de Lint.<sup>80</sup>
- 1.78 The purpose of the academic review was to:
- ... provide an independent account of Strike Force Parrabell's systemic validity; where possible, identify evidence of poor or biased investigations; guide further policing strategies of community engagement; and develop a more suitable bias crime identification process.<sup>81</sup>
- 1.79 Professor de Lint explained that the review involved an analysis of case summaries developed by the *Parrabell* team, not an investigation of the information behind those summaries.<sup>82</sup> On that

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<sup>75</sup> NSW Police Force, *Strike Force Parrabell: Final Report* (2018), p 24.

<sup>76</sup> NSW Police Force, *Strike Force Parrabell: Final Report* (2018), p 22.

<sup>77</sup> NSW Police Force, *Strike Force Parrabell: Final Report* (2018), p 22.

<sup>78</sup> Submission 20, NSW Police Force, p 2.

<sup>79</sup> NSW Police Force, *Strike Force Parrabell: Final Report* (2018), p 21.

<sup>80</sup> Submission 20, NSW Police Force, p 3.

<sup>81</sup> NSW Police Force, *Strike Force Parrabell: Final Report* (2018), p 14.

<sup>82</sup> Evidence, Professor Willem de Lint, Professor in Criminal Justice, College of Business, Government and Law, Flinders University, 28 November 2018, p 11 and p 14.

basis, the academic review considered the summary findings for 85 cases<sup>83</sup> examined by *Parrabell*.<sup>84</sup> It did so by applying a three-part test to determine bias. Flinders University explained:

... [W]e designed a simple three-part test of bias is as follows. Bias crime: *expresses* a categorical animus (directed at a person or group on the basis of his/her perceived identification with a *vulnerable* group); produces an act that *intentionally*, by way of criminal predation on the basis of that categorical animus, causes harm to that person or group; is mitigated or aggravated by an offender's contemporaneous *associations* that are linked by a commitment of *denunciatory non-identification* with the vulnerable person or group. In simple terms, bias expresses an animus towards a vulnerable person and acts intentionally to cause harm to that person, an act that is aggravated or mitigated by associations and denunciatory statements. In our evaluation of the gay bias homicides in NSW for the NSWP, we applied this instrument to the information on the cases we were presented to make our findings.<sup>85</sup>

**1.80** Using this test, the academic review made slightly different findings to *Parrabell* with regard to the classification of cases. The academic review found that, out of 85 cases reviewed:

- 29 cases found evidence of categorical bias, with:
  - 12 cases with evidence of anti-paedophile animus
  - 17 cases with evidence of anti-gay bias crime
- 23 cases found no evidence of bias crime
- 33 cases found insufficient information to determine bias crime.<sup>86</sup>

**1.81** The difference in findings between *Parrabell* and the academic review have been attributed to different classification interpretations, although *Parrebell's* final report stated that 'each team understood and endorsed the systemic approach of the other'.<sup>87</sup> It added that the different findings 'highlights the difficulty of bias crime classification'.<sup>88</sup>

**1.82** Beyond the consideration of each of the individual cases, the academic review also found no evidence of systemic bias in investigations against gay and transgender people, stating: '...[w]e cannot conclude that these investigations provide evidence of institutional anti-gay police bias'.<sup>89</sup>

<sup>83</sup> According to the Flinders University submission, 'our numbers [of cases considered] differ slightly with the police report due to last minute changes they made', Submission 12, Flinders University, p 2.

<sup>84</sup> Flinders University, 'Anti-Gay Bias Homicide, 1976-2000: An analysis of the record of investigation by the New South Wales Police Force *Strike Force Parrabell*', p 49, as found in NSW Police Force, *Strike Force Parrabell: Final Report* (2018).

<sup>85</sup> Submission 12, Flinders University, pp 5-6.

<sup>86</sup> Flinders University, 'Anti-Gay Bias Homicide, 1976-2000: An analysis of the record of investigation by the New South Wales Police Force *Strike Force Parrabell*', p 50, as found in NSW Police Force, *Strike Force Parrabell: Final Report* (2018).

<sup>87</sup> NSW Police Force, *Strike Force Parrabell: Final Report* (2018), p 22.

<sup>88</sup> NSW Police Force, *Strike Force Parrabell: Final Report* (2018), p 22.

<sup>89</sup> Flinders University, 'Anti-Gay Bias Homicide, 1976-2000: An analysis of the record of investigation by the New South Wales Police Force *Strike Force Parrabell*', p 49, as found in NSW Police Force, *Strike Force Parrabell, Final Report* (2018).

- 1.83** In particular, Flinders University stated that the academic review did not find evidence that police were reluctant to pursue these cases as bias crimes,<sup>90</sup> nor did it find any evidence that police failed to adequately investigate any of the deaths under review,<sup>91</sup> a conclusion also made by *Parrabell* in its final report.<sup>92</sup>
- 1.84** The findings made by these reports and the subsequent responses to the issues raised within them were the genesis for this committee inquiry, which seeks to further explore the current developments in policy and practice drawn from the gay and transgender hate crimes to be examined in the following chapter.

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<sup>90</sup> Submission 12, Flinders University, p 7.

<sup>91</sup> Submission 12, Flinders University, p 2.

<sup>92</sup> See paragraph 1.74.

## Chapter 2      The nature of historic gay and transgender hate crimes

The previous chapter explored the societal and legal context within which historic gay and transgender hate crimes took place. Against this backdrop, this chapter considers the nature of these crimes by highlighting the cases of Mr Scott Johnson, Mr Alan Rosedale, Mr Ross Warren and Mr John Russell. Drawing on their stories, along with those of other cases of suspected gay hate crime, this chapter examines the circumstances of these crimes more broadly, such as where they were being committed, by whom, and how, at a particularly vulnerable time in history for gay and transgender people. The chapter also acknowledges that much is unknown about the nature of gay and transgender hate crimes of that time because of what was *not* reported by victims.

### Case studies

- 2.1 As outlined in chapter 1, there have been a number of key responses to gay and transgender hate crime in recent years, including the NSW Police Force operations *Taradale* and *Parrabell*, and an ACON report on prejudice killings in New South Wales.
- 2.2 The reports from these processes identified the cases of several gay men who were found dead, disappeared or were violently attacked in the 1980s and 1990s. These cases highlight many of the themes examined throughout this report, and are discussed below.
- 2.3 It is important to note that the case studies below are only a summary of the circumstances and details around the particular matters. Those wishing to familiarise themselves more extensively with the matters, should examine primary source documents that may be found in the footnotes and elsewhere.

#### Case study 1 – Mr Scott Johnson<sup>93</sup>

- 2.4 Mr Scott Johnson was an American man studying in Australia. On 10 December 1988, Scott's naked body was discovered at the base of a cliff in North Head in Manly.
- 2.5 Upon the discovery of Scott's body, Manly Police ruled Scott's death as a suicide. No forensic evidence was collected at the scene and no photographs were taken at Blue Fish Point where Scott fell, including of his clothing left at the top of the cliff. Instead, Scott's clothes were packed up by constables and a scientific officer took photos from the air in a helicopter.
- 2.6 The case was closed the following day when it was determined that there were no suspicious circumstances surrounding Scott's death.

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<sup>93</sup> Case study 1 has been drawn from Submission 29, Mr Steve Johnson; Evidence, Mr Steve Johnson, Brother of Scott Johnson, 27 November 2018; Evidence, Mr Steve Page, Former NSW Police Force Detective Sergeant, 28 November 2018; Submission 32, Ms Sue Thompson; NSW Police Force, Death of Scott Johnson, <[https://www.police.nsw.gov.au/can\\_you\\_help\\_us/rewards/1000000\\_reward/death\\_of\\_scott\\_johnson](https://www.police.nsw.gov.au/can_you_help_us/rewards/1000000_reward/death_of_scott_johnson)>; Evidence, Assistant Commissioner Anthony Crandell, Police Education and Training, NSW Police Force, 9 November 2018; Answers to questions on notice, NSW Police, 21 January 2019, p 1.

- 2.7** When Scott's brother, Mr Steve Johnson, arrived in Australia two days later, he was told that North Head was 'where people jump'. Steve was not told that Blue Fish Point was in fact a popular gay beat nor that there was any violence surrounding Scott's death.
- 2.8** Steve was left feeling 'totally mystified' about what happened to Scott, marking the beginning of a nearly thirty-year effort to find out the circumstances of Scott's death. The Johnson family were adamant that Scott would not have taken his own life – he was a happy, successful PhD student who was planning for his future. Indeed, his PhD professor had communicated with him only the day before his disappearance, advising that Scott's many years of hard work were finally coming to fruition.
- 2.9** The Johnson family urged the police to investigate Scott's death further but to no avail.
- 2.10** In March 1989, the first of three coronial inquests was held into Scott's death. The police told the Coroner that Scott had committed suicide. Moreover, they testified that the location of Scott's death was not a gay beat, suggesting there was no evidence of foul play. The Coroner ruled Scott's cause of death to be suicide.
- 2.11** Seventeen years later, Steve received news of Operation Taradale and the subsequent coronial inquest into the suspected deaths of Mr John Russell [Case study 4], Mr Ross Warren [Case study 3] and Mr Gilles Mattaini [Case study 5], which found that they were victims of gay hate crime and likely murdered. Steve realised that Scott too may have been a victim of gay hate crime and travelled back to Australia to ask Manly Police to reinvestigate. The police agreed to Steve's request but no action was taken following an internal review that found an investigation was not warranted.
- 2.12** Steve decided to conduct his own investigations. With a private investigator, and the assistance of former NSW Police Gay/Lesbian Client Consultant, Ms Sue Thompson, and former NSW Police Force Detective Sergeant, Mr Steve Page, they pieced together evidence of crimes of violence against gay men in the northern beaches. Steve discovered that, contrary to what he had been told by the police, Blue Fish Point was for many decades a gay beat. Moreover, court records showed that gay bashings had occurred at various locations around Manly, including other gay beats, the week Scott had died.
- 2.13** Steve was convinced Scott was a victim of gay hate crime, arguing that 'men do not go to gay beats to commit suicide, let alone take off their clothes before doing so'. Others shared the view that Scott did not commit suicide, including Sue Thompson who, through her experience, believed that Scott was more likely murdered by gay hate assailants.
- 2.14** Steve presented the findings of their investigations to Manly Police in 2007 but 'never heard a word back'. According to Steve, there was an instruction on Scott's file not to divulge information to the Johnson family, including a response to Steve's investigations which blamed him for Scott's death.
- 2.15** In June 2012, a second coronial inquest into Scott's death was held. In their evidence to the Coroner, a police officer acknowledged that the area in which Scott had died was a gay beat. The Coroner overturned the initial suicide finding and returned an open finding instead, ruling that the case be referred to unsolved homicides. According to Steve, however, the police later told him that the case could not be solved because the police officer who had testified at the

first coronial inquest in 1989 was now a superintendent, and insisted that Blue Fish Point was not a gay beat and that no crime had been committed.

- 2.16** The following year, an episode of *Australian Story* focusing on Scott's death aired. Soon after, the police together with the Johnson family held a joint press conference announcing the establishment of Strike Force Macnamir to investigate Scott's case.
- 2.17** The Johnson family were 'heartened' and 'encouraged' by this development, however, they soon found themselves amidst an investigation Steve believed was undertaken 'unwillingly and with hostility'. He described the investigating officer as being 'disgruntled' and 'aggrieved' at having to take on the case, deeming the original investigation to be 'of the standard of the day'.
- 2.18** Through his personal investigations, Steve and his team had identified a list of 60 persons of interest, which he had passed on to the police. The police subsequently eliminated each person from the list, sometimes for what Steve argued to be 'incredible or spurious reasons'. This included credible suspects raised through Crime Stoppers.
- 2.19** According to Mr Steve Page, former NSW Police Force Detective Sergeant, those who had assisted and supported the Johnson family were 'collectively smeared' throughout the Macnamir operation. The Johnson family, and in particular Scott's brother, Steve, became the subject of intense police scrutiny, amid claims that Steve had used his wealth and influence to keep Scott's case open.
- 2.20** The Task Force ultimately concluded that there was no reason to suspect that Scott's death involved violence and that the officers of the original investigation had reached the correct conclusion of suicide.
- 2.21** In April 2015, a third coronial inquest into Scott's death was referred, with the Coroner ordering that the persons of interest previously ruled out by the police be re-interviewed. Many witnesses testified, including former gang members, gay bashers and convicted perpetrators, some of whom gave evidence of suspended or light sentences following their conviction. One particular witness told the Coroner he had called Crime Stoppers in a panic when two of his friends had bashed an 'American faggot' sunbaking on a rock in North Head in December 1988. Evidence was also heard of a 'friendly' relationship between a known gang leader in the area and the Manly Police. The police have vehemently denied any such relationship.
- 2.22** Significantly, during this third inquest, the police finally accepted that Blue Fish Point where Scott had died was in fact a gay beat, an acknowledgement that had followed almost thirty years of police insistence that it was not.
- 2.23** By November 2017, the Coroner concluded that Scott fell from the cliff top 'as a result of actual or threatened violence from unidentified persons who attacked him because they perceived him to be homosexual'. At last, a ruling had been made that Scott's death was a gay hate crime, most likely at the hand of others.
- 2.24** When asked to provide the total cost incurred for the Johnson inquiry, the NSW Police Force advised that the Johnson coronial inquest had incurred total legal costs of \$878,363.79.
- 2.25** Steve had hoped that the Coroner's findings would spur the police into launching an immediate effort to investigate Scott's death. However, while Steve, his family and supporters had waited



decades for a determination about Scott's death, the outcome of the coronial inquest was not welcomed by everyone. According to Steve, the police were 'outraged' by the Coroner's findings, 'as if it was a defeat instead of an independent, fact-based inquiry that had concluded that a homicide had been committed'.

- 2.26** Moreover, Steve had been told by a senior police officer after the inquest that 'he should be grateful to the police for all they did' and that he should be satisfied with the investigation because it was all they would do moving forward. This marked for Steve another 'squandered' opportunity for the police to 'set things right'.
- 2.27** Steve has said that, having had three coronial inquests into his brother's death, it might appear that Scott has received 'more than enough justice' over the years. However, Steve maintains that these inquests were all 'hard won and necessary' because the police have fought for the last three decades to keep Scott's case closed.
- 2.28** According to Steve, a number of questions continue to haunt his family, including why Manly police concluded that Scott's death was a suicide, thus closing the case so quickly thereafter, and why the NSW Police Force had persisted for so long that this was the only plausible explanation for Scott's death, thereby rejecting repeated calls to investigate.
- 2.29** Outside of the Johnson family, others who have followed Scott's case have shared these concerns, drawing attention to what they believe to be an entrenched resistance by the police to accept that Scott was likely murdered – and that, as author and former detective Mr Duncan McNab put it, they had 'got it wrong' in 1988 by saying it was a suicide. Several inquiry participants went so far as to suggest there may have been police complicity in the mystery surrounding Scott's death.
- 2.30** In late 2018, in the months following the establishment of this committee inquiry, the police established a new task force to investigate Scott's death as a homicide, through the sex crimes squad. Acknowledging that the Johnson family simply want an 'open and transparent investigation', Assistant Commissioner Anthony Crandell, Police Education and Training, NSW Police Force, has undertaken to give them just that. The task force has been charged with pursuing the outcomes and leads from the coronial inquest as part of a fresh new investigation.
- 2.31** For Steve, what matters now is action. While encouraged by direct contact from the police – the first he says since his brother's death – about the new investigation, he maintains that what is important now is 'purposeful action designed to solve the crime and hold the murderer accountable'. He remains hopeful that it is not too late to solve his brother's case – or the many others of that era. Steve says that only by doing so, by giving justice to the victims of gay hate crime, will it be known that the NSW Police Force 'not only says it believes in equal protection and equal justice, but that it can deliver it'.

### **Case study 2 – Mr Alan Rosendale<sup>94</sup>**

- 2.32** In May 1989, Mr Alan Rosendale was attacked at a gay beat on South Dowling Street, Surry Hills by a group of men armed with wooden planks. Alan was beaten so badly he lost

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<sup>94</sup> Case study 2 has been drawn from Evidence, Mr Alan Rosendale, 27 November 2018; Evidence, Mr Paul Simes, Witness of gay hate violence, 27 November 2018; Submission 31, Mr Paul Simes;

consciousness. He was taken to St Vincent's Hospital where he was treated for severe head injuries and a broken nose. While Alan vaguely recalls a policeman being present in the emergency department when he was taken in, he does not recall a statement being made at the time. No other contact was made by the police following his discharge from hospital.

- 2.33** Twenty-four years later, Alan read an article in the *Sydney Morning Herald* describing an assault witnessed by Mr Paul Simes on South Dowling Street in 1989. Amazed by the similarities between Paul's account of the assault and his own, Alan contacted the journalist who had written the article, Mr Rick Fenely, identifying himself as the victim of the assault witnessed by Paul.
- 2.34** Paul told the committee that, one night in 1989, he was going home in his car when he noticed a car speeding down South Dowling Street and then screeching to a halt. A group of men jumped out of the car, opened the boot to retrieve wooden planks and ran into the nearby park. Shortly after, Paul observed a man being chased out of the park by the men and running towards his car. The man fell in the gutter right in front of Paul's car, whose headlights were turned off. The men caught up and started beating him. Paul turned on his headlights but it did not stop the assailants from continuing to beat the man. Paul drove past them, did a u-turn and came up behind the assailant's car to record the numberplate.
- 2.35** Fearing the worst for the victim, Paul left the scene to call the police and report the number plate. When Paul returned to the scene, both the victim and the assailants had gone.
- 2.36** In the days following the incident, Paul contacted the Gay Anti-Violence Project, a gay liaison agency, to report what he had witnessed. Some weeks later, the agency called Paul to advise that the police had told them the number plate he had reported belonged to a police vehicle, and asked if Paul would attend a meeting at the College Street Police Centre. The agency arranged for former Member of Parliament, Mr Fred Miller, to accompany Paul to the meeting.
- 2.37** When Paul presented to the police centre, he was taken to an upper floor office with harbour views where he met with an officer with 'plenty of braid', giving Paul the impression that he was meeting with a very senior officer of the NSW Police Force. Paul was questioned about the events of the night he witnessed the assault, telling the officer that he had seen the assailants using planks of wood to beat the victim. Showing Paul a police baton, Paul realised that the assailants had been using both wood and batons in the assault.
- 2.38** The officer told Paul that he had witnessed a squad of unassigned police officers, trouble shooters who would 'go out and do stuff'. Paul later learned that this group was known as the 'hoodlum squad'. Paul was informed that the reports the squad gave from that night were that they were chasing a suspect from a stabbing in Moore Park Road but that no one was apprehended.
- 2.39** The senior police officer told Paul that, there being no victim, charges could not be laid against the squad. In any case, the officer said that the squad would be disbanded and reassigned.

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Evidence, Mr Duncan McNab, Author and Former NSW Police Force Detective, 9 November 2018;  
Evidence, Mr Nicholas Stewart, Partner, Dowson Turco Lawyers, 9 November 2018.

- 2.40** Paul left the meeting satisfied that he had been heard, no less by a senior police officer. As far as Paul was concerned, that was the end of the matter, even if he was left wondering in the years to come what had happened to the victim.
- 2.41** Then in 2013, having read *Sydney Morning Herald* articles about gay hate crimes, Paul reflected on the assault he had witnessed and began to think whether what he had seen that night was a murder. He contacted the journalist of those articles and told him his story, which was later published.
- 2.42** Alan told the committee that Paul's story had prompted him to wonder whether the police never took his statement because they had already known who the assailants were.
- 2.43** After Alan identified himself as the victim in Paul's story, Alan's account of his assault was published in the *Sydney Morning Herald* soon after.
- 2.44** Following the article, both Alan and Paul were contacted to come in to Surry Hills Police Station to make an official statement. Their interviews were conducted separately on different dates by different detectives.
- 2.45** Alan and Paul later learned that the detectives interviewing them had both told them that it was not clear that the two incidents were linked and that the events they had described were not necessarily the same. This left Paul with the impression that the police had already formed a judgement about the case which would colour their investigation.
- 2.46** During Alan's interview, the detective told him that she had read a police report of the incident – a report Alan was unaware of – which said he was attacked by a group of 'skinheads'. She asked for Alan's diary to inform her investigations and said it would be returned at a later date.
- 2.47** Three months later, the detective called Alan to inform him that the investigation yielded nothing and asked him to collect his diary. When Alan picked it up some time later, he asked about the outcome of the investigation to which no information or assistance was offered to him in the absence of the investigating detective. Alan told the committee that he left the police station in 'disgust' at what he perceived to be their lack of effort and indifference.
- 2.48** Both Alan and Paul submitted separate Freedom of Information requests to find out more about the investigation. They found that the investigation included their statements, a street map of the area, a heavily redacted note from a milkman and the police report from the night of the assault. The police report contained incorrect information about the events of that night and detailed information Alan did not recall giving, such as his address, but assumed was taken from his wallet given his state at the time. There were no interviews with any police officers – uniformed or otherwise – on duty at the time, including the officer who admitted Alan to hospital. There was also no record of Paul's meeting at the College Street Police Centre. For Paul, the investigation was disappointingly limited and 'lacked rigour', with 'more questions unanswered than answered'. He felt as though the police just did not want to investigate the matter.
- 2.49** Ultimately, the investigation concluded that there was no correlation between Alan's assault and the assault witnessed by Paul.

- 2.50** While some, such as former NSW Police Force Detective Mr Duncan McNab and Dowson Turco Lawyers Partner Mr Nicholas Stewart, have stridently disagreed with this finding, in evidence to the committee, Assistant Commissioner Crandell, NSW Police Force, maintained that the two incidents were unrelated.
- 2.51** Assistant Commissioner Crandell said that the fact that Alan was savagely assaulted 'is not in doubt', nor is the fact that the police 'let him down in relation to the investigation' at the time of the attack. He reported that the only witness at the time, a milkman, was never interviewed, there was no investigation and the report was simply filed.
- 2.52** However, upon a 'thorough investigation through one of my detective inspectors', Assistant Commissioner Crandell remains unconvinced that the event described by Paul was the assault on Alan. According to Assistant Commissioner Crandell, he could not establish a link between the police and Alan's attack based on 'a witness who has come forward 30 years later' – he believes Paul witnessed another incident, potentially on another night.

### **Case study 3 – Mr Ross Warren<sup>95</sup>**

- 2.53** Mr Ross Warren was a television presenter in Wollongong who disappeared in July 1989. His body has never been recovered.
- 2.54** Ross was last seen by a friend on Oxford Street on 22 July 1989. When he failed to meet with friends that weekend, they became concerned and reported him missing to Paddington Police Station.
- 2.55** Ross' friends began their own search, later finding Ross' car parked in a street besides Marks Park, a popular gay beat in the Bondi/Tamarama area. Searching further, they found Ross' keys in a rock honeycomb at the bottom of the cliff. They took his keys to the police who subsequently searched his car and found his wallet.
- 2.56** The committee received evidence that within a week of Ross' disappearance, without his body being found or his disappearance explained, the detective sergeant investigating Ross' case chose to 'sideline' the investigation, concluding that Ross had likely fallen or slipped into the ocean given the 'treacherous' rock formation in which his keys were found.
- 2.57** Ross' suspected death was never reported to the Coroner.
- 2.58** In 2001, former NSW Police Force Detective Sergeant, Mr Steve Page, was handed correspondence from Ross' mother, Mrs Kay Warren, asking if an investigation was being conducted into her son's disappearance. Over the years she had repeatedly written to various areas of the NSW Police Force asking for assistance, however, no action had been taken despite being told otherwise.
- 2.59** Mr Page sought to pass the case on to the original officers involved, however, when he found the police record documenting the incident, he noticed that it had been written in such a way to

<sup>95</sup> Case study 3 has been drawn from Evidence, Mr Steve Page, Former NSW Police Force Detective Sergeant, 28 November 2018; NSW Coroner's Court, *Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini: Findings and Recommendations*.

suggest the entry was made after the fact, ‘almost [like] a response to the [media] attention it was getting back in that era’.

- 2.60** Indeed, the record showed that the entry was made by a detective sergeant, with several other police officers nominated as assisting him with the investigation. However, when Mr Page approached the officers, they had no knowledge of the matter whatsoever.
- 2.61** In 2005, a coronial inquest was held into Ross’ suspected death, along with that of Mr John Russell [Case study 4] and Mr Gilles Mattaini [Case study 6]. At the inquest, the detective sergeant in charge of the case at the time gave evidence that he had submitted a brief of evidence to the Coroner, however, there was no record of the brief to be found. There was also no copy of the documents sent to Missing Persons, nor any photographs of Ross’ car, keys or the crime scene. The only document located named two officers who deny any involvement in the case and a third officer who was on leave at the time.
- 2.62** The Coroner subsequently found the police investigation into Ross’ case to be ‘grossly inadequate and shameful’, saying that ‘this state of affairs defies belief’.
- 2.63** While unable to determine the exact cause and manner of Ross’ death, the Coroner ruled the death to be a homicide.

#### **Case study 4 – Mr John Russell<sup>96</sup>**

- 2.64** Mr John Russell was a barman who had plans to leave Bondi and build a home on his father’s farm in Wollombi after receiving a family inheritance. On 23 November 1989, John’s body was found at the bottom of the cliffs at Marks Park, a known gay beat.
- 2.65** Crime scene photographs were taken of John’s body, and human hairs were found on John’s hand which were ‘bagged’ for analysis but later lost and never forensically examined.
- 2.66** While John’s death was investigated, the officer in charge of the case deemed his death to be accidental so it was not pursued as a possible homicide.
- 2.67** The first coronial inquest into John’s death found that he had died by ‘misadventure’ having fallen from the cliff to the rocks below. The Coroner could not establish, however, whether the fall was accidental or otherwise.
- 2.68** In 2001, as part of Operation Taradale, former police detective, Mr Steve Page, was charged with revisiting John’s case. Mr Page had a forensic pathologist review the crime scene photographs, which included a detailed photo of the hair found on John’s hand.
- 2.69** The forensic pathologist later gave evidence to the second coronial inquest into John’s death in 2005 that the hair in the photo did not appear to be consistent with the colouring of John’s hair and, moreover, looked to have been ‘tugged out’ from another person.

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<sup>96</sup> Case study 4 has been drawn from Evidence, Mr Steve Page, Former NSW Police Force Detective Sergeant, 28 November 2018; Submission 14, Mr Gary Wotherspoon; NSW Coroner’s Court, *Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini: Findings and Recommendations*.

- 2.70** The forensic pathologist also found the positioning of John’s body to be ‘unusual’ as most people found at the bottom of a cliff have their head towards the ocean and their feet towards the cliff, while John was found with his head towards the cliff and his feet towards the ocean. The forensic pathologist concluded that it was likely John had rotated or twisted while falling, suggesting perhaps that he had been deliberately thrown off the cliff.
- 2.71** The Coroner found that the original investigation into John’s death was ‘limited’, ‘inadequate’ and ‘naïve’, and did not take into account these and other features that might suggest foul play. Furthermore, there was no consideration of any possible links between the disappearance of Mr Ross Warren [Case study 3] months earlier and John’s death, despite both incidents taking place at Marks Park, known for gay bashings given its popularity as a gay beat. Indeed, the coronial inquest heard evidence from dozens of witnesses, including perpetrators who spoke of brutal attacks carried out on gay men in Marks Park and the Bondi/Tamarama area.
- 2.72** The Coroner concluded that John was thrown off the cliff at Marks Park and ruled his death as a homicide.
- 2.73** It later became public after Operation Taradale that, in the month following John’s body being found, Mr David McMahon [Case study 6] was assaulted in Marks Park and dragged to a cliff by the assailants. David reported hearing one of the assailants saying to throw him off the cliff ‘where we threw the other one’. David had been taken to the top of the cliff where John’s body was thrown.

### **Other cases of suspected gay and transgender hate crime**

- 2.74** A number of other cases of suspected gay and transgender hate crime from the 1980s and 1990s were also drawn to the attention of the committee. Revealing similar circumstances to those of Mr Johnson, Mr Rosendale, Mr Warren and Mr Russell, these cases are briefly outlined below.

#### ***Case study 5 – Mr Gilles Mattaini<sup>97</sup>***

- 2.75** Mr Gilles Mattaini was a French man living in Bondi. Gilles was last seen walking on the Marks Park track in September 1985.
- 2.76** Concerned that Gilles had not presented to work, two of his friends began to search for him but to no avail. One of his friends believed that the other friend had reported Gilles missing to Paddington Police Station but no report could be found. There was no police investigation at the time.
- 2.77** Gilles’ case came to the attention of former detective Mr Steve Page during Operation Taradale. While initially being told that he could not pursue the case and that it would be transferred to the Eastern Suburbs Local Area Command, Mr Page insisted on taking the investigation back and had the case included in the Coroner’s brief of evidence.
- 2.78** In 2005, a coronial inquest was held into the suspected death of Gilles, along with the death of Mr John Russell [Case study 4] and suspected death of Mr Ross Warren [Case study 3].

<sup>97</sup> Case study 5 has been drawn from Evidence, Mr Steve Page, Former NSW Police Force Detective Sergeant, 28 November 2018; NSW Coroner’s Court, *Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini: Findings and Recommendations*.

- 2.79** Having considered both John and Ross' cases and evidence of brutal attacks on gay men at Marks Park, the Coroner concluded that Gilles likely met his death by being thrown off the cliff, like John and potentially Ross.
- 2.80** The Coroner ruled that Gilles had died, finding the cause and manner of his death to be 'undetermined'. While Gilles' mother believed it was possible her son had committed suicide, the Coroner found no evidence to support a finding of suicide.

***Case study 6 – Mr David McMahon<sup>98</sup>***

- 2.81** In December 1989, Mr David McMahon went for a jog on the Marks Park track between Bondi and Tamarama. While jogging, he came across a group of young people who asked him for a cigarette. He told them he did not have one and continued jogging, deciding to go home a different way.
- 2.82** Despite going home a different route, David was again approached by the group who began violently beating him and threatening to rape him with a stick. David noticed in particular a girl in the group wearing a green bikini who was inciting most of the action.
- 2.83** David lost consciousness and had been dragged a fair distance when he came to. Finding himself at the edge of a cliff, David heard one of the assailants telling the others to throw him off over 'where we threw the other one'. Realising he was about to be thrown, David found his footing and ran. With the group following him, David yelled out for help as he was running through the park but was met with the response from a nearby resident: 'We don't help poofers'.
- 2.84** David eventually made it home and immediately called Bondi Police Station to report the assault. Two police officers came to David's unit. They asked if he wanted to be taken to the hospital. David remembers the police officers laughing at him when he said his friend would take him.
- 2.85** David did not hear from the police again until after Christmas when he was asked to present at Bondi Police Station to make a statement. David went to the police station in January 1990. He told the committee that when he arrived, he was put in a holding cell and locked in there for almost three hours before being let out to make his statement. Although the interviewing officer was kind and help put David at ease, David thought he would be arrested for being gay and did not want to be there anymore. He was 'scared' and 'petrified', and felt 'intimidated'. To this day, David still does not know why he was put in a cell and made to feel like he had done something wrong when he was the victim.
- 2.86** Having not heard from the police for a few weeks after, his next contact with them was when they arrived at his work to inform him that he should have been in court. David said that he was never served a summons or told where or why he was required to attend.
- 2.87** Many years later, David was approached by former NSW Police Force Detective Sergeant, Mr Steve Page, during Operation Taradale. Reflecting on his contribution to the investigation, David said 'that was the first time ever that I was treated like I was the victim in this'. During

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<sup>98</sup> Case study 6 has been drawn from Submission 26, Mr David McMahon; Evidence, Mr David McMahon, 27 November 2018; Evidence, Mr Rick Fenely, Journalist, 27 November 2018;

Mr Page's investigation, David was able to identify two suspects from his assault – the same two he had identified in the initial investigation following his attack.

- 2.88** It was later uncovered that three days apart from David's assault, Mr Alan Boxsell was attacked. Both David and Alan identified the same two suspects, one of whom became part of the Tamarama Three later convicted of the murder of Mr Kritchikorn Rattanjurathaporn [Case study 8], and the other who went on to lead a Bondi gang known for gay bashings and whose name was frequently raised throughout *Taradale*.
- 2.89** While David's evidence to the coronial inquest following Operation Taradale was initially suppressed, the suppression order was later lifted, allowing David to share his experience through journalist, Mr Rick Fenely. David told the committee that the publication of his story 'was one of the most positive steps', helping him to 'step up' after the bashing that had left him so deeply traumatised.

***Case study 7 – Mr William Rudney / Mr William Rooney<sup>99</sup>***

- 2.90** Among the unsolved cases of suspected gay hate crime identified by the NSW Police Force is that of Mr William Rudney. It was deemed unsolved because no coronial records could be found under that name.
- 2.91** However, it was later discovered that there were no coronial records because the victim's name was in fact Mr William 'Bill' *Rooney*. The police had searched for the wrong name and by doing so had dismissed Bill's case.
- 2.92** Bill was found dead in Wollongong's central business district in February 1986.
- 2.93** Former NSW Police Force Detective, Mr Duncan McNab told the committee that, at the time, the investigating officer suspected foul play but was told by his superiors that it was an accidental death. They concluded that Bill had died from a drunken fall. The officer was told not to pursue the case.
- 2.94** Within weeks, there was a spate of attacks on young men. The men were violently assaulted and sexually abused, often at night in similar areas. After the attack of a 12<sup>th</sup> victim, a suspect was charged with 29 offences against all 12 men, but many charges were eventually dropped and the prosecution was narrowed to three victims. The suspect was convicted and served his sentence. However, upon release, he reoffended and went back to jail. In 2011, he was released once more.
- 2.95** Mr McNab advised that, while some within Wollongong Police believed Bill may have been murdered by this same suspect, he was never charged over Bill's death.

<sup>99</sup> Case study 7 has been drawn from Evidence, Mr Douglas McNab, Author and Former NSW Police Force Detective, 9 November 2018; SBS The Gay-Hate Decades <<http://www.sbs.com.au/gayhatedecades/>>; Please note, Submission 35, Australian Lawyers for Human Rights suggested that the real name of the victim is 'William Rudney' and that the police had incorrectly searched for 'William Rooney'.



***Case study 8 – Mr Kritchikorn Rattanajurathaporn<sup>100</sup>***

- 2.96** In July 1990, Mr Kritchikorn Rattanajurathaporn, a Thai man, was assaulted in Marks Park, a popular gay beat, by three teenage boys later known as the Tamarama Three. As a result of the assault, Kritchikorn was found dead at the bottom of the cliff.
- 2.97** The Tamarama Three were charged and convicted of Kritchikorn's murder.

***Case study 9 – Mr Kenneth Brennan<sup>101</sup>***

- 2.98** Mr Kenneth Brennan was a senior teacher at a large Sydney public school. In June 1995, Kenneth was found murdered in his ransacked apartment. Kenneth had been stabbed multiple times in what appeared to be a frenzied attack. There was no evidence of forced entry into the apartment, suggesting that Kenneth had let the assailant in.
- 2.99** Without any family in Sydney, a colleague was called to identify Kenneth's body. The colleague had witnessed the state of the apartment in which Kenneth was found and had liaised with police in the initial stages of the investigation.
- 2.100** Kenneth's colleague felt that the police were 'genuinely unhelpful' and seemed to 'not want to know anything' about Kenneth's death. The police had given him the impression that because it appeared that Kenneth had invited someone into his apartment, that he was responsible for his own death.
- 2.101** Describing it as a 'horrendous crime', Kenneth's colleague believes Kenneth was murdered because he was gay. The police, however, are reported to have maintained that 'there is no evidence this crime was a gay-hate crime'.
- 2.102** No arrests have been made in connection with Kenneth's death.

**The nature of historic gay and transgender hate crimes**

- 2.103** The cases discussed in this chapter are only some of many suspected gay and transgender hate crimes of that period. Indeed, the recent ACON and Strike Force Parabell reports discussed in chapter 1, document up to 88 cases of suspected gay and transgender-related deaths.
- 2.104** Together, these cases paint a picture of the collective circumstances of these deliberate and brutal crimes. For example, they reveal the likely locations of these attacks, the type of people who perpetrated them and why, and the weapons and methods of violence used.

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<sup>100</sup> Case study 8 has been drawn from Evidence, Mr Steve Page, Former NSW Police Force Detective Sergeant, 28 November 2018.

<sup>101</sup> Case study 9 has been drawn from Submission 36, Name suppressed; SBS The Gay-Hate Decades <<http://www.sbs.com.au/gayhatedecades/>>

### Where were these crimes being committed?

- 2.105** From what is known of these historic cases, victims were often attacked or murdered in three main spaces: their homes or a private residence, at gay beats, or other gay or social spaces.<sup>102</sup>
- 2.106** By far, the majority of crimes took place in victims' homes or the home of an acquaintance or even the offender.<sup>103</sup> According to ACON, of those crimes that took place in the victim's home, the victim was more likely to have known the offender than if at a beat or other social space.<sup>104</sup>
- 2.107** While a place for men to socialise and often engage in sexual activity, as outlined in chapter 1, gay beats were also 'an ideal setting for violence', ACON advised, as they were isolated from the public view, dark and men could be lured by the promise of sex.<sup>105</sup> Indeed, some of the most highly publicised disappearances and deaths of men, including those considered in this report, were at known gay beats, including Marks Park in the Bondi/Tamarama area.
- 2.108** Beyond gay beats, however, gay hate and transgender crimes also took place in other gay social spaces in areas such as Kings Cross, Darlinghurst and Surry Hills.<sup>106</sup> As Mr Nicolas Parkhill, Chief Executive Officer, ACON, asserted, in that time period, many people were victims of gay bashings, often unreported, who:

... may have just been walking along the street in and around Darlinghurst or Surry Hills, they were not in beats—it might have been lesbian women who were holding hands walking home from the theatre. The level of hate crime that was happening at the time was not just concentrated in and around beats; it was much broader than that.<sup>107</sup>

### Who perpetrated these crimes?

- 2.109** Historic cases of gay and transgender hate crime reveal that attacks and murders were committed by gangs of young men as well as lone assailants.<sup>108</sup> In particular, ACON suggested

<sup>102</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20<sup>th</sup> Century* (2018), p 13; NSW Police Force, *Strike Force Parrabell, Final Report* (2018), p 31.

<sup>103</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20<sup>th</sup> Century* (2018), p 13; NSW Police Force, *Strike Force Parrabell, Final Report* (2018), p 31; Evidence, Mr Michael Atkinson, Program Manager, Safety, Inclusion and Historical Justice, ACON, 9 November 2018, p 5.

<sup>104</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20<sup>th</sup> Century* (2018), p 13.

<sup>105</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20<sup>th</sup> Century* (2018), p 15; see also Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 9 November 2018, p 7.

<sup>106</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20<sup>th</sup> Century* (2018), p 16; Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 9 November 2018, p 7.

<sup>107</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 9 November 2018, p 7.

<sup>108</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20<sup>th</sup> Century* (2018), p 13; NSW Police Force, *Strike Force Parrabell, Final Report* (2018), p 30.

that gangs or groups of assailants tended to attack their victims at gay beats or social spaces, while individual assailants would attack their victims in private residences.<sup>109</sup>

- 2.110** According to former NSW Police Detective Sergeant, Mr Steve Page, gangs were often 'fluid' and would move around from beat to beat, sometimes mixing or crossing over in membership.<sup>110</sup> At times, as in the case of Mr David McMahon [Case study 6], gangs would include both males and females. Mr Michael Atkinson, a survivor of gay hate violence, informed the committee that gangs would also often employ elaborate strategies to lure people and distract them, before attacking them.<sup>111</sup>

### *Motive*

- 2.111** A number of motives for these crimes were identified during the inquiry. These include homophobia and transphobia,<sup>112</sup> a peer or pack mentality,<sup>113</sup> HIV/AIDS,<sup>114</sup> robbery,<sup>115</sup> alcohol and drugs,<sup>116</sup> and conflating homosexuality with paedophilia.<sup>117</sup>
- 2.112** Inquiry participants spoke of the often many factors at play when a gay and transgender hate crime is committed and the difficulty in separating motives apart.<sup>118</sup> For example, with reference to his knowledge of known gangs in the Bondi area, Mr Page explained:

... [T]he motives for the gangs were varied. With the Tamarama Three, one of the three was the victim of paedophilia as a younger child. He just could not differentiate between a paedophile male and a gay male. ... [T]he other two from the Tamarama Three were just evil. They enjoyed inflicting pain on people and for them it was a sport ... Predatory gangs would go up and assault victims, looking to get \$10, \$20 or \$30 to buy some alcohol and have a good night out.

...

<sup>109</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20<sup>th</sup> Century* (2018), p 13.

<sup>110</sup> Evidence, Mr Steve Page, Former NSW Police Force Detective Sergeant, 28 November 2018, p 28.

<sup>111</sup> Evidence, Mr Michael Atkinson, Private citizen, 27 November 2018, p 49.

<sup>112</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20<sup>th</sup> Century* (2018), p 16; NSW Police Force, *Strike Force Parrabell, Final Report* (2018), p 37; Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 9 November 2018, p 4.

<sup>113</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20<sup>th</sup> Century* (2018), p 17.

<sup>114</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20<sup>th</sup> Century* (2018), p 18.

<sup>115</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20<sup>th</sup> Century* (2018), p 18; NSW Police Force, *Strike Force Parrabell, Final Report* (2018), p 37; Evidence, Mr Steve Page, Former NSW Police Force Detective Sergeant, 28 November 2018, p 28.

<sup>116</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20<sup>th</sup> Century* (2018), p 18.

<sup>117</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20<sup>th</sup> Century* (2018), p 18; NSW Police Force, *Strike Force Parrabell, Final Report* (2018), p 37; Evidence, Mr Steve Page, Former NSW Police Force Detective Sergeant, 28 November 2018, p 28.

<sup>118</sup> For example, Evidence, Mr Michael Atkinson, Private citizen, 27 November 2018, p 50; Evidence, Mr Steve Page, Former NSW Police Force Detective Sergeant, 28 November 2018, p 28.

... [T]hey were robberies of a class of people that they detested. In my eyes, it was not robbery; it was gay hate crime.

...

I think there were so many factors in it. There is that alpha male piece, where they are territorial and just want to be tough, they do not like gays, and it was an easy earn. There are so many things that were probably involved in those matters.<sup>119</sup>

### How were these crimes committed?

- 2.113** The documented cases of historic gay and transgender hate crime show that they were committed in various ways, often depending on the location of the attack.<sup>120</sup>
- 2.114** For example, when victims were murdered in their homes, ACON described the attacks as 'frenzied', 'vicious' and 'brutal', many with the intent to kill.<sup>121</sup> Mr Atkinson, ACON, explained that these attacks were sometimes in response to a sexual advance to which the assailant reacted by becoming 'disgusted, angry, confused and reacted very strongly [to]'.<sup>122</sup> Victims were often bludgeoned to death with a blunt object from within the home or stabbed to death.<sup>123</sup>
- 2.115** Meanwhile, at gay beats, assailants most often attacked their victims with their fists and feet which were used to punch, suffocate and stomp on their victims. Weapons were also often brought to beats, indicating a level of premeditation.<sup>124</sup> For former NSW Police Gay/Lesbian Client Consultant, Ms Sue Thomson, cliffs themselves were a weapon at the disposal of gay hate assailants,<sup>125</sup> as shown to be used in the cases of Mr John Russell and Mr Scott Johnson, among others considered in this report.

### Unreported gay and transgender hate crimes

- 2.116** While the cases discussed in this chapter and examined more broadly in other reports reveal, to some extent, the nature of historic gay and transgender hate crimes, there is still much that is unknown because of the many crimes that were never reported to the police. Indeed, the number of suspected gay and transgender hate crimes committed, particularly in the years following the decriminalisation of homosexuality, is widely speculated, with many inquiry participants observing that the number is much greater than the 88 cases examined by ACON

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<sup>119</sup> Evidence, Mr Steve Page, Former NSW Police Force Detective Sergeant, 28 November 2018, p 28.

<sup>120</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20<sup>th</sup> Century* (2018), p 13.

<sup>121</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20<sup>th</sup> Century* (2018), p 14.

<sup>122</sup> Evidence, Mr Michael Atkinson, Program Manager, Safety, Inclusion and Historical Justice, ACON, 9 November 2018, p 5.

<sup>123</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20<sup>th</sup> Century* (2018), p 14.

<sup>124</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20<sup>th</sup> Century* (2018), p 15.

<sup>125</sup> Submission 32, Ms Sue Thomson, p 3.

and Strike Force Parabell.<sup>126</sup> ACON themselves asserted that the list of cases is 'by no means comprehensive',<sup>127</sup> while Assistant Commissioner Crandell, NSW Police Force acknowledged that many reports of gay bashings were never made to the police for fear of them.<sup>128</sup>

- 2.117** According to Professor Willem de Lint and Associate Professor Derek Dalton, Flinders University, the impact of a 'prevailing social hostility' to homosexuality meant that, following its decriminalisation in 1984, a deep-seated fear and reluctance among victims to report hate crimes had set in.<sup>129</sup> As Mr Parkhill, ACON, explained, 'what existed at the time and what still exists is a concern at a community level about reporting to police'.<sup>130</sup>
- 2.118** For the NSW Beat Project, this concern and reluctance was based on a range of fears – of reprisal or intimidation by police, often based on previous negative experiences with officers; of retribution from vigilante residents and bashers; or a fear that police officers would give bashers personal information.<sup>131</sup>
- 2.119** Mr Michael Atkinson reflected upon his experience as a victim of a gay hate attack in Lismore in 1995. He did not report the incident to police 'based on having heard other people's negative experiences when reporting incidents to police ... [and] having grown up witnessing and experiencing pervasive homophobia and discrimination'.<sup>132</sup>
- 2.120** Concerns about reporting were also steeped in the fear that a victim's case would be poorly investigated, if at all. For example, Mr Nicholas Stewart, Partner, Dowson Turco Lawyers, suggested there was reluctance because 'so many crimes have gone uninvestigated or are not investigated properly', leaving victims to question what good it would do to report the crime at all.<sup>133</sup>
- 2.121** Mr Larry Galbraith, former editor and journalist, expressed a similar view, arguing that efforts to encourage victims to report were often 'undermined by the police themselves', which in turn impacted on the willingness of victims to report crimes.<sup>134</sup> Mr Galbraith recounted a sentiment expressed to him, that going to the police was like a 'lucky dip – except it was a lucky dip that too many gay men were not prepared to risk'.<sup>135</sup> He explained: 'For many gay men, it was sheer luck if the cop you saw took your matter seriously and was willing to do something about it'.<sup>136</sup>
- 2.122** Ultimately, there was a deep mistrust of the police and the criminal justice system more broadly. As Professor de Lint and Associate Professor Dalton described, there was a 'reciprocal climate

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<sup>126</sup> Please see Chapter 3, paragraph 3.112 for more detail.

<sup>127</sup> ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20<sup>th</sup> Century* (2018), p 4.

<sup>128</sup> Evidence, Assistant Commissioner Anthony Crandell, Police Education and Training, NSW Police Force, 9 November 2018, p 22.

<sup>129</sup> Submission 12, Flinders University, p 6.

<sup>130</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 9 November 2018, p 4.

<sup>131</sup> Submission 33, NSW Beat Project, p 3.

<sup>132</sup> Submission 5, Mr Michael Atkinson, p 1.

<sup>133</sup> Evidence, Mr Nicholas Stewart, Partner, Dowson Turco Lawyers, 9 November 2018, p 43.

<sup>134</sup> Evidence, Mr Larry Galbraith, Former Editor, *Sydney Star Observer*, 9 November 2018, p 46.

<sup>135</sup> Evidence, Mr Larry Galbraith, Former Editor, *Sydney Star Observer*, 9 November 2018, p 46.

<sup>136</sup> Evidence, Mr Larry Galbraith, Former Editor, *Sydney Star Observer*, 9 November 2018, p 46.

of dislike and suspicion between the police and the LGBTIQ community', such that it worked to 'thwart the achievement of justice in a range of cases from the trivial to the most serious'.<sup>137</sup>

- 2.123** This mistrust was acknowledged by Assistant Commissioner Crandell, who spoke of the 'relationship with the police force in those times' which would have prevented people from reporting. He recognised that 'without that trust and confidence in the police, you will not get reports'.<sup>138</sup>
- 2.124** According to Mr Parkhill, concerns around reporting not only captured a fear of the police but also a fear of what that reporting might trigger for victims – would they be outing themselves to the wider public? What would it do to their career? How will it impact on their families, particularly those who were married men at the time? Mr Parkhill stated: 'There is a whole set of social issues that play out around fear of reporting'.<sup>139</sup>
- 2.125** Indeed, the committee heard that victims often carried trauma, shame and self-blame from an attack,<sup>140</sup> insofar that many would choose not to report the crime.<sup>141</sup> Mr Alan Rosendale, survivor of gay hate violence, discussed the trauma of being beaten and how in his case it impacted on him so deeply he had developed stress-related conditions, including alopecia and psoriasis.<sup>142</sup> He recognised that the shame of such an experience could naturally deter someone from reporting a crime.<sup>143</sup>
- 2.126** For many, however, the decision not to report simply marked an act of 'moving on and getting on with it'. Mr Stewart, Dowson Turco Lawyers, explained that the experiences of the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) communities over many years has seen many come to accept that to be bashed and targeted was a 'fact of life', and that rather than report a crime, they thought best to move on: 'I think we are a resilient group because of what we have been through and generally it is just like a fact of life that sometimes we are targeted and it is time to move on'.<sup>144</sup>

<sup>137</sup> Submission 12, Flinders University, p 6.

<sup>138</sup> Evidence, Assistant Commissioner Anthony Crandell, Police Education and Training, NSW Police Force, 9 November 2018, p 22.

<sup>139</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 9 November 2018, p 4.

<sup>140</sup> For example, Evidence, Mr Michael Atkinson, Private citizen, 27 November 2018, p 48.

<sup>141</sup> For example, Evidence, Mr Nicholas Stewart, Partner, Dowson Turco Lawyers, 9 November 2018, p 46.

<sup>142</sup> Evidence, Mr Alan Rosendale, 27 November 2018, p 22.

<sup>143</sup> Evidence, Mr Alan Rosendale, 27 November 2018, p 22.

<sup>144</sup> Evidence, Mr Nicholas Stewart, Partner, Dowson Turco Lawyers, 9 November 2018, p 43.



## Chapter 3 Seeking justice from the NSW Police Force

This chapter examines the culture and attitudes of police towards the gay and transgender community in the period 1970-2010. It then considers the police investigations of cases identified in Operation Tarradale. This is followed by a discussion of the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) community's response to Strike Force Parrabell and calls for a reinvestigation of the 88 cases of suspicious deaths in the period 1976 to 2000. The chapter then considers improvements to training of police officers and the role of gay and lesbian liaison officers. The chapter concludes with a discussion of the COPS database and other data collection methods used to track and identify bias-motivated crimes.

### Police culture and attitudes towards the gay and transgender community between 1970 and 2010

- 3.1 Many inquiry participants spoke about police culture and police attitudes towards the LGBTIQ community between 1970 and 2010. A key theme raised was the homophobic culture and attitudes of the police and how this negatively impacted upon their relationship with the community and, in particular their responsiveness to victims of crime.
- 3.2 It is important to recognise that the NSW Police Force as with many other organisations in our society is the subject of constant cultural and attitudinal change. It is thus not appropriate to consider the police culture and attitudes towards the LGBTIQ community in 1970 and suggest that that culture and those attitudes were the same in 2010. Indeed, the evidence received by the committee demonstrates that there were significant steps taken by the NSW Police Force over this period of time to address earlier shortcomings.
- 3.3 The following discussion centres primarily around the experience of gay men, as their experience was the focus of much of the evidence received in this inquiry. However, the committee heard that these experiences were shared by other groups within the LGBTIQ community, particularly lesbian women and trans people. For example, Ms Sue Thompson, former NSW Police Gay/Lesbian Client Consultant, told the committee that the 1995 *Out of the Blue Report* found that:
- Lesbians were at least 6 times more likely than other Sydney women to experience assault in a 12 month period
  - 52 per cent of lesbians experienced a high level of verbal abuse
  - 72 per cent of lesbians had modified their behaviour (hide sexuality, avoid locations, use streetwise or defensive strategies).<sup>145</sup>

### Police investigations of suspected gay hate crimes

- 3.4 Throughout the inquiry the committee heard that police investigations into a number of suspected gay hate crimes during the 1980s and 1990s were inadequate, ineffective and in some cases absent almost entirely, with victims and loved ones never receiving adequate justice.

<sup>145</sup> Submission 32, Ms Sue Thompson, p 38.



- 3.5** Professor Stephen Tomsen, Professor of Criminology and Criminal Justice, School of Social Science and Psychology, University of Western Sydney noted that 'there have been some really lax investigations', for example:

the lost evidence with the John Russell case, the hair that went missing that nobody could find, and then this bizarre paying an expert to actually look at old photographs of the hair and to write a report on what the grainy old pictures of the hair looked like and putting that in the evidence for the Scott Johnson case.<sup>146</sup>

- 3.6** Associate Professor Shirleene Robinson, Honorary Research Fellow, Discipline of Modern History and Politics, Macquarie University observed that historical cases, when reported, were 'perhaps [not] ... labelled as hate-motivated crimes and investigated properly in that particular way'.<sup>147</sup>

- 3.7** The NSW Beat Project gave evidence that when beat users did 'report homophobic violence to police ... officers failed to adequately investigate and/or record the incidents in the COPS system, and would treat these victims of crime with considerable disrespect'.<sup>148</sup>

- 3.8** A number of cases identified in the NSW Police Force Operation Taradale were not investigated thoroughly. The following section refers to the case summaries outlined in chapter 2 to illustrate the broader themes that were at play when police investigated these cases and the response provided by the police to victims and loved ones.

- 3.9** It is important to note that the circumstances and details around the investigations described below are only a summary. Those wishing to familiarise themselves more extensively with the matters, should examine primary source documents that may be found in the footnotes and elsewhere.

#### *Investigation into the case of Mr Ross Warren*

- 3.10** In the case of Mr Ross Warren, his friends, after reporting him missing to the police, conducted their own searches as a result of the unsatisfactory response from Paddington Police Station.<sup>149</sup>

- 3.11** Mr Steve Page, former NSW Police Detective Sergeant told the committee that Mr Warren's friends

drove around. They attended that beat. They found Ross's car. They did more of a search and they found Ross's keys in what can best be described as honeycombing in the sandstone at the bottom of the cliffs there ... That was then escalated back up to police. Ross was well and truly missing and really we do not know much more about what happened to him to this day.<sup>150</sup>

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<sup>146</sup> Evidence, Professor Stephen Tomsen, Professor of Criminology and Criminal Justice, School of Social Science and Psychology, University of Western Sydney, 27 November 2018, p 41.

<sup>147</sup> Evidence, Associate Professor Shirleene Robinson, Honorary Research Fellow, Discipline of Modern History and Politics, Macquarie University, 28 November 2018, p 20.

<sup>148</sup> Submission 33, NSW Beat Project, p 3.

<sup>149</sup> Evidence, Mr Steve Page, Former NSW Police Detective Sergeant, 28 November 2018, p 26.

<sup>150</sup> Evidence, Mr Steve Page, Former NSW Police Detective Sergeant, 28 November 2018, pp 26-27.

- 3.12** Mr Nicholas Stewart, Partner, Dowson Turco Lawyers, spoke of the subsequent letters Mr Warren's mother wrote to the police force on numerous occasions 'pleading for someone to investigate her son's disappearance' and this was ignored for so long.<sup>151</sup>
- 3.13** It was not until 12 years later in 2001 that Mrs Warren's letters were finally noticed, when Mr Page received the file on his desk. Mr Page described his experience of reading those letters: 'I could feel the emotion in the letter that Mrs Warren had sent to us ... asking for assistance to help her with closure with that matter'.<sup>152</sup>
- 3.14** In concluding *Operation Taradale* in 2005, Her Honour Deputy State Coroner Jacqueline Milledge deemed the investigation by police officers of the disappearance of Mr Warren as "grossly inadequate and shameful" and concluded Mr Warren was murdered.<sup>153</sup>

#### ***Investigation into the case of Mr John Russell***

- 3.15** In the case of Mr John Russell's death, Mr Page argued that this case was 'left with probably the most junior member of the detective's office at Bondi, so it certainly was not investigated as a homicide'.<sup>154</sup>
- 3.16** Mr Page described how in the crime scene photographs of Mr Russell it was apparent that there was 'hair adhering to his hand. I thought, "That's great. There's a potential for solvability here with that." However, Mr Page learnt that this piece of evidence 'was lost and had been lost the best part of a decade previously'.<sup>155</sup>
- 3.17** Mr Stewart questioned how and why the sample of hair had been lost considering that it could have 'led to the conviction of the person who murdered him'. He expressed the view that if this was 'not through homophobic bias, it is through incompetence' which should also be addressed.<sup>156</sup>
- 3.18** In 2005, Her Honour Deputy State Coroner Milledge described the investigation of Mr Russell's death as 'lacklustre'<sup>157</sup> and concluded that he had been murdered by 'gay-hate assailants at a gay beat'.<sup>158</sup>

#### ***Investigation into the case of Mr Scott Johnson***

- 3.19** In the case of Mr Scott Johnson, no police investigation took place as outlined by Mr Johnson's brother, Mr Steve Johnson:

<sup>151</sup> Evidence, Mr Nicholas Stewart, Partner, Dowson Turco Lawyers, 9 November 2018, p 44.

<sup>152</sup> Evidence, Mr Steve Page, Former NSW Police Detective Sergeant, 28 November 2018, p 26.

<sup>153</sup> NSW Coroner's Court, *Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini: Findings and Recommendations*, p 6.

<sup>154</sup> Evidence, Mr Steve Page, Former NSW Police Detective Sergeant, 28 November 2018, p 27.

<sup>155</sup> Evidence, Mr Steve Page, Former NSW Police Detective Sergeant, 28 November 2018, p 27.

<sup>156</sup> Evidence, Mr Nicholas Stewart, Partner, Dowson Turco Lawyers, 9 November 2018, p 44.

<sup>157</sup> NSW Coroner's Court, *Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini: Findings and Recommendations*, p 11.

<sup>158</sup> Evidence, Mr Steve Johnson, Brother of Scott Johnson, 27 November 2018, p 2; see also NSW Coroner's Court, *Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini: Findings and Recommendations*, p 14.

Within hours of finding Scott's body, the New South Wales Police Force (NSWPF) concluded that Scott had committed suicide. Within 24 hours, the file containing evidence taken from the scene was marked: 'No further action.' The day after Scott's death, a statement was issued by the NSWPF informing the press that there were 'no suspicious circumstances' surrounding Scott's death.<sup>159</sup>

**3.20** Mr Steve Johnson explained the poor procedures that were followed by police upon the discovery of Scott's body:

the police officers attending the scene all held the rank of Constable ... no detective bothered to investigate the scene ... No forensic team visited the crime scene, and thus, no fingerprints from Scott's belongings were recovered and no pictures of the crime scene were taken at the location from which Scott fell. No cliff top photographs of Scott's clothes were taken as they existed in place, thus forfeiting key information such as the appearance of Scott's clothes and their position in relation to the cliff's edge. Instead, the crime scene was photographed from a hovering helicopter, and Scott's clothing was rearranged and moved to a nearby car park to be photographed.<sup>160</sup>

**3.21** As a result of the highly inadequate police investigation of Scott's death, the Johnson family, through 'extensive lobbying and privately-funded investigations'<sup>161</sup> over nearly three decades, have tried to find out what really happened to Scott.<sup>162</sup>

**3.22** In November 2017, the NSW Coroner found that 'Mr Johnson fell from the cliff top as a result of actual or threatened violence by unidentified persons who attacked him because they perceived him to be homosexual'. Despite this finding, Mr McNab claimed there was still a resistance by the NSW Police to investigating the case as demonstrated by the behaviour of a senior officer towards Steve Johnson and their refusal to accept the Coroner's finding.<sup>163</sup>

**3.23** Mr McNab commented that anecdotally there was evidence of the NSW Police's resistance to accepting that "[i]t probably was a murder and we mucked it up back in 1988. We declared it a suicide." They are clinging to that'.<sup>164</sup>

**3.24** According to Mr Steve Johnson, the NSW Police Force have, during this 30 year period, treated the Johnson family as 'adversaries'; have 'resisted working together with the ... family to find the truth'; and 'refused to objectively consider evidence amassed by the family'.<sup>165</sup>

**3.25** Mr Steve Johnson told the committee that 'police resistance to appropriately investigating crimes against gay victims is not just a relic of the past; it is current'. This view was based on his lengthy experiences in dealing with the NSW Police Force regarding the death of his brother. While Mr Johnson acknowledged the goodwill demonstrated by Assistant Commissioner

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<sup>159</sup> Submission 29, Mr Steve Johnson, pp 2-3.

<sup>160</sup> Submission 29, Mr Steve Johnson, p 5.

<sup>161</sup> Submission 24, NSW Gay and Lesbian Rights Lobby, p 6.

<sup>162</sup> Submission 29, Mr Steve Johnson, p 3.

<sup>163</sup> Submission 4, Mr Duncan McNab, p 1.

<sup>164</sup> Evidence, Mr Duncan McNab, Author and Former NSW Police Force Detective, 9 November 2018, p 54.

<sup>165</sup> Submission 29, Mr Steve Johnson, p 9.

Anthony Crandell, Police Education and Training, NSW Police Force, he noted that the NSW Police Force as a whole had not yet proven it had changed.<sup>166</sup>

- 3.26** Mr Steve Johnson advised that throughout this ordeal the family 'has received significant support, privately and publicly, from other families who have lost loved ones and who suspect that their relatives and significant others were the victims of gay hate crimes'. Further, many of these families 'have looked to Scott Johnson's case as shining a light on systemic problems and hope that Scott's case can bring attention to their cases as well'.<sup>167</sup>
- 3.27** On 9 December 2018, NSW Police Commissioner Mick Fuller announced that 'a \$1 million reward and a "fresh eyes" police investigation' would commence into the death of Scott Johnson.<sup>168</sup>
- 3.28** As noted in Chapter 2, to date, the NSW Police Force has spent a total of \$878,363.79 on legal costs relating to the Johnson coronial inquest.<sup>169</sup>

### *Investigation into the case of Mr Alan Rosendale*

- 3.29** In the case of Mr Alan Rosendale, no formal interviews were conducted at the time of the assault other than the initial police report in 1989 and no assailants were ever charged.<sup>170</sup>
- 3.30** It was not until 2013 that NSW Police finally took statements from Mr Rosendale and Mr Paul Simes, who allegedly witnessed the assault, about the incident and investigated if there was a link between the accounts of Mr Rosendale and Mr Simes.
- 3.31** Both Mr Rosendale and Mr Simes advised the committee that during their separate police interviews, the detectives had stated at the outset 'that there was no evidence to link our separate statements and as such the events we described were not necessarily the same'.<sup>171</sup>
- 3.32** Following this re-investigation, the police concluded that the incidents described by Mr Rosendale and Mr Simes were two separate events.<sup>172</sup> In an attempt to find out more about the police investigation into the matter, Mr Rosendale and Mr Simes made a Freedom of Information request to the NSW Police Force. However, this produced limited further information. As Mr Rosendale described: 'It was my statement, Paul's statement, Refidex of the area, a photocopy of a street directory of the area, the police report from the night and the

<sup>166</sup> Evidence, Mr Steve Johnson, Brother of Scott Johnson, 27 November 2018, p 2.

<sup>167</sup> Submission 29, Mr Steve Johnson, p 11.

<sup>168</sup> NSW Police Force, Death of Scott Johnson, <[https://www.police.nsw.gov.au/can\\_you\\_help\\_us/rewards/1000000\\_reward/death\\_of\\_scott\\_johnson](https://www.police.nsw.gov.au/can_you_help_us/rewards/1000000_reward/death_of_scott_johnson)>; Rick Feneley, '\$1m reward offered for gay-hate killing 30 years after death', *Sydney Morning Herald*, 9 December 2018, <<https://www.smh.com.au/national/nsw/1m-reward-offered-for-gay-hate-killing-30-years-after-death-20181208-p5011p.html>>

<sup>169</sup> Answers to questions on notice, Assistant Commissioner Anthony Crandell, NSW Police Force, 21 January 2019, p 1.

<sup>170</sup> Submission 4, Mr Duncan McNab, p 1.

<sup>171</sup> Submission 31, Mr Paul Simes, p 1; Evidence, Mr Alan Rosendale, 27 November 2018, p 18.

<sup>172</sup> Evidence, Mr Alan Rosendale, 27 November 2018, p 19.

handwritten note from some milkman'.<sup>173</sup> Likewise, Mr Simes stated the Freedom of Information returned

... no interviews with officers who were on duty at the time, including the officer who admitted the victim to hospital, or interviews with plain clothes detectives working in the area on the date of the assault, any attempt to link my recollection of a senior police meeting to any senior officers who may have had connections with the events of 1989 or family members serving in the Darlinghurst area command.<sup>174</sup>

- 3.33** Mr McNab objected to the NSW Police Force handling of the case, and their decision to dismiss the case as mistaken identity or incorrect witness accounts as opposed to a proper investigation. Mr McNab also objected to the assertion that the bashing of Alan Rosendale and the witness account of Paul Simes were not interrelated:

How many people are chased across South Dowling Street in the depth of a May night and have the living bejesus kicked out of them by a group of young men, who then get into a car which may be a police car? It is not a nightly occurrence.<sup>175</sup>

- 3.34** Mr McNab suggested that, in order to determine the truth of Alan's assault, the charge book for that weekend be reviewed to identify if a 'hoodlum patrol' made any arrests and who those officers were. He explained:

There will be the names of each of the coppers who were involved in the arrest. Grab that, have a look, find them and go out and interview them. That is how you might either say, one, we have exhausted all opportunities in Alan's case or, two, we have got three or four suspects so let's go and talk to them. Some may still be serving police. It is 30 years ago, but they are presumably quite young at that stage so let's go and find them. Let's find out who was working that night and you tell us what you were up to that night.<sup>176</sup>

- 3.35** At the suggestion of Mr McNab, the committee requested access to these records. The police provided the committee with access on a confidential basis. Having reviewed the contents of the charge books, the committee is satisfied that these records do not provide evidence that will assist to identify Mr Rosendale's assailants.

- 3.36** According to Assistant Commissioner Crandell, NSW Police Force, the re-investigation of Mr Rosendale's case did not 'link the police officers to the assault on Mr Rosendale'.<sup>177</sup>

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<sup>173</sup> Evidence, Mr Alan Rosendale, 27 November 2018, p 19.

<sup>174</sup> Submission 31, Mr Paul Simes, p 1.

<sup>175</sup> Evidence, Mr Duncan McNab, Author and Former NSW Police Force Detective, 9 November 2018, p 54.

<sup>176</sup> Evidence, Mr Duncan McNab, Author and Former NSW Police Force Detective, 9 November 2018, p 54.

<sup>177</sup> Evidence, Assistant Commissioner Anthony Crandell, Police Education and Training, NSW Police Force, 9 November 2018, p 22.

### *Investigation into the case of Mr David McMahon*

- 3.37** Mr David McMahon reported his assault immediately to Bondi police but no action was taken until a month or so after the assault when he was approached by police offer at his place of work to give a statement at the police station.<sup>178</sup>
- 3.38** Upon arrival at the police station, Mr McMahon was locked in a cell for nearly three hours waiting for an officer to take his statement. After giving his statement Mr McMahon did not hear from the police for several weeks until they again arrived at his place of work claiming he was required in court for reasons still unknown.<sup>179</sup>
- 3.39** Mr McMahon still remains confused as to why he was locked in a police cell when he was a victim of a crime and was asking for help: 'I felt I did something wrong. I could not get that out of my head, and it was making me very upset. I was young and naive and I thought I was going to be arrested for being gay'.<sup>180</sup>

### **Outcomes for historical victims**

- 3.40** When questioned as to whether these historic cases had been set up to fail in terms of the thoroughness of investigation, Professor Tomsen replied that the 'Scott Johnson case and several of the Bondi cliff killings looked like that'.<sup>181</sup> He added that the NSW Police Force is 'very resistant' to the notion of 'just getting on with it and doing thorough investigation' of the historical gay hate crimes.<sup>182</sup>
- 3.41** Professor Tomsen expressed the view that the NSW Police Force should give 'a real commitment to focus more on the investigation of unsolved assaults and homicides, rather than merely debate the total possible number of homicides or the merits of a narrow definition of hate or bias crime that potentially excludes matters from priority'.<sup>183</sup>
- 3.42** To date, the evidence received by the committee has not clarified the number of crimes that remain unreported or require investigation. The committee and secretariat received anecdotal evidence that a large number of victims of historic gay and transgender hate crimes are now mature-aged and have relocated to regional areas. The committee was not able to travel to those areas and meet with victims within the limited timeframe applied to this inquiry.
- 3.43** Also, while inquiry participants spoke anecdotally of the need for support for victims of historic crime, little evidence was received on what this support would involve and who would provide such support.

<sup>178</sup> Evidence, Mr David McMahon, 27 November 2018, p 25.

<sup>179</sup> Evidence, Mr David McMahon, 27 November 2018, p 25.

<sup>180</sup> Evidence, Mr David McMahon, 27 November 2018, p 27.

<sup>181</sup> Evidence, Professor Stephen Tomsen, Professor of Criminology and Criminal Justice, School of Social Science and Psychology, University of Western Sydney, 27 November 2018, p 44.

<sup>182</sup> Evidence, Professor Stephen Tomsen, Professor of Criminology and Criminal Justice, School of Social Science and Psychology, University of Western Sydney, 27 November 2018, p 44.

<sup>183</sup> Evidence, Professor Stephen Tomsen, Professor of Criminology and Criminal Justice, School of Social Science and Psychology, University of Western Sydney, 27 November 2018, p 38.

### *An apology*

- 3.44** A number of inquiry participants called for a public apology from the NSW Parliament and NSW Police Force to LGBTIQ victims and survivors of hate crime. For example, the NSW Gay and Lesbian Rights Lobby argued that 'a formal apology is overdue to victims and families'.<sup>184</sup>
- 3.45** These calls were also made by ACON, Professor Stephen Tomsen, Mr Duncan McNab, former NSW Police Force detective and academics Dr Andy Kaladelfos, Dr Bianca Fileborn, Dr Yorick Smaal, Associate Professor Lisa Featherstone, and Associate Professor Shirleene Robinson.<sup>185</sup>
- 3.46** The NSW Police Force was not asked in their evidence to the inquiry, either written or oral, whether or not they believed an apology should be made to those who have experienced bias-motivated crimes.

### **Committee comment**

- 3.47** This inquiry has afforded the committee the opportunity to reflect on the response to gay and transgender hate crimes between 1970 and 2010 to date. The committee has been deeply moved by the stories it has heard and the strength and resilience demonstrated by victims of gay hate crimes and their families.
- 3.48** The NSW Police Force has stated it is 'acutely aware of and acknowledges without qualification' both the 'elevated, extreme and often brutal' level of violence inflicted on gay men and its role in the marginalisation of the LGBTIQ community 'during the 1970s, 80s and 90s especially'. Indeed, the legacy of this injustice is still being felt by some of the LGBTIQ community today.
- 3.49** The committee believes this is particularly true of the historic cases it has considered during this inquiry, including the cases of Mr Alan Rosendale, Mr Scott Johnson, Mr John Russell and Mr Ross Warren. The committee was greatly disturbed by the evidence it received, not only of the crimes themselves, but of the response it drew from the police at the time.
- 3.50** With this, the committee finds that a prevailing acceptance of and indifference towards violence and hostility directed at gay men principally during the period prior to the mid-1990s impacted on the protection of and delivery of justice to victims of hate crime, including but not limited to Mr Alan Rosendale, Mr Scott Johnson, Mr John Russell and Mr Ross Warren.

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### **Finding 1**

That a prevailing acceptance of and indifference towards violence and hostility directed at gay men principally during the period prior to the mid-1990s impacted on the protection of and delivery of justice to victims of hate crime, including but not limited to Mr Alan Rosendale, Mr Scott Johnson, Mr John Russell and Mr Ross Warren.

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<sup>184</sup> Submission 24, NSW Gay and Lesbian Rights Lobby, p 5.

<sup>185</sup> Evidence, Mr Duncan McNab, Author and Former NSW Police Force detective, 9 Novemebr 2018, p 60; Submission 23, ACON, p 18; Submission 19, Dr Andy Kaladelfos, Dr Bianca Fileborn, Dr Yorick Smaal, Associate Professor Lisa Featherstone, and Associate Professor Shirleene Robinson, pp 1 -2.

- 3.51** The committee believes that there are many more stories to be told about the LGBTIQ experience of hate crime that the committee has not yet heard owing to the limited time allocated to this inquiry. We believe that, if this inquiry is re-established in the new parliament and the committee receives further evidence, these stories will inform how best to acknowledge publicly the brutality and violence perpetrated on victims of gay hate crime, and afford the committee the opportunity to thoroughly examine all aspects of the terms of reference.
- 3.52** To this end, the committee recommends that the NSW Legislative Council re-establish the inquiry into Gay and Transgender hate crimes between 1970 and 2010 in the 57<sup>th</sup> Parliament, and that all evidence received to date be referred to the Standing Committee on Social Issues for further inquiry and report in the new parliament. The terms of reference for further inquiry and report will be subject to a decision of the House.

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### **Recommendation 1**

That the NSW Legislative Council re-establish the inquiry into Gay and Transgender hate crimes between 1970 and 2010 in the 57<sup>th</sup> Parliament and the terms of reference for further inquiry and report be subject to a decision of the House.

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### **Recommendation 2**

That all evidence received and records produced by the Standing Committee on Social Issues during its inquiry into Gay and Transgender hate crimes between 1970 and 2010 in the 56<sup>th</sup> Parliament, be made available to the Standing Committee on Social Issues for further inquiry and report in the 57<sup>th</sup> Parliament.

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### **A shift in police culture**

- 3.53** The committee heard evidence from some witnesses that a challenging culture permeated the NSW Police Force during the 1980s and 1990s. While some police officers made genuine efforts to shift the culture and attitudes towards the gay community to a more positive one, others resisted this shift observed by the aforementioned police investigations of the time.
- 3.54** According to Mr Thomas Poberezny-Lynch, three factors coalesced to engender the new police approach to anti-gay violence – the amendment to the *Anti-Discrimination Act 1977* making discrimination on the basis of homosexuality unlawful, the decriminalisation of homosexuality which provided a legislative basis for protecting gay men and lesbians, and the appointment of Mr John Avery as NSW Police Commissioner who initiated a restructure of the police force.<sup>186</sup>
- 3.55** Mr Poberezny-Lynch described how Police Commissioner Avery oversaw the implementation of a "community policing" approach whereby local police were instructed 'to work with the public and all minority groups'. An example of this was the establishment of a Community Relations Branch which had 'Aboriginal, Ethnic, Youth and Gay positions each with its own coordinator whose job was to ensure effective communication between police and minority groups to ensure the interests of each was reflected in policy'.<sup>187</sup>

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<sup>186</sup> Submission 1, Mr Thomas Poberezny-Lynch, p 14.

<sup>187</sup> Submission 1, Mr Thomas Poberezny-Lynch, pp 14-15.



- 3.56** During the early to mid-1990s the NSW Police Force implemented several programs and initiatives to build trust with the gay and transgender community in reporting violence and crimes to the police and improve the relationship between the two groups.
- 3.57** As Ms Sue Thompson, former NSW Police Gay/Lesbian Client Consultant recounted, the then Police Minister, the Hon Peter Anderson MP (1981-86) was insistent that the 'Police Service ... establish a gay liaison role'. While this role was initially held by the aged liaison officer, an informal yet full time gay liaison officer position was established in 1985 and filled by Mr Fred Miller, a previous MP.<sup>188</sup>
- 3.58** Mr Miller held this position until June 1989 when he medically retired. Ms Thompson advised that there was 'no replacement until the gay community asked Police Minister Ted Pickering to intervene and establish a formal permanent job doing formal organisational change'.<sup>189</sup>
- 3.59** In 1990, the Gay and Lesbian Liaison Officer (GLLO) program was established with Ms Sue Thompson appointed as the Client Group Consultant – Gay and Lesbian.<sup>190</sup> The following case study outlines the GLLO program in more detail:

#### **Case study: Gay and Lesbian Liaison Officer (GLLO) program<sup>191</sup>**

In 1990, the GLLO program was established with a small number of officers stationed across four inner city locations to respond to violence. By 1993, the number of GLLOs had increased to 55, by 1994 it had grown to 70 and by 2002, there were 118 GLLOs.

The committee heard that GLLOs are a key part of NSW police liaison with the LGBTI community, and have an important role in: building trust with the community; encouraging the reporting of violence; reducing hate crimes against the community; and supporting people for gay and lesbian police who encounter discrimination and prejudice.

Mr Larry Galbraith, former editor of Sydney *Star Observer* described the GLLO program as '[o]ne of the great things that occurred in the 1990s' as it gave members of the gay community confidence that 'they could go and talk ... about a crime against them'. He observed that this was 'a very big advance' as it provided people with a reassurance that they could trust someone at a police station 'and not rely upon it being a lucky dip'. Mr Galbraith supported the work of GLLOs and the idea that there needed to be 'officers with a particular understanding of the gay community in the same way as I suspect there is a place for officers with an understanding of the Aboriginal community, the Vietnamese community'.

- 3.60** In addition, the NSW Police Force partnered with the Gay and Lesbian Rights Lobby for a campaign focused on 'encouraging community members to report violence and crimes to police eg: "*Stop the Bashings, Report the Violence*" campaign'.<sup>192</sup>

<sup>188</sup> Submission 32, Ms Sue Thompson, p 32.

<sup>189</sup> Submission 32, Ms Sue Thompson, Attachment 2, p 2.

<sup>190</sup> Submission 20, NSW Police Force, p 5.

<sup>191</sup> See Submission 32, Ms Sue Thompson, Attachment 1, p 1; Submission 32, Ms Sue Thompson, p 41; Evidence, Mr Larry Galbraith, Former Editor, Sydney *Star Observer*, 9 November 2018, p 49.

<sup>192</sup> Submission 20, NSW Police Force, p 5.

- 3.61** In 1993, the *Anti-Discrimination Act 1977* was amended 'to render vilification on the ground of homosexuality unlawful and to create an offence of serious homosexual vilification'.<sup>193</sup>
- 3.62** In 1995, the first policy on policing of beats was released. This policy 'articulated clear expectations of police managing beats with a focus on high visibility policing to enhance community safety and to support professional interactions with beat users'. According to the NSW Police Force, this policy 'set the tone for current policy and guidance for police in managing beats'.<sup>194</sup>
- 3.63** Furthermore, throughout the 1990s the police were 'actively involved' in various campaigns which attempted to 'address the ongoing issue of under-reporting of hate crimes'. These included:
- 'You can help stop the violence' campaign in partnership with the Lesbian and Gay Anti-Violence Project
  - Department of Health 'Homophobia. What are you scared of?' campaigns.<sup>195</sup>
- 3.64** Assistant Commissioner Anthony Crandell, NSW Police Force, put forward the view that '[s]ince 1984-85 the NSW Police Force has made slow but steady progress through strong community partnerships, an active engagement agenda, and a growing network of LGBTIQ champions across the force'.<sup>196</sup>
- 3.65** In evidence to the inquiry, Assistant Commissioner Crandell acknowledged that historically, the 'NSW Police Force accepted a culture and society that marginalised people who happened to be sexually or gender diverse'. He also stated that NSW Police Force is 'acutely aware of and acknowledges without qualification the shocking violence directed at the LGBTIQ communities during the seventies, eighties and nineties'.<sup>197</sup>

### Committee comment

- 3.66** The committee recognises what some inquiry participants have described as a positive shift in police culture, that being a focus on implementing various programs and initiatives to build trust with the LGBTIQ community in reporting violence and crimes to the police, in addition to improving the relationship between the police and the LGBTIQ community.
- 3.67** The committee considers these programs and initiatives to be important efforts of the NSW Police Force, and acknowledges the sentiments expressed by Assistant Commissioner Anthony Crandell regarding past practices and conduct of police towards the gay and transgender community.

<sup>193</sup> *Anti-Discrimination (Homosexual Vilification) Amendment Act 1993*, Long title, <<https://www.legislation.nsw.gov.au/acts/1993-97.pdf>>

<sup>194</sup> Submission 20, NSW Police Force, p 5.

<sup>195</sup> Submission 20, NSW Police Force, p 6.

<sup>196</sup> Evidence, Assistant Commissioner Anthony Crandell, Police Education and Training, 9 November 2018, p 13.

<sup>197</sup> Evidence, Assistant Commissioner Anthony Crandell, Police Education and Training, 9 November 2018, p 13.

- 3.68** The committee was convinced by evidence received that the first step in this process is to clarify the role and function of the GLLO program, and ensure that the training provided to all police officers meets best practice. This is discussed further below.

### **Training for police officers**

- 3.69** Some inquiry participants expressed the view that more could be done across the NSW Police Force to ensure all officers respond to the needs of the LGBTIQ community equally and respectfully.

- 3.70** Assistant Commissioner Anthony Crandell, Police Education and Training, NSW Police Force, informed the committee of the current training tools and education programs delivered to police recruits.

- 3.71** For example, Assistant Commissioner Crandell outlined the education and training provided to police recruits at the Goulburn Police Force Academy about the LGBTIQ community and expectations of the LGBTIQ community of officer behaviour when policing:

[Since 2013] ... members of the LGBTIQ community ... address every police recruit before they hit the streets. Those people have ranged from members of the transgender community who have simply got up and told their story, and every single member of the transgender community will have a story, and also their interactions with police ... It involves a presentation and a procedure over two hours where the recruits basically hear what the expectations are from the LGBTIQ community of their behaviour when they are policing.<sup>198</sup>

- 3.72** Meanwhile, training for Gay and Lesbian Liaison Officers (GLLO) comprises of a three day course consisting of 'guest lectures and guest presenters ... [who] talk about relations with the community'. This was in addition to the recruitment of gay, lesbian and transgender people into the NSW Police Force which Assistant Commissioner Crandell described as 'a fantastic thing because that allows us to understand the issues in that community'.<sup>199</sup>

- 3.73** When questioned as to what was stopping the NSW Police Force from having more education and training for GLLOs as well as officers more generally of all ranks, Assistant Commissioner Crandell responded that

[t]here is nothing stopping us from doing that. In fact, I would be more than supportive of that. We are moving onto some online engagement educational products. There is absolutely no reason why we could not put out educational material to more and more people.<sup>200</sup>

- 3.74** The NSW Police Force described the role and education of GLLOS as follows:

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<sup>198</sup> Evidence, Assistant Commissioner Anthony Crandell, Police Education and Training, 9 November 2018, p 18.

<sup>199</sup> Evidence, Assistant Commissioner Anthony Crandell, Police Education and Training, 9 November 2018, pp 18-19.

<sup>200</sup> Evidence, Assistant Commissioner Anthony Crandell, Police Education and Training, 9 November 2018, p 19.

GLLOs are contact officers for the broader sexuality, gender diverse and intersex communities. Their training includes specific information on the history of the relationship between police and LGBTIQ communities, challenges and sensitivities experienced by some community members to engage with police, and effective responses to people who become victims of crime. They also assist other police to respond to homophobic and transphobic incidents and work with the Bias Crimes Unit and other specialist areas. Another aspect of their role is to champion LGBTIQ inclusion at work and provide support to LGBTIQ staff.<sup>201</sup>

- 3.75** Ms Lauren Foy, Co-Convenor, NSW Gay and Lesbian Rights Lobby recommended that the NSW Police Force implement 'ongoing education models relating to LGBTI people as standard for employment for every employee of the force from the commissioner down'. This was reasoned on the grounds that '[a]ny individual in any corner of this State should be able to deal with any New South Wales police officer ... with confidence knowing that they will be treated equally and respectfully'.<sup>202</sup>
- 3.76** In order to assist the LGBTIQ community, Ms Foy called for the NSW Police Force to provide up to date contact information on their website for GLLOs, in addition to ensuring that such officers were not 'city-centric' as the LGBTI community 'existe[d] in all corners of New South Wales'.<sup>203</sup>
- 3.77** Mr Nicholas Stewart, Partner, Dowson Turco Lawyers, suggested that relations between the LGBTIQ community and police could be improved if 'a floating team of trained gay and lesbian liaison officers [was introduced so] that community representatives ... [and community members] ... could contact through a number to make an appointment for the purposes of reporting a crime or seeking police assistance'.<sup>204</sup>
- 3.78** Mr Larry Galbraith, former editor of *Sydney Star Observer*, expressed the view that 'ideally, every police officer should be capable of investigating a gay hate crime and making a serious effort to solve it', but acknowledged that currently this was not available.<sup>205</sup>
- 3.79** Mr Alex Greenwich MP, Member for Sydney, Legislative Assembly stated that 'all police officers should be trained in this space and [know] how to deal with these types of complaints and concerns and it would go a long way to build that trust'. He added that 'any resources and training which support and empower police officers to be able to deal with a very diverse community, whether it is in relation to the LGBTI community or other communities, is vitally important'.<sup>206</sup>

<sup>201</sup> NSW Police Force, *LGBTIQ*, [https://www.police.nsw.gov.au/safety\\_and\\_prevention/your\\_community/working\\_with\\_lgbtqia](https://www.police.nsw.gov.au/safety_and_prevention/your_community/working_with_lgbtqia)

<sup>202</sup> Evidence, Ms Lauren Foy, Co-Convenor, NSW Gay and Lesbian Rights Lobby, 9 November 2018, p 25.

<sup>203</sup> Evidence, Ms Lauren Foy, Co-Convenor, NSW Gay and Lesbian Rights Lobby, 9 November 2018, p 29.

<sup>204</sup> Evidence, Mr Nicholas Stewart, Partner, Dowson Turco Lawyers, 9 November 2018, p 41.

<sup>205</sup> Evidence, Mr Larry Galbraith, Former Editor, *Sydney Star Observer*, 9 November 2018, p 49.

<sup>206</sup> Evidence, Mr Alex Greenwich, Member for Sydney, Legislative Assembly, 9 November 2018, p 50.

- 3.80** Mr Greenwich contended that a LGBTI person 'would feel a greater sense of comfort and certainty knowing that ... they are reporting a crime to someone who is specially trained to support them'.<sup>207</sup>
- 3.81** Mr Greenwich supported Ms Foy's observation regarding the need for GLLOs to be accessible for all LGBTI people across the state, especially in rural and regional areas where LGBTI people 'may not be out to their friends or family members, they may feel a great deal of stigma and discrimination, and may be more comfortable knowing that there is a GLLO who can deal with them and understands their life experience a bit better'.<sup>208</sup>
- 3.82** Dr Andy Kaladelfos, Dr Bianca Fileborn, Dr Yorick Smaal, Associate Professor Lisa Featherstone, and Associate Professor Shirleene Robinson put forward the view that the 'NSW Police [should] introduce mandatory LGBTIQ awareness training for *all* police officers and the expansion of the current GLLOs in NSW'. This was reasoned on the grounds that 'research consistently illustrates that younger LGBTIQ people express the least amount of trust in police and are least likely to report incidents of hate crime'.<sup>209</sup> The group of academics additionally submitted that increasing the number and availability of GLLOs would lead to greater 'comfort and confidence of LGBTIQ people in reporting to police'.<sup>210</sup>
- 3.83** The NSW Gay and Lesbian Rights Lobby supported the idea of expanding the GLLO program in order to 'foster positive relationships between NSW Police Force and LGBTIQ communities'. It also suggested that 'an audit be undertaken to ensure that training, professional development and capacity building activities appropriately meet the goals of the program'.<sup>211</sup>
- 3.84** Mr Nicholas Stewart, Partner, Dowson Turco Lawyers encouraged further expansion of the GLLO program to make it more accessible, particularly in Sydney. As Mr Stewart described:
- ... I often ring the NSW Police Force hoping to get a gay and lesbian liaison officer on the line and try to set up an appointment where a member of the community can go in and seek assistance. It is just not that kind of service. A general response is, "They can go into any police station. We don't have a GLLO available right now." ... There is a general fear in the community I think of going to the police generally and if there is an officer who is trained in our lifestyles, how we live and where we go for entertainment and how we have families and live our lives, I think that would make it a lot easier to report crimes or seek the assistance of the police force.<sup>212</sup>
- 3.85** The NSW Police Force stated that there are currently 204 GLLOs 'across a connected network involving six police regions, Public Safety and Transport Command, and Specialist areas', with an additional 30 GLLOs trained by the end of 2018.<sup>213</sup>

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<sup>207</sup> Evidence, Mr Alex Greenwich, Member for Sydney, Legislative Assembly, 9 November 2018, p 49.

<sup>208</sup> Evidence, Mr Alex Greenwich, Member for Sydney, Legislative Assembly, 9 November 2018, p 49.

<sup>209</sup> Submission 19, Dr Andy Kaladelfos, Dr Bianca Fileborn, Dr Yorick Smaal, Associate Professor Lisa Featherstone, Associate Professor Shirleene Robinson, p 5.

<sup>210</sup> Submission 19, Dr Andy Kaladelfos, Dr Bianca Fileborn, Dr Yorick Smaal, Associate Professor Lisa Featherstone, Associate Professor Shirleene Robinson, p 5.

<sup>211</sup> Submission 24, NSW Gay and Lesbian Rights Lobby, pp 11-12.

<sup>212</sup> Evidence, Mr Nicholas Stewart, Partner, Dowson Turco Lawyers, 9 November 2018, p 40.

<sup>213</sup> Submission 20, NSW Police Force, pp 8-9.

- 3.86** The NSW Police Force also informed that GLLOs were 'supported and led by seven Sexuality, Gender Diversity and Intersex Region Sponsors and a Corporate Sponsor, all supported by a Senior Programs and Policy Officer'.<sup>214</sup>
- 3.87** The following table sets out the number of GLLOs allocated to each network across the state.

**Table 1 Number of GLLOs across the NSW Police Force Network<sup>215</sup>**

Network	Number of GLLOs
Central Metropolitan Region	44
North Western Sydney	24
South Western Sydney	17
Northern NSW	23
Southern NSW	20
Western NSW	10
Police Transport Command and a range specialist areas	66

- 3.88** The NSW Police Force gave evidence that it has made a number of commitments to ensure the LGBTIQ community are included in recruits diversity training and that officers can provide support for colleagues and community members:

... [s]ince 2013, a commitment was made to ensure LGBTIQ community groups are included in NSWPF recruit diversity training. Further, 'LGBTIQ Ally' training was introduced with Peer Support Officers and staff at key Commands to enhance the GLLO network. Officers are now trained to provide support for colleagues and community members. This year alone, over 100 additional officers have been trained to complement the GLLO network.<sup>216</sup>

- 3.89** However, the committee heard that more could be done to bolster the coordination of the network. Dr Allen George, Lecturer in Socio-legal Studies, Faculty of Arts and Social Sciences, University of Sydney referred to the success of the previous role held by Ms Sue Thompson, NSW Police Gay/Lesbian Client Consultant, and argued in favour of its reinstatement. He outlined to the committee the role and responsibilities that such a position should have:

What you would want them to do is to have a sort of watching brief. They do a number of things; they would watch reports that were coming in, if people were being bashed in parks in certain areas that were known beats they could organise that and observe it, they could speak to police officers on the ground to find out whether these bashings are going on and get some information. They also have a strong liaison with the LGBTIQ community. They are also involved in doing education for police officers,

<sup>214</sup> Submission 20, NSW Police Force, p 9.

<sup>215</sup> Submission 20, NSW Police Force, p 9.

<sup>216</sup> Submission 20, NSW Police Force, p 8.

going down to Goulburn and speaking—this is what Sue Thompson used to do. It is now part of courses—how much of a course is focused on learning about LGBTIQ issues I am not sure about—and also part of education programs and that general going to events, being seen in the community.<sup>217</sup>

- 3.90** Professor Tomsen observed that in the last 15 years, there appear to have been no attempts by NSW Police 'to have a designated employee clearly assigned with the basic task of monitoring such crimes and communicating on these to LGBTIQ community organisations and media. Similarly, there has also been no apparent central monitoring and communication in regard to complaints about police from LGBTIQ people'.<sup>218</sup>
- 3.91** Professor Tomsen argued that community liaison appears to be less successful now than it was previously. He attributed this to the departure of key staff from the NSW Police Force in the early 2000s and the rise of new management styles.<sup>219</sup>
- 3.92** Mr Galbraith was of the view that there remained challenges for GLLOs, particularly in ensuring adequate support for GLLOs within the police station, 'whether the senior command supports them, or whether they are seen as a token'.<sup>220</sup>
- 3.93** The NSW Young Lawyers Human Rights Committee argued that there are limitations to the current GLLO program that need to be addressed. These include:
- the name of the program creates barriers to access for bisexual, transgender, intersex and queer people
  - there are significant gaps in when and where GLLOs are available; and
  - there is limited evaluation of the performance of GLLOs in their role.<sup>221</sup>
- 3.94** Given the perceived limitations of the GLLO program, the NSW Young Lawyers Human Rights Committee put forward three recommendations to improve its accessibility and effectiveness. These were:
- Changing the name of the program to the LGBTIQ Liaison Officer program
  - Increasing the number of LGBTIQ liaison officers, particularly in areas where gaps exist
  - Regularly evaluating the performance of LGBTIQ liaison officers and ensuring adequate support is provided for such officers to perform effectively in their roles.<sup>222</sup>

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<sup>217</sup> Evidence, Dr Allen George, Lecturer in Socio-legal Studies, Faculty of Arts and Social Sciences, University of Sydney, 28 November 2018, p 6.

<sup>218</sup> Submission 16, Professor Stephen Tomsen, p 1.

<sup>219</sup> Submission 16, Professor Stephen Tomsen, p 1.

<sup>220</sup> Evidence, Mr Larry Galbraith, Former Editor, Sydney *Star Observer*, 9 November 2018, p 49.

<sup>221</sup> Submission 17, NSW Young Lawyers Human Rights Committee, p 10.

<sup>222</sup> Submission 17, NSW Young Lawyers Human Rights Committee, p 10.

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### Committee comment

- 3.95** The committee acknowledges the evidence received about the need to train police officers in responding to the needs the LGBTIQ community.
- 3.96** The NSW Police Force is responsible for ensuring that all interactions by police with the general public and the LGBTIQ community is done with both respect and professionalism. These are, and continue to be, key priorities for the NSW Police Force.

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### Finding 2

That the NSW Police Force is responsible for ensuring that all interactions by police with the general public and the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) community is done with both respect and professionalism. These are, and continue to be, key priorities for the NSW Police Force.

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- 3.97** In this regard, the committee recommends that the NSW Police Force ensure that all officers have the skills and knowledge to engage with LGBTIQ people respectfully and equally.

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### Recommendation 3

That the NSW Police Force ensure that all officers have the skills and knowledge to engage with lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) people respectfully and equally.

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- 3.98** Notwithstanding the need for all police officers to have the skills and knowledge to engage with LGBTIQ people respectfully and equally, the committee is encouraged by efforts to ensure specialised officers are available through the Gay and Lesbian Liaison Officer (GLLO) Program. The committee commends the NSW Police Force for implementing this initiative across the state, as we acknowledge the positive impact these officers have had on the relationship between the police and the LGBTIQ community.
- 3.99** The committee also believes that access to these officers, who have been specifically trained to engage with LGBTIQ people, is needed across the state, as expressed by a number of inquiry participants. We are particularly mindful of LGBTIQ communities in rural and regional areas who at present have limited access to these specialist officers.

## LGBTIQ community's response to Strike Force Parrabell

- 3.100** As discussed in chapter 1, Strike Force Parrabell was established '[t]o bring the NSW Police Force and the Lesbian, Gay, Bisexual, Transgender, Intersex and Queer community closer together ... [through a review of] 88 deaths of men between 1976 and 2000, each claimed as motivated, or potentially motivated, by anti-gay bias'.<sup>223</sup>

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<sup>223</sup> NSW Police Force, *Strike Force Parrabell Final Report*, p 18.



- 3.101** A number of inquiry participants criticised the NSW Police Force's Parrabell review on the grounds that it did not achieve its objective.
- 3.102** While Mr Nicholas Stewart, Partner, Dowson Turco Lawyers, personally welcomed the Parrabell review 'as a step in the right direction' and showed that the 'police force is looking back at what happened', he was of the view that it was not an 'accurate reflection of what went on':
- I do not think it represents the facts so far as I think there are a lot more than 88 hate crimes that should have been identified. I think there are hundreds. I also dispute that it can identify bias when all it did was really review papers. I think unless you go back to investigations and ask investigators, "Why didn't you keep this evidence? Why was it lost? Why didn't you interview this person? What questions did you ask? What questions didn't you ask at the time?" It is only then that you can identify bias.<sup>224</sup>
- 3.103** Likewise, Mr Nicolas Parkhill, Chief Executive Officer, ACON, commended the NSW Police Force for Strike Force Parrabell and the leadership of Assistant Commissioner Crandell for focusing 'on issues of the past and putting in place processes to try to right those wrongs and have a better understanding of what did occur'.<sup>225</sup> However, Mr Parkhill noted the limitations of Parrabell such as the omission of 'broader contextual issues or other source' as part of the review of the 'paper files that the police had ... to try to determine if bias was involved in those crimes'. He further argued that the fact that Parrabell 'did not actually go back and reinvestigate those cases' was a considerable limitation which in turn limited the delivery of justice. Mr Parkhill was of the view that 'some of the recommendations ... of Parrabell could have been a lot stronger than what they were' to improve police relations with the LGBTIQ community.<sup>226</sup>
- 3.104** Ms Lauren Foy, Co-convenor, NSW Gay and Lesbian Rights Lobby considered the release of the Parrabell review as 'deeply disheartening' and an attempt by the NSW Police to 'frame these violent murders as somehow part of the times. She also claimed the review evaded 'any obligation it had to assess the role of police bias in an often woeful response to these crimes due to widespread social prejudice against LGBTI people'.<sup>227</sup>
- 3.105** When questioned as to whether community expectations regarding the outcomes of Parrabell were too high, Ms Foy responded that 'when people are charged with the responsibility to investigate for truth and justice then they should be able to uphold their role'. For Ms Foy, the reasoning provided by the NSW Police that it was 'the nature of the time ... does not suffice as doing the best you possibly can in an objective way to do your job'.<sup>228</sup>
- 3.106** Ms Foy added that '[f]or the heartbroken friends and family members of individuals who were targeted and murdered, it has been a decades-long journey for justice and redress, and that

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<sup>224</sup> Evidence, Mr Nicholas Stewart, Partner, Dowson Turco Lawyers, 9 November 2018, p 39.

<sup>225</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 9 November 2018, p 9.

<sup>226</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 9 November 2018, p 9.

<sup>227</sup> Evidence, Ms Lauren Foy, Co-convenor, NSW Gay and Lesbian Rights Lobby, 9 November 2018, p 25.

<sup>228</sup> Evidence, Ms Lauren Foy, Co-convenor, NSW Gay and Lesbian Rights Lobby, 9 November 2018, p 28.

journey is sadly not over'. She urged the NSW Police Force to 'continue to focus on improving its culture and conduct towards LGBTI individuals, both within the force ... and the public'.<sup>229</sup>

- 3.107** Ms Sue Thompson, former NSW Police Gay/Lesbian Client Consultant, submitted her criticism of *Parrabell*:

Its result is to rewrite history, wipe the slate clean as if it never existed and make up an entirely new narrative stating that in an approximate 24 year period there were in fact really only 27 or 29 gay hate related murders and only two or three remain unsolved.<sup>230</sup>

- 3.108** Mr Duncan McNab, former NSW Police Force Detective also spoke of the limitations of *Parrabell*:

Reviewing cases, as Police did with *Parrabell*, doesn't solve crimes - investigation does. And *Parrabell* was about death - not possibly incorrectly declared suicide (like the Scott Johnson case) or misadventure, and doesn't cover grievous assault in which the victim was fortunate to survive.<sup>231</sup>

### **Calls for a further investigation of all suspected gay hate crimes**

- 3.109** In response to the limitations of *Parrabell*, the majority of inquiry participants called for an investigation into all suspected gay hate crimes, including those resulting in death. In particular, stakeholders discussed the investigation and outcomes of the 88 cases identified by Strike Force *Parrabell*. Others raised the possibility of a Royal Commission into LGBTIQ hate crimes.

- 3.110** Mr Nicholas Stewart, Partner, Dowson Turco Lawyers, suggested that a LGBTIQ task force be set up to investigate the full extent of the number of suspicious deaths that can be attributed to gay hate crimes:

I would like to see the police force accept that it is not just 88, it is probably hundreds. Coroner Michael Barnes in the Scott Johnson case referred to hundreds. Sue Thompson, who is giving evidence to this inquiry, has mentioned hundreds. We know that this goes a lot deeper than the *Parrabell* report purports to reflect. I would like to see more dialogue and more honesty about that and the state of facts.<sup>232</sup>

- 3.111** Indeed, the origin of the list of crimes that became the subject of the ACON and *Parrabell* reports has been disputed.<sup>233</sup> Inquiry participants were also adamant that the number of victims is likely to be much higher than 88,<sup>234</sup> therefore a renewed approach to the identification of suspected gay hate crimes is required.

<sup>229</sup> Evidence, Ms Lauren Foy, Co-convenor, NSW Gay and Lesbian Rights Lobby, 9 November 2018, p 25.

<sup>230</sup> Submission 32, Ms Sue Thompson, p 10.

<sup>231</sup> Submission 4, Mr Duncan McNab, p 1.

<sup>232</sup> Evidence, Mr Nicholas Stewart, Partner, Dowson Turco Lawyers, 9 November 2018, p 39.

<sup>233</sup> For example, Evidence, Professor Stephen Tomsen, Professor of Criminology and Criminal Justice, School of Social Science and Psychology, University of Western Sydney, 27 November 2018, p 35; Submission 32, Ms Sue Thompson, pp 14-16.

<sup>234</sup> For example, Evidence, Mr Michael Atkinson, Program Manager, Safety, Inclusion and Historical Justice, ACON, 9 November 2018, pp 4-5; Evidence, Assistant Commissioner Anthony Crandell,

- 3.112** According to the Australian Lawyers for Human Rights 'it is impossible to fully appreciate the extent to which bias and prejudice influenced decision-making during this period unless a full reinvestigation of each hate crime takes place'.<sup>235</sup> Subsequently, the Australian Lawyers for Human Rights recommended the 'creation of a taskforce investigating outstanding cases of hate crimes against LGBTIQ people to address the limitations of the Final Report of Strike Force Parrabell'.<sup>236</sup>
- 3.113** Mr Alex Greenwich, Member for Sydney, Legislative Assembly argued that '[i]f there was any other cohort of our society, which had been victims of murders and crimes that have remained unsolved, there would have been an independent process set up to look into that, investigate it thoroughly and seek justice'.<sup>237</sup>
- 3.114** To fill this gap, Mr Greenwich urged for 'a full and thorough investigation' to address the limitations of *Parrabell*. Such an investigation could be potentially conducted by the Law Enforcement Conduct Commission or a full judicial inquiry.<sup>238</sup>
- 3.115** Another suggestion offered by inquiry participants was the establishment of a Royal Commission into LGBTIQ hate crimes.
- 3.116** Mr Duncan McNab, former NSW Police Force Detective called for a Royal Commission with 'powers to investigate murders, disappearances and murders passed off as suicides ... [by] witnesses brought before it and compelled, if necessary, to give truthful evidence'.<sup>239</sup>
- 3.117** The NSW Young Lawyers Human Rights Committee considered a Royal Commission into LGBTIQ hate crimes would have 'significant potential as a reparative measure'. It was of the view that the powers of a Royal Commission 'would assist in verifying the facts and formulating an accurate account of hate crimes against LGBTIQ people, forming a sound basis for improvements to current policy and practice'.<sup>240</sup>
- 3.118** In addition, the NSW Young Lawyers Human Rights Committee described how a Royal Commission would 'likely ... attract significant public attention' which in turn could 'facilitate participation and engagement by a broad section of the public and to raise community awareness of hate crimes against LGBTIQ people'.<sup>241</sup> It submitted that if a Royal Commission was established, the 'terms of reference should be formulated in consultation with LGBTIQ people and LGBTIQ organisations'.<sup>242</sup>

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Police Education and Training, NSW Police Force, 9 November 2018, pp 13-14; Evidence, Professor Stephen Tomsen, Professor of Criminology and Criminal Justice, School of Social Science and Psychology, University of Western Sydney, 27 November 2018, p 35; Submission 16, Professor Stephen Tomsen, p 2; Submission 32, Ms Sue Thompson, pp 14-16; Submission 20, NSW Police Force, p 2; NSW Police Force, Strike Force Parrabell, Final Report (2018), pp17-18.

<sup>235</sup> Submission 35, ALHR, p 7.

<sup>236</sup> Submission 35, ALHR, p 2.

<sup>237</sup> Evidence, Mr Alex Greenwich, Member for Sydney, Legislative Assembly, 9 November 2018, p 52.

<sup>238</sup> Evidence, Mr Alex Greenwich, Member for Sydney, Legislative Assembly, 9 November 2018, p 52.

<sup>239</sup> Submission 4, Mr Duncan McNab, p 1.

<sup>240</sup> Submission 17, NSW Young Lawyers Human Rights Committee, p 9.

<sup>241</sup> Submission 17, NSW Young Lawyers Human Rights Committee, p 9.

<sup>242</sup> Submission 17, NSW Young Lawyers Human Rights Committee, p 9.

**3.119** Likewise, academics Dr Andy Kaladelfos, Lecturer in Criminology, University of New South Wales, Dr Bianca Fileborn, Lecturer in Criminology, University of New South Wales, Dr Yorick Smaal, Senior Lecturer in Humanities, Griffith University, Associate Professor Lisa Featherstone, School of Historical and Philosophical Inquiry, University of Queensland, and Associate Professor Shirleene Robinson, Honorary Research Fellow, Discipline of Modern History and Politics, Macquarie University recommended a national inquiry into historical and contemporary LGBTIQ Hate Crime. They argued that:

... [a national inquiry] would have the ability to call evidence that would uncover 1) the extent of hate crime against LGBTIQ communities historically and today 2) the extent to which state institutions were responsible for failures of justice in responding to serious victimisation of a marginalised community.<sup>243</sup>

### Committee comment

- 3.120** While the intent behind *Parrabell* was welcomed by the community, the committee acknowledges stakeholder concerns that it was set up to review historical investigative files rather than to undertake any further independent investigation of those files and complaints. They believe *Parrabell* merely scratched the surface in uncovering issues within the NSW Police Force that prevented justice for victims of gay and transgender hate crimes in New South Wales.
- 3.121** The committee was encouraged to hear that, as outlined in chapter 1, the 23 unsolved murders the subject of the *Parrabell* report, have been referred to the unsolved homicide team. The committee urges the NSW Police Force to prioritise these cases.
- 3.122** A number of inquiry participants have called for a Royal Commission to investigate the extent of hate crimes against LGBTIQ people. The committee has heard evidence from a number of witnesses, both civilian and at least one police witness, that raised serious concerns regarding some past investigations. These incidents have related to the period prior to 1995. Unfortunately the committee process is not an adequate mechanism to determine serious issues of culpability and/or neglect.
- 3.123** The committee has not been able to reach a conclusion as to what mechanism of review is appropriate. The committee has not heard from a range of stakeholders on the issues of independent judicial review such as representatives of the Attorney-General's department, the Commissioner of Police, the Police Ministry, the NSW Police Association, the Coroner, the Commissioner of Law Enforcement Conduct Commission, and the NSW Ombudsman.
- 3.124** This committee believes it is appropriate that all stakeholders potentially effected by an independent review be again given the opportunity for input.
- 3.125** The question for any future committee is not whether there should be independent review but rather, what the form of that independent review is. The committee considers it is appropriate that in the next parliament any future committee invite witnesses to address the issue of the appropriate mechanism for independent review of past crimes.

<sup>243</sup> Submission 19, Dr Andy Kaladelfos, Dr Bianca Fileborn, Dr Yorick Smaal, Associate Professor Lisa Featherstone, Associate Professor Shirleene Robinson, pp 4-5.

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**Recommendation 4**

That, should the inquiry be re-established consistent with Recommendation 1, the committee invite witnesses to address the issue of the appropriate mechanism for independent review of past gay and transgender hate crimes.

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**COPS database and other data collection methods**

- 3.126** Another area identified by inquiry participants for improvement was the NSW Police Force's data collection methods and the computerised operational policing system (COPS).
- 3.127** Mr Nicolas Parkhill, Chief Executive Officer, ACON, spoke of the importance of population studies to provide a broader 'perspective on who may have been bashed or may have been a victim but not reported'.<sup>244</sup> He advised that a population level study would help to 'ascertain what the current level of violence is towards our communities and then also ask questions such as, "What is your reporting behaviour and if you are not reporting what are some of the impediments?"'.<sup>245</sup>
- 3.128** Mr Parkhill was of the view that the current 'computerised operational policing system [COPS] data would only tell us the picture of those people who have reported'.<sup>246</sup> Furthermore, Mr Parkhill noted that unless there was detailed recording of a bias crime in the COPS database such data would remain unknown.<sup>247</sup>
- 3.129** ACON acknowledged that the 'collection of data on bias motivated crime has improved, with resources such as searchable databases used by police and others involved in the criminal justice system, however there are still likely gaps in data on this issue, both in relation to under reporting and misidentification of bias motivation'.<sup>248</sup>
- 3.130** Given the outcomes of *Parrabell*, ACON spoke of the 'importance of collecting, collating and storing data on bias motivated crime' in order to 'determine trends, prevent future crimes and provide an accurate representation of the facts as needed to ensure justice is delivered to victims and their loved one'.<sup>249</sup>
- 3.131** Assistant Commissioner Anthony Crandell, Police Education and Training, NSW Police Force, admitted that the classification of bias crime has been 'a difficult road'. He explained currently the NSW Police Force use a 10 point guide to 'indicate whether there is a bias crime or not with

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<sup>244</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 9 November 2018, p 6.

<sup>245</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 9 November 2018, p 6.

<sup>246</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 9 November 2018, p 6.

<sup>247</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 9 November 2018, p 8.

<sup>248</sup> Submission 23, ACON, p 9.

<sup>249</sup> Submission 23, ACON, p 10.

a caveat that says all points could be indicated and it is not a bias crime, or none could be indicated and it is a bias crime'.<sup>250</sup>

**3.132** The current 10 point NSW Police bias indicators in the Police Bias Crime Indicators Review Form are as follows:

- Differences
- Comments, Written Statements, Gestures
- Drawings, Markings, Symbols, tattoos, Graffiti
- Organised hate Groups (OHG)
- Previous Existence of Bias Crime Incidents
- Victim/witness Perception
- Motive of Offender/s
- Location of Incident
- Lack of Motive
- Level of violence.<sup>251</sup>

**3.133** In addition, there are 'nine protected categories for bias motivated crimes. They are: religion, race, ethnic or national origin, sex/gender, gender identity, age, disability status, sexual orientation or homeless status'.<sup>252</sup>

**3.134** However, as noted in chapter 1, the difference in findings between *Parrabell* and the academic review of the 88 cases of suspicious deaths were attributed to different classification interpretations of bias crimes.

**3.135** This is illustrated by the position given in the academic review which stated '[d]iscovering bias in criminal acts including homicide is not an exact science...'.<sup>253</sup> Flinders University added: 'There are difficult questions to be asked when assessing whether an incident is a bias crime and quite often investigators do not have the information to answer them'.<sup>254</sup>

**3.136** Flinders University referred to other academics to support the view that classifying and identifying bias was difficult:

<sup>250</sup> Evidence, Assistant Commissioner Anthony Crandell, Police Education and Training, NSW Police Force, 9 November 2018, p 16.

<sup>251</sup> Flinders University, 'Anti-Gay Bias Homicide, 1976-2000: An analysis of the record of investigation by the New South Wales Police Force *Strike Force Parrabell*', p 57, as found in NSW Police Force, *Strike Force Parrabell: Final Report* (2018); Submission 32, Ms Sue Thompson, p 13.

<sup>252</sup> Answers to questions on notice, Assistant Commissioner Anthony Crandell, 21 January 2019, p 2.

<sup>253</sup> Flinders University, 'Anti-Gay Bias Homicide, 1976-2000: An analysis of the record of investigation by the New South Wales Police Force *Strike Force Parrabell*', p 49, as found in NSW Police Force, *Strike Force Parrabell: Final Report* (2018).

<sup>254</sup> Submission 12, Flinders University, p 5.

there is no consensus among social scientists or lawmakers on definitional elements that would constitute a global description of hate crime” (Boeckmann and Turpin-Petrosino 2002: 208)

The Association of Chief Police Officers (ACPO) in the U.K. defines hate crime as “any incident perceived by the victim to be motivated by hate or prejudice” (ACPO, 2005, emphasis added). However, victims are often in no better position to determine the motivation for behaviour than is the perpetrator or the bystander.<sup>255</sup>

- 3.137** Using crimes that occurred near beats as an illustration, Flinders University indicated that '[b]ias is over-represented where the definition is too unselective, and many events or phenomena are captured as bias that ought not to be, either as a case of generic or specific bias'. For example:

assaults or homicides that occur near the vicinity of a beat may not have any relation to homophobia. Over-capture of bias can occur here if one presumes that the beat location for the crime is always indicative of hate sentiment.<sup>256</sup>

- 3.138** Assistant Commissioner Crandell discussed how having a simpler guide for police to 'identify bias crime' would allow for patterns of behaviour to be observed in order to try 'prevent the crime from happening in the first place. I think that has been a failing in the past in that we have not had the data available'.<sup>257</sup>

- 3.139** Assistant Commissioner Crandell gave evidence that NSW Police had employed the research skills of Dr Phil Birch from Charles Sturt University for an international investigation into an appropriate bias crimes tool. Assistant Commissioner Crandell advised that this research would help front line police officers identify bias crime.<sup>258</sup>

- 3.140** Assistant Commissioner Crandell advised that the preliminary findings of the research were expected in February or March 2019 with the objective of developing a 'contemporary Bias Crime identification tool that reduces the risk of mis-categorisation and allows a robust review process for less experienced operational police officers'.<sup>259</sup>

### Committee comment

- 3.141** The committee recognises that while there has been some improvement to the collection of data on bias motivated crimes, further improvements are required to ensure that data about bias motivated crimes that are reported is accurately captured.

- 3.142** Indeed, Assistant Commissioner Crandell has told the committee that the NSW Police Force has employed an expert from Charles Sturt University to develop a 'contemporary Bias Crime identification tool' for this purpose. The committee is encouraged that the NSW Police Force

<sup>255</sup> Submission 12, Flinders University, p 4.

<sup>256</sup> Submission 12, Flinders University, pp 4-5.

<sup>257</sup> Evidence, Assistant Commissioner Anthony Crandell, Police Education and Training, NSW Police Force, 9 November 2018, p 16.

<sup>258</sup> Evidence, Assistant Commissioner Anthony Crandell, Police Education and Training, 9 November 2018, p 16.

<sup>259</sup> Answers to questions on notice, Assistant Commissioner Anthony Crandell, NSW Police, 21 January 2019, p 2.

has commissioned this research and we support the implementation of a new bias toolkit as a matter of priority.

- 3.143** The committee supports the views of ACON that if such data were available this would assist in determining trends, preventing future crimes and ensure justice is delivered.
- 3.144** While the committee recognises the benefit that a population study would have in determining the current level of violence and bias crime perpetrated towards the LGBTIQ community and the barriers to LGBTIQ people reporting such violence, we note that the preliminary findings of the Charles Sturt University research will not be available until as late as March 2019. The committee believes there would be limited value in undertaking a population study until this new identification model is available.
- 3.145** Similarly, while a number of inquiry participants were adamant that the cases the subject of Strike Force Parrabell should be reinvestigated to determine whether the suspected deaths could be classified as motivated by bias, such classification is dependent on the availability of the new identification model currently under development.
- 3.146** The committee has earlier recommended that this inquiry be re-established in the 57<sup>th</sup> Parliament. We would encourage the new committee to follow up on the progress and roll out of the new identification model. If successful, the committee should consider whether a population study be conducted, and whether the model could be utilised to inform a new investigation into the cases the subject of the Parrabell report.





## Chapter 4 Seeking justice in the courts

This chapter discusses the so-called 'gay panic' defence and the role it played in the culture of gay and transgender hate crimes during the 1990s. It also examines how the 'gay panic' defence influenced the delivery of justice in relation to gay and transgender hate crimes, and the attitudes of judicial officers during this time.

### 'Gay panic' defence

- 4.1 The 'gay panic' defence, also known as the 'Homosexual Advance Defence', refers to 'cases in which an accused person alleges that he or she acted either in self defence or under provocation in response to a homosexual advance made by another person'.<sup>260</sup> In practice, this meant that murder charges could be downgraded to manslaughter 'on the basis that the defendant was "provoked" into homicide by a sexual advance from the victim'.<sup>261</sup>
- 4.2 Between 1993 and 1998, 16 accused and co-accused relied upon this defence in 13 cases in the Supreme Court of New South Wales.<sup>262</sup> Two of these cases resulted in complete acquittal, two accused were found guilty of murder and four were found guilty of manslaughter.<sup>263</sup>
- 4.3 Mr Larry Galbraith, former Editor, Sydney *Star Observer* referred to an article he wrote in the 1990s with the headline '*He touched me*', which in his view 'gave the impression that if a person committed a violent crime and he could use the defence of "He touched me", that might be sufficient for him to get off'.<sup>264</sup>
- 4.4 Mr Galbraith was of the view that the 'gay panic' defence 'helped perpetuate the idea that ... somehow the crime was lesser and therefore ... should not be treated as seriously'. He added it was likely that the 'gay panic' defence fed 'into a culture where other crimes against gay men should not be treated as seriously'.<sup>265</sup>
- 4.5 In 1995, the NSW Attorney General 'directed that a Working Party be established to review the operation of the Homosexual Advance Defence ... in NSW'.<sup>266</sup>

<sup>260</sup> New South Wales Attorney-General's Department, *Homosexual Advance Defence: Final Report of the Working Party*, September 1998, p 4.

<sup>261</sup> Ben Winsor, 'A sordid history of the gay panic defence in Australia', SBS online, 2 May 2017, <https://www.sbs.com.au/topics/sexuality/agenda/article/2016/08/12/sordid-history-gay-panic-defence-australia>

<sup>262</sup> New South Wales Attorney-General's Department, *Homosexual Advance Defence: Final Report of the Working Party*, September 1998, p 5.

<sup>263</sup> New South Wales Attorney-General's Department, *Homosexual Advance Defence: Final Report of the Working Party*, September 1998, pp 5-6.

<sup>264</sup> Evidence, Mr Larry Galbraith, Former Editor, Sydney *Star Observer*, 9 November 2018, p 51.

<sup>265</sup> Evidence, Mr Larry Galbraith, Former Editor, Sydney *Star Observer*, 9 November 2018, p 51.

<sup>266</sup> NSW Government, NSW Attorney General Working Party *Homosexual Advance Defence: Final Report of the Working Party*, September 1998, p 3.

- 4.6 During this same period, the NSW Law Reform Commission was 'continuing work on a 1993 reference on provocation (and other defences) more broadly'.<sup>267</sup>
- 4.7 In addition, the case of *Green v R*, one of the most prominent cases of 'gay panic' defence had made its way to the High Court.<sup>268</sup> The following case study outlines this case:

**Case study: *Green v R***<sup>269</sup>

Green (the defendant), after going to bed alone at his friend's (the deceased) house where he was staying the night, claimed that the deceased had, 'slid in next to him uninvited and began sexually groping him'.

Green stated that he had 'pushed the deceased away and told him the contact was unwelcome but the deceased persisted and the accused again pushed him away but the deceased again persisted harder (with insistent force although not frank violence)'.

It was argued that Green stabbed the deceased with scissors ten times as well as punched the deceased in the head, in self-defence.

In 1997, the High Court upheld the common law 'right' to raise homosexual provocation in *Green v R*.

- 4.8 As the Australian Lawyers for Human Rights explained, the *Green v R* case was 'a point of high publicity for and criticism of the homosexual advance defence in Australia' with the facts of the case 'highly contested'.<sup>270</sup>
- 4.9 Ms Lauren Foy, Co-convenor of the NSW Gay and Lesbian Rights Lobby, also spoke of the criticisms that emerged as a result of the *Green v R* case, 'allow[ing] claims of a homosexual advance to substantiate a claim of provocation'.<sup>271</sup> In 1998, the Working Party on Homosexual Advance Defence released its report recommending '[t]he exclusion of a non-violent homosexual advance from forming the basis of the defence of provocation, by way of legislative reform of section 23 of the *NSW Crimes Act*'.<sup>272</sup> However, this key recommendation was not implemented immediately.
- 4.10 The Working Party also recommended, in light of the *Green v R* case, jury instructions be introduced to
- combat homophobic prejudice and to draw a distinction between self-defence or disproportionate response to a violent sexual attack on the one hand and a violent response to a non-violent sexual advance on the other.<sup>273</sup>

<sup>267</sup> Submission 35, ALHR, p 19.

<sup>268</sup> See Submission 24, NSW Gay and Lesbian Rights Lobby, p 9; Submission 34, Dowson Turco Lawyers, p 4; Evidence, Ms Lauren Foy, Co-convenor, NSW Gay and Lesbian Rights Lobby, 9 November 2018, p 30.

<sup>269</sup> See Submission 35, ALHR, pp 21-22; Submission 34, Dowson Turco Lawyers, p 4.

<sup>270</sup> Submission 35, ALHR, p 21.

<sup>271</sup> Evidence, Ms Lauren Foy, Co-convenor, NSW Gay and Lesbian Rights Lobby, 9 November 2018, p 30.

<sup>272</sup> NSW Government, NSW Attorney General Working Party *Homosexual Advance Defence: Final Report of the Working Party*, September 1998, p 20; Evidence, Ms Lauren Foy, Co-convenor, NSW Gay and Lesbian Rights Lobby, 9 November 2018, p 30.

<sup>273</sup> Submission 35, ALHR, p 20.

- 4.11** It was not until some 15 years later that legislative change occurred after sustained efforts by gay and lesbian lobbyists and recommendations made by a Legislative Council inquiry on the Partial Defence of Provocation.<sup>274</sup>
- 4.12** In April 2013, the Legislative Council Select Committee on the Partial Defence of Provocation recommended the amendment of section 23 of the *Crimes Act 1900*, including renaming it to 'the partial defence of gross provocation'.<sup>275</sup>
- 4.13** In October 2013, the NSW Government agreed with the Select Committee's recommendation that the Law Reform Commission should, in five years' time, conduct a 'comprehensive review of the law of homicide and homicide defences, including a review of any reforms to the law of provocation'.<sup>276</sup> This review is yet to be undertaken by the NSW Law Reform Commission.
- 4.14** In 2014, the *Crimes Amendment (Provocation) Act 2014* was enacted to amend section 23 of the *Crimes Act 1900* to provide for a 'partial defence' of 'extreme provocation' for trials of persons for murder allegedly committed from 13 June 2014.<sup>277</sup> As a result the 'gay panic' defence was effectively abolished.

#### **Impact of the 'gay panic' defence**

- 4.15** Some inquiry participants gave evidence about how the 'gay panic' defence influenced the delivery of justice in the period 1970 to 2010.
- 4.16** As ACON identified, the 'gay panic' defence was a 'major impediment to the proper scrutiny of claims of homophobia and homophobic violence' as it was not uncommon for 'investigating police and the judiciary ... [to] sympathise with the accused and reflect the views of the general population about homosexuality'.<sup>278</sup>

<sup>274</sup> Evidence, Ms Lauren Foy, Co-convenor, NSW Gay and Lesbian Rights Lobby, 9 November 2018, pp 30-31.

<sup>275</sup> Select Committee on the Partial Defence of Provocation, Legislative Council, *The partial defence of provocation*, 2013, p 195.

<sup>276</sup> Select Committee on the Partial Defence of Provocation, Legislative Council, *The partial defence of provocation*, 2013, p 209. Recommendation 11 states that the Attorney General issue a reference to the NSW Law Reform Commission, requiring that it undertake a comprehensive review of the law of homicide and homicide defences in NSW, including reforms made in accordance with the recommendations in this report, to commence at the end of five years from the date of this report. Correspondence from Attorney General Greg Smith SC MP to the Chair of the Select Committee on the Partial Defence of Provocation, providing government response to the inquiry, 23 October 2013 enclosing the Department of Attorney General and Justice, *Reform of the Partial Defence of Provocation: Call for Submissions on the exposure draft Crimes Amendment (Provocation) Bill 2013*, October 2013, p 5.

<sup>277</sup> Judicial Commission of New South Wales, *Criminal Trial Courts Bench Book – Defences* (CTC 53, September 2016), [6-400], <<https://www.judcom.nsw.gov.au/publications/benchbks/criminal/provocation.html>>

<sup>278</sup> Submission 23, ACON, p 11.

- 4.17 In addition, ACON submitted that the plausibility of many cases was questionable as 'the only person who could speak to the details of the crime were the accused, or the deceased'. ACON noted that in 'several cases ... there were no witnesses to the supposed advance'.<sup>279</sup>
- 4.18 ACON put forward the view that the 'gay panic' defence 'instilled and reinforced homophobia in society generally, in the Police and in the courts'. ACON also stated that the 'gay panic' defence was essentially 'homophobia feeding homophobia' which subsequently made it
- even harder for people the subject of homophobic violence to report that violence to Police and then follow through the gruelling process of chasing up the Police and going through the court process, assuming the perpetrator was identified in the first place and then charged.<sup>280</sup>
- 4.19 Likewise, Dowson Turco Lawyers claimed that this 'entrenched institutional and societal homophobia made it harder for those who were subjected to homophobic violence to receive adequate justice from a system that was effectively working against them'.<sup>281</sup>
- 4.20 Dowson Turco Lawyers were of the view that the 'ability to raise homosexual provocation in murder proceedings further fuelled the general acceptance of societal and institutional violence and hatred against gay men'.<sup>282</sup>

#### **Attitudes of judicial officers**

- 4.21 Professor Willem de Lint and Associate Professor Derek Dalton, Flinders University stated that between 1970 and 1990 'criminal justice practitioner attitude[s] towards gay males as victims of crime ha[d] been at best reluctant and negligent; and at worst prejudicial'.<sup>283</sup>
- 4.22 ACON's 2018 report entitled *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in the Late 20th Century* identified that societal homophobic attitudes were evident in judicial and coronial statements and rulings of the time. For example,

... one judge in 1996, referring to an assailant being approached to have sex, stated, 'Although it is no longer a crime, anal intercourse is to many members of the community both revolting and degrading'. In another case, the judge referred to the sexual advance as 'grossly offensive'. And in another, a victim was portrayed as a 'predator of straight boys' who 'would do anything for sex'. This judge's remarks at sentencing pejoratively suggested that the victim had pursued the assailant 'presumably with a view to persuading a heterosexual man to have sex with him', thus stigmatising his homosexuality, potentially overshadowing the culpability of the assailant, and prejudicing the case.<sup>284</sup>

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<sup>279</sup> Submission 23, ACON, p 11.

<sup>280</sup> Submission 23, ACON, p 11.

<sup>281</sup> Submission 34, Dowson Turco Lawyers, p 5.

<sup>282</sup> Submission 34, Dowson Turco Lawyers, p 5.

<sup>283</sup> Submission 12, Professor Willem de Lint and Associate Professor Derek Dalton, Flinders University, p 6.

<sup>284</sup> Submission 23, ACON, p 5 quoting ACON, *In Pursuit of Truth and Justice* (2018).

*Calls for change*

- 4.23** In 1998, the Working Party on Homosexual Advance Defence Final Report had recommended that there be 'continuing judicial education with regard to HAD [Homosexual Advance Defence]' and that:

... [t]he Attorney General write to the Judicial Commission, suggesting a direction to the effect, that criminal courts are not 'courts of morals' be included in the Benchbooks for consideration for use in all criminal trials in which the sexuality of the alleged victim does not conform with majority stereotypes.<sup>285</sup>

- 4.24** These recommendations were again reiterated in a similar fashion by the NSW Gay and Lesbian Rights Lobby. Mr Nathan Johnstone, Committee Member, suggesting that judicial bench books be examined to ascertain their contents pertaining to LGBTIQ issues and the historical context of these issues.<sup>286</sup>

- 4.25** Further, Ms Foy argued that 'a whole-of-government response' was needed to make sure that any service that interacts with the LGBTIQ community is 'aware or at least trained to be aware of LGBTI issues within its historical context, and that should include law courts'.<sup>287</sup>

- 4.26** Likewise, the NSW Young Lawyers Human Rights Committee recommended that the 'NSW Government provide cultural competence training regarding LGBTIQ people to legal and justice system personnel, including police, corrective services personnel and government lawyers ... lawyers in private practice and judicial officers'.<sup>288</sup>

**Committee comment**

- 4.27** The committee acknowledges the impact of the 'gay panic' defence which entrenched homophobic attitudes and reinforced the perception that a violent response to an alleged sexual advance could in some way be justified.

- 4.28** The committee recognises the injustice experienced by both victims and their loved ones who were subjects of 'gay panic' defence cases in the 1990s, which led to the charge of murder being diminished to a charge of manslaughter, or as referenced in two cases, a complete acquittal.

<sup>285</sup> NSW Government, NSW Attorney General Working Party *Homosexual Advance Defence: Final Report of the Working Party*, September 1998, p 1; Submission 34, Dowson Turco Lawyers, p 4.

<sup>286</sup> Evidence, Mr Nathan Johnstone, Committee Member, NSW Gay and Lesbian Rights Lobby, 9 November 2018, pp 31-32.

<sup>287</sup> Evidence, Ms Lauren Foy, Co-convenor, NSW Gay and Lesbian Rights Lobby, 9 November 2018, p 31.

<sup>288</sup> Submission 17, NSW Young Lawyers Human Rights Committee, p 10.



## Chapter 5 The experience of hate crime today

This chapter explores the lesbian, gay, transgender, bisexual, transgender, intersex and queer (LGBTIQ) communities' experience of hate crime today and examines the present-day relationship of the LGBTIQ community with the NSW Police Force. It also considers the rural and regional experience of LGBTIQ hate crimes.

### Recent reporting of hate crime

- 5.1** Inquiry participants gave various examples of present day experiences of hate crimes towards the LGBTIQ community. While many agreed that the experiences of the LGBTIQ community had improved since the 1980s and 1990s, it was recognised that hate crimes are still prevalent, especially towards transgender people.
- 5.2** The NSW Young Lawyers Human Rights Committee referred to the Law Council of Australia's 2018 *The Justice Project Final Report*, which reported on the legal needs of LGBTIQ people, and 'concluded that hate crimes are "a common occurrence throughout Australia".<sup>289</sup> It also found that hate crimes are most likely to be perpetrated against LGBTIQ people who tend to be especially vulnerable, such as transgender people and young LGBTIQ people.<sup>290</sup>
- 5.3** In addition, the NSW Young Lawyers Human Rights Committee referred to research conducted by the Australian Research Centre in Sex, Health and Society in 2011-12 entitled *Private Lives 2: The Second National Survey on the Health and Wellbeing of Gay, Lesbian, Bisexual and Transgender Australians*. In this survey LGBTIQ people reported they had experienced the following because of their sexuality or gender identity:
- 25.5 per cent reported verbal abuse
  - 15.5 per reported harassment
  - 8.7 per cent reported threats of physical violence
  - 2.9 per cent reported sexual assault
  - 1.8 per cent reported physical attack or assault with a weapon.<sup>291</sup>
- 5.4** This was supported by Dr Justin Koonin, President, ACON, who stated that violence against the LGBTI community was still existent: 'We still regularly hear reports and some of them make the media and some of them do not'.<sup>292</sup>
- 5.5** Mr Nicolas Parkhill, Chief Executive Officer, ACON was of the view that trans and gender diverse people were 'probably disproportionately affected by ... [hate] crimes' and would still find it challenging to report such crimes to police.<sup>293</sup>

<sup>289</sup> Submission 17, NSW Young Lawyers Human Rights Committee, p 3.

<sup>290</sup> Submission 17, NSW Young Lawyers Human Rights Committee, p 3.

<sup>291</sup> Submission 17, NSW Young Lawyers Human Rights Committee, p 3.

<sup>292</sup> Evidence, Dr Justin Koonin, President, ACON, 9 November 2018, p 8.

<sup>293</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 9 November 2018, p 9.



- 5.6** Mr Michael Atkinson, Program Manager, Safety, Inclusion and Historical Justice, ACON noted that while 'street-based violence does still occur', a 'different kind of insidious violence' had emerged. Mr Atkinson gave the example of violence in public and private housing where tenants are being harassed by their landlords for being gay, lesbian or trans but which is unrecorded.<sup>294</sup>
- 5.7** Mr Nicholas Stewart, Partner, Dowson Turco Lawyers spoke of both personal and client experiences of assault and harassment in more recent years:
- ... clients ... [have been] bashed to a point of being unconscious or to them being in hospital. We have had members of the drag queen community assaulted because of how they dress ... I have been walking to the new theatre at night in my suit and wearing a pink tie and being called a faggot from people driving on the road. Generally speaking, we still do not feel safe in Sydney or in the city. I am constantly looking over my shoulder ... and my partner stops holding my hand when someone approaches us.<sup>295</sup>
- 5.8** Mr Michael Atkinson also gave evidence of a recent example of harassment motivated he experienced while walking a friend home from a bar in Perth:

It was not long after the marriage equality was announced. We had been out having a few gin and tonics at the new gin bar in Perth ... We are walking to go back to drop our friend off ... I noticed two guys behind us—maybe a bit hyper vigilant, but it paid off. We stopped at the traffic lights and they said, 'Oh, we voted for you', and I was like, 'Oh, here we go again'. So I called, 'Good on ya'. We kept walking. 'No, mate, no. What are you gonna do? What are you gonna say to thank me?' I was like, 'Oh my God, this is not good'. His mate went off for a pee. We kept walking. He said, 'No, come and get 'em.' I was like, 'Oh, shit.' I was in fight or flight and I just said, 'I'm an off-duty police officer, you might want to fuck off'. Excuse me. As if! They came at us. But we were right near a bar and we just went into the bar ... Those people clearly already had that kind of hatred. I am glad that we dropped our friend off.<sup>296</sup>

## Present day relationship with police

- 5.9** Inquiry participants informed the committee that the present day relationship between the LGBTIQ community and police was improving but more could be done to strengthen trust in reporting crimes to police as well as to address historical issues.
- 5.10** Mr Alex Greenwich MP, Member for Sydney, Legislative Assembly suggested that the actions of the NSW Police Force, through 'increased outreach [and] increased acknowledgement' have led to 'an increase in LGBTIQ people trusting and reporting crimes to police'. Mr Greenwich also noted that the police have been working 'very closely with ACON, particularly in the domestic violence space, in providing resources and support to police officers around domestic violence within the LGBTIQ community as well'.<sup>297</sup>

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<sup>294</sup> Evidence, Michael Atkinson, Program Manager, Safety, Inclusion and Historical Justice, ACON, 9 November 2018, pp 8-9.

<sup>295</sup> Evidence, Mr Nicholas Stewart, Partner, Dowson Turco Lawyers, 9 November 2018, p 37.

<sup>296</sup> Evidence, Mr Michael Atkinson, Private citizen, 27 November 2018, p 57.

<sup>297</sup> Evidence, Mr Alex Greenwich, Member for Sydney, Legislative Assembly, 9 November 2018, pp 52-53.

- 5.11** Likewise, Mr Nicolas Parkhill, Chief Executive Officer, ACON expressed the view that police Force have 'shown great leadership over the past few years. Their investment in programs like Pride in Diversity, their gay and lesbian liaison officers [GLLO] program, are all steps in the right direction'.<sup>298</sup>
- 5.12** While Assistant Commissioner Anthony Crandell, Police Education and Training, NSW Police Force, acknowledged 'there is a long way to go to repair injuries and hurt from the past', he took the view that involving the LGBTIQ community in the training of recruits was a 'really good step'.<sup>299</sup>
- 5.13** The NSW Police Force told the committee that it has 'worked very hard to build trust and confidence amongst some of the most marginalised groups within the LGBTIQ communities – transgender and other gender diverse people and young people'.<sup>300</sup>
- 5.14** The NSW Police Force stated that it has also shown significant support towards services such as:
- The Gender Centre, a 'peak state-wide specialist multi-purpose service supporting the transgender, gender diverse and gender questioning community of NSW'<sup>301</sup>
  - events like Transgender Day of Remembrance
  - the design and installation of plaque outside Surry Hills Police Area Command dedicated to the Transgender community.<sup>302</sup>
- 5.15** Assistant Commissioner Crandell observed that at no stage had the NSW Police Force indicated that there was 'no more homophobia, transphobia or that sort of sentiment' within the force. Rather, he stated: 'We reflect the community'.<sup>303</sup> He explained:
- If we can say that about the community then perhaps I could say that about the police force, but you cannot say that about the community and I cannot say that about the police force ... My role is to make sure it gets better.<sup>304</sup>

### **A continuing fear of reporting to police**

- 5.16** A number of inquiry participants spoke of a continuing fear among the LGBTIQ community to report incidents to the police founded upon the historical mistrust of the police.

<sup>298</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 9 November 2018, p 9.

<sup>299</sup> Evidence, Assistant Commissioner Anthony Crandell, Police Education and Training, NSW Police Force, 9 November 2018, p 18.

<sup>300</sup> Submission 20, NSW Police Force, p 8.

<sup>301</sup> The Gender Centre Inc, *Welcome to the Gender Centre*, <<https://gendercentre.org.au/>>

<sup>302</sup> Submission 20, NSW Police Force, p 8.

<sup>303</sup> Evidence, Assistant Commissioner Anthony Crandell, Police Education and Training, NSW Police Force, 9 November 2018, p 19.

<sup>304</sup> Evidence, Assistant Commissioner Anthony Crandell, Police Education and Training, NSW Police Force, 9 November 2018, p 19.

- 5.17** The committee heard some evidence that there is strong transphobia in New South Wales and crimes against transgender people are underreported due to fear of retaliation and distrust of authorities such as the police and the courts.<sup>305</sup>
- 5.18** Associate Professor Robinson referred to a 2010 study she conducted in Queensland which 'found that 72 per cent of people from the LGBTI community had experienced homophobic or transphobic abuse, yet 75 per cent of people who had experienced that abuse did not report it'.<sup>306</sup>
- 5.19** Associate Professor Shirleene Robinson, Honorary Research Fellow, Discipline of Modern History and Politics, Macquarie University observed that the primary reason why members of the LGBTIQ community did not report violence or harassment is because they do not trust the police:
- ... people were reluctant to come forward or to report their experiences because they felt they would not be treated with respect, and it would be not worth the personal and social costs of raising it with the police given the somewhat troubled and fraught history.<sup>307</sup>
- 5.20** Associate Professor Robinson also highlighted that the LGBTIQ community would be influenced by the historical experience of reporting whereby crimes were 'perhaps [not] ... labelled as hate-motivated crimes and investigated properly in that particular way'.<sup>308</sup>
- 5.21** Likewise, Mr Nicholas Stewart, Partner, Dowson Turco Lawyers, explained that the decision not to report could be traced anecdotally to the feeling among members of the LGBTIQ community that 'we have always been bashed and targeted, so it is just another incident in our lives and it is just best to move on and get on with it'.<sup>309</sup>
- 5.22** As noted in chapter 2, Mr Stewart explained that the reluctance in reporting crimes to the police was 'because ... many crimes have gone uninvestigated or are not investigated properly', with members of the community contemplating "What use would it do? Are they going to find the perpetrators? What do I have to go through to prove that I was bashed" and, "to what extent do I need to show that I did not provoke the bashing."<sup>310</sup>
- 5.23** Mr Alex Greenwich MP, Member for Sydney, Legislative Assembly remarked that the 'number one reason why people do not feel comfortable [reporting incidents] is ... a result of the

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<sup>305</sup> Evidence, Associate Professor Shirleene Robinson, Honorary Research Fellow, Discipline of Modern History and Politics, Macquarie University, 28 November 2018, pp 19-20; Evidence, Dr Andy Kaladelfos, Lecturer in Criminology, School of Social Sciences, University of New South Wales, 28 November 2018, pp 19-20.

<sup>306</sup> Evidence, Associate Professor Shirleene Robinson, Honorary Research Fellow, Discipline of Modern History and Politics, Macquarie University, 28 November 2018, p 20.

<sup>307</sup> Evidence, Associate Professor Shirleene Robinson, Honorary Research Fellow, Discipline of Modern History and Politics, Macquarie University, 28 November 2018, p 23.

<sup>308</sup> Evidence, Associate Professor Shirleene Robinson, Honorary Research Fellow, Discipline of Modern History and Politics, Macquarie University, 28 November 2018, p 20.

<sup>309</sup> Evidence, Mr Nicholas Stewart, Partner, Dowson Turco Lawyers, 9 November 2018, p 43.

<sup>310</sup> Evidence, Mr Nicholas Stewart, Partner, Dowson Turco Lawyers, 9 November 2018, p 43.

historical handling of the LGBTI community by the police'. He was of the view that it was 'critical that all police are given that historical setting as well and the impact that that has'.<sup>311</sup>

**5.24** In order to 'fully understand the scale of this issue' Associate Professor Robinson recommended a large scale survey be conducted of the LGBTIQ population across New South Wales to 'consider just how substantial the issue of underreporting of abuse to police has been and continues to be'. She argued that such a survey should also 'consider both abuse experienced personally and also take into consideration the accounts of those who witnessed abuse but did not report to police for a variety of reasons, including a distrust or fear of police'.<sup>312</sup>

**5.25** As the NSW Young Lawyers Human Rights Committee indicated, with reference to the Law Council of Australia's 2018 *The Justice Project Final Report*, LGBTIQ people are significantly less likely than other victims of crime to report harassment or violence. Seventy-five percent of LGBTIQ people did 'not report recent experiences of homophobic or transphobic abuse to police or seek professional assistance'. It also found that '[o]nly 16 per cent of those who sought help reported the abuse to police'.<sup>313</sup>

**5.26** The Law Council of Australia identified several other key reasons, alongside mistrust and a fear of being 'outed, for why LGBTIQ people do not report hate crimes, including:

- Public attitudes towards LGBTIQ people, which contribute to a fear of further victimisation and a desire to avoid drawing negative attention to LGBTIQ communities
- Internalised attitudes, by which some LGBTIQ people believe that they deserve to be a victim of crime
- A lack of informed and inclusive services, including legal services
- Compounded barriers for LGBTIQ people who experience intersectional disadvantage, especially:
  - LGBTIQ people with a disability
  - Older LGBTIQ people
  - Aboriginal and Torres Strait Islander LGBTIQ people
  - LGBTIQ people in rural, regional and remote ("RRR") areas
  - LGBTIQ people who are sex workers.<sup>314</sup>

### **Committee comment**

**5.27** The committee acknowledges that crimes motivated by bias or hate are still prevalent in today's society despite the efforts of police, the LGBTIQ community and the introduction of legislation to foster equal treatment and change entrenched views and attitudes towards the LGBTIQ community. The committee notes that transgender people and young LGBTIQ people are particularly vulnerable.

<sup>311</sup> Evidence, Mr Alex Greenwich, Member for Sydney, Legislative Assembly, 9 November 2018, p 50.

<sup>312</sup> Evidence, Associate Professor Shirleene Robinson, Honorary Research Fellow, Discipline of Modern History and Politics, Macquarie University, 28 November 2018, p 19.

<sup>313</sup> Submission 17, NSW Young Lawyers, p 5.

<sup>314</sup> Submission 17, NSW Young Lawyers, p 5.

- 5.28** The efforts of the NSW Police Force in generating cultural change, and its implementation of programs and support for transgender, gender diverse and young LGBTIQ people to build trust and improve their relationship with police is commendable. The committee recognises these as positive measures towards ensuring that all members of the LGBTIQ community feel safe, are treated with respect, and are assured that their experience of crime and violence is taken seriously and investigated properly.
- 5.29** However, the committee notes the observations of the NSW Police Force, among others, that homophobic or transphobic sentiments have not been eliminated entirely from within the force, or from society more generally.
- 5.30** The committee recognises that the historical distrust of the police and lack of investigation of hate crimes against the LGBTIQ community has led to continued under-reporting of crimes. The committee is concerned by the high number of LGBTIQ people who experience violence or harassment but do not report it to police. The committee is also concerned that there is a continued perception amongst some LGBTIQ people that violence towards them has been normalised so reporting such crimes would be pointless.
- 5.31** This cannot continue. While the committee would have liked to have made recommendations to rectify this problem, the committee has not received sufficient evidence to date to identify the most appropriate solutions. Similarly, the committee is cognisant that there are many more stories to be told about trans people's experience of hate crime that the committee has not yet heard, owing to the limited time allocated to this inquiry. Further evidence on these matters should be prioritised, should the Legislative Council take up its recommendation that this inquiry resume in the new parliament.

## **Rural and regional experiences of the LGBTIQ community**

- 5.32** In evidence to the inquiry, Mr Michael Atkinson, reflected on his experience in 1995 as the subject of a homophobic attack in Lismore:

I was at a day party organised by a local LGBTIQ group held at a public hall in town. There was a theme and some people were dressed in costumes ... a male member of the general public in his mid-thirties (the visitor) happened upon the venue and asked what was going on. We explained it was a gay party and was welcome to join in if he was comfortable. He said he was comfortable and stayed outside chatting with us for about half an hour. A good song came on and everyone except me, my boyfriend and the visitor went inside. My boyfriend lent in and kissed me at which point the visitor started punching and kicking me and yelling out homophobic slurs including "dirty fucking faggots". My back was to the visitor and we were sitting on the bonnet of a car so we were taken unaware and it was hard to get away. I received about 8 strikes to my head, neck and back which caused bleeding to my head, dizziness, and immediate pain to my head, neck and back as well as shock. The visitor stopped hitting me and ran away at which point my boyfriend started chasing him to no avail.<sup>315</sup>

- 5.33** Mr Atkinson did not report the incident to police 'based on having heard other people's negative experiences when reporting incidents to police ... [and] having grown up witnessing and

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<sup>315</sup> Submission 5, Mr Michael Atkinson, p 1.

experiencing pervasive homophobia and discrimination that informed my negative perceptions of government services in general including police'.<sup>316</sup>

- 5.34** The committee and secretariat received anecdotal evidence from stakeholders who gave evidence to this inquiry that many people who live in regional and rural areas experience hate crime and would like to share their story. However, in view of the limited timeframe accorded to this inquiry, the committee was unable to travel beyond Sydney to hear those stories.

#### **Committee comment**

- 5.35** As noted earlier, crimes motivated by bias or hate continue to exist in society today despite the efforts of police, the LGBTIQ community and legislative reform to ensure respect and equal treatment of the LGBTIQ community. The committee believes that the isolation experienced by LGBTIQ people in regional and rural communities has the potential to make them particularly vulnerable to crime and even less likely to come forward and seek assistance from the police.
- 5.36** The committee acknowledges that the timeframe for this inquiry has not been sufficient to enable it to travel to regional and rural parts of the state. Should the Legislative Council take up our recommendation that this inquiry resume in the new parliament, the committee should prioritise hearings in regional and rural areas to hear these stories in person, rather than in writing, and identify how to best support the needs of this particularly vulnerable group.
- 5.37** The committee is aware, anecdotally, of victims of historical gay hate crimes having moved to rural and regional areas and who may feel more comfortable telling their story in person than in writing. In addition, the committee is of the view that rural and regional experiences of gay hate crimes is an issue for further investigation. Should the Legislative Council take up our recommendation that this inquiry resume in the new parliament, the committee should endeavour to take evidence from these stakeholders.

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<sup>316</sup> Submission 5, Mr Michael Atkinson, p 1.



## Appendix 1 Submissions

No.	Author
1	Mr Thomas Poberezny-Lynch
2	Name suppressed
3	Confidential
4	Mr Duncan McNab
5	Mr Michael Atkinson
6	carolyn ienna
7	Mr Peter Clare
8	Support After Murder inc
8a	Confidential
8b	Support After Murder inc
9	Name suppressed
10	Confidential
11	Name suppressed
12	Flinders University
13	Name suppressed
14	Garry Wotherspoon
15	Name suppressed
16	Professor Stephen Tomsen
17	NSW Young Lawyers
18	Name suppressed
19	Dr Andy Kaladelfos, Dr Bianca Fileborn, Dr Yorick Smaal, Associate Professor Lisa Featherstone, Associate Professor Shirleene Robinson
20	NSW Police Force
20a	Confidential
21	Confidential
22	Mr Alastair Lawrie
23	ACON
24	NSW Gay and Lesbian Rights Lobby
25	Name suppressed
26	Mr David McMahon
27	Ms Rachel Smith
28	Confidential



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<b>No.</b>	<b>Author</b>
29	Mr Steve Johnson
30	City of Sydney
31	Mr Paul Simes
32	Ms Sue Thompson
32a	Confidential
33	NSW Beat Project
34	Dowson Turco Lawyers
35	Australian Lawyers for Human Rights
36	Name suppressed

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## Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
<b>Friday 9 November 2018, Macquarie Room, Parliament House</b>		
	Dr Justin Koonin	President, ACON
	Mr Nicolas Parkhill	Chief Executive Officer, ACON
	Mr Michael Atkinson	Program Manager, Safety, Inclusion and Historical Justice, ACON
	Mr Anthony Crandell	Assistant Commissioner, Police Education and Training, NSW Police Force
	Ms Lauren Foy	Co-convenor, NSW Gay and Lesbian Rights Lobby
	Mr Nathan Johnstone	Committee Member, NSW Gay and Lesbian Rights Lobby
	Mr Nicholas Stewart	Partner, Dowson Turco Lawyers
	Mr Alex Greenwich MP	Member for Sydney
	Mr Larry Galbraith	Former Editor and Journalist
	Mr Duncan McNab	Author, former NSW Police Force Detective
<b>Tuesday 27 November 2018, Macquarie Room, Parliament House</b>		
	Mr Steve Johnson	Brother of Scott Johnson
	Mr Paul Simes	Witness of gay hate violence
	Mr Alan Rosendale	Survivor of gay hate violence
	Mr David McMahon	Survivor of gay hate violence
	Mr Rick Feneley	Journalist
	Professor Stephen Tomsen	Professor of Criminology and Criminal Justice, School of Social Sciences and Psychology, Western Sydney University
	Mr Peter Rolfe	President, Support after Murder Inc
	Mr Michael Atkinson	Survivor of gay hate violence
<b>Wednesday 28 November 2018, Macquarie Room, Parliament House</b>		
	Dr Allen George	Lecturer in Socio-legal Studies, Faculty of Arts and Social Science, University of Sydney

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
	Professor Willem de Lint	Professor in Criminal Justice, College of Business, Government and Law, Flinders University
	Associate Professor Derek Dalton	College of Business, Government and Law, Flinders University
	Dr Andy Kaladelfos	Lecturer in Criminology, School of Social Sciences, University of New South Wales
	Associate Professor Shirleene Robinson	Honorary Research Fellow, Discipline of Modern History and Politics, Macquarie University
	Mr Steve Page	Former NSW Police Force Detective Sergeant

## Appendix 3 Minutes

### Minutes no. 13

Wednesday 26 September 2018

Standing Committee on Social Issues

Room 1136, Parliament House, Sydney, 10.30 am

#### 1. Members present

Mr Mallard, *Chair*

Mr Donnelly, *Deputy Chair*

Mr Khan (substituting for Mr Fang for the duration of the inquiry into gay and transgender hate crimes between 1970 and 2010)

Revd Mr Nile

Mr Pearson (participating member for the duration of the inquiry into gay and transgender hate crimes between 1970 and 2010)

Ms Sharpe

Mrs Ward (substituting for Dr Phelps for the duration of the inquiry into gay and transgender hate crimes between 1970 and 2010)

#### 2. Participating member

The Chair advised that Mr Pearson would be participating in meetings as a participating member for the duration of the inquiry into gay and transgender hate crimes between 1970 and 2010.

#### 3. Correspondence

The committee noted the following items of correspondence:

##### *Received:*

- 19 September 2018 – Letter from the Hon Natasha Maclaren-Jones, Government Whip, to the secretariat advising that the Hon Trevor Khan will substitute for the Hon Wes Fang for the duration of the inquiry into gay and transgender hate crimes between 1970 and 2010.
- 26 September 2018 – Letter from the Hon Natasha Maclaren-Jones, Government Whip, to the secretariat advising that the Hon Natalie Ward will substitute for the Hon Dr Peter Phelps for the duration of the inquiry into gay and transgender hate crimes between 1970 and 2010.

#### 4. Inquiry into gay and transgender hate crimes between 1970 and 2010

##### 4.1 Terms of reference

The committee noted the following terms of reference referred by the House on 19 September 2018:

That with reference to the May 2018 report of ACON *In Pursuit of Truth and Justice* and the progress made by NSW Police Force through Strike Force Parrabell, the Standing Committee on Social Issues inquire into and report on the response to gay and transgender hate crimes between 1970 and 2010 and current developments in policy and practice in relation to such crimes, and in particular:

- (d) the violent crimes committed in New South Wales between 1970 and 2010 where the victim of that crime was a member of the LGBTIQ community and where the relevant crime was the subject of a report to the NSW Police Force, including:
  - (iii) whether there existed impediments within the criminal justice system that impacted the protection of LGBTIQ people in New South Wales and the delivery of justice to victims of LGBTIQ hate crimes and their families, with reference to case studies of particular matters including but not limited to Alan Rosendale, Scott Johnson, John Russell and Ross Warren,
  - (iv) to the extent that past impediments are identified, how effectively these have been addressed by current policy and practice,
- (e) in relation to LGBTIQ hate crimes more generally:

- (iii) what role the so-called 'gay panic' defence played in the culture of LGBTIQ hate crimes between 1970 and 2010,
- (iv) how the so-called 'gay panic' defence impacted the delivery of justice and the treatment of gay men during LGBTIQ hate crime investigations and court proceedings, and
- (f) any other related matter.

#### **4.2 Proposed timeline**

Resolved, on the motion of Ms Sharpe: That the committee adopt the following timeline for the administration of the inquiry:

- Closing date for submissions: 7 November 2018
- Hearings: Two hearings and one reserve date in late November and early December 2018
- Report: Late January 2019.

#### **4.3 Closing date for submissions**

Resolved, on the motion of Mr Donnelly: That the closing date for submissions be 7 November 2018.

#### **4.4 Stakeholder list**

Resolved, on the motion of Mr Khan: That the secretariat email members with a list of stakeholders to be invited to make written submissions, and that members have two days from the email being circulated to nominate additional stakeholders.

#### **4.5 Advertising**

The committee noted that the inquiry will be advertised via Twitter, Facebook, stakeholder letters and a media release distributed to all media outlets in New South Wales, including the Star Observer.

#### **4.6 Hearing dates**

Resolved, on the motion of Mrs Ward: That the committee hold hearings in November and December 2018, the dates of which are to be determined by the Chair after consultation with members regarding their availability.

#### **4.7 Provision of documents to participating member**

Resolved, on the motion of Mr Donnelly: That Mr Pearson, who has advised the committee that he intends to participate for the duration of the inquiry into gay and transgender hate crimes, be provided with copies of meeting papers and unpublished submissions.

### **5. Other business**

### **6. Next meeting**

The committee adjourned at 10.54 am, *sine die*

Jenelle Moore

**Clerk to the Committee**

### **Minutes no. 14**

Wednesday 24 October 2018

Standing Committee on Social Issues

Room 1043, Parliament House, Sydney, 1.30 pm

#### **1. Members present**

Mr Mallard, *Chair*

Mr Donnelly, *Deputy Chair*

Mr Khan (from 1.40 pm)

Revd Mr Nile (from 1.50 pm)

Mr Pearson (participating member)

Ms Sharpe  
Mrs Ward

## 2. Inquiry into gay and transgender hate crimes between 1970 and 2010

### 2.1 Private briefing, Everymind

The committee met with the following representatives of Everymind and ACON to discuss use of language and questioning approaches for upcoming hearings:

- Ms Rebecca Pryor, Project Officer, Mindframe, Everymind
- Ms Jennifer Howard, Project Officer, Mindframe, Everymind
- Mr Chris Nelson, ACON.

## 3. Next meeting

The committee adjourned at 2.06 pm, *sine die*.

Jenelle Moore  
Clerk to the Committee

## Minutes no. 15

Friday 9 November 2018

Standing Committee on Social Issues

Macquarie Room, Parliament House, Sydney at 8:32 am

## 1. Members present

Mr Mallard, Chair

Mr Donnelly, Deputy Chair

Revd Mr Nile

Mr Pearson

Ms Faehrmann (participating member for the duration of the inquiry into Gay and Transgender hate crimes between 1970 and 2010)

Ms Sharpe

Mrs Ward.

## 2. Apologies

Mr Khan.

## 3. Previous minutes

Resolved, on the motion of Revd Mr Nile: That draft minutes nos. 13 and 14 be confirmed.

## 4. Correspondence

Committee noted the following items of correspondence:

### *Received*

- 24 September 2018 – Letter from anonymous stakeholder providing information regarding historic hate crimes against gay men in the Parramatta area (circulated on yellow paper)
- 5 October 2018 – Email from Mr Rick Feneley, Journalist, to the secretariat advising that he will not be making a submission to the inquiry into Gay and Transgender hate crime between 1970 and 2010, but would be willing to provide further advice or evidence on the subject if requested
- 25 October 2018 – Email from Ms Jennifer Howard, Project Officer, Everymind, to the secretariat attaching a 'media pack' and resources on trauma and the law
- 5 November 2018 – Email from Ms Amanda Xavier, Acting Manager Executive Support, Office of the Lord Mayor, City of Sydney advising that Lord Mayor Clover Moore has declined to appear as a witness in the hearing on 9 November 2018 but would be willing to provide answers to any questions on notice

- 7 November 2018 – Email from Ms Michelle Vaughn, Chief of Staff, Secretary of the Department of Justice, declining to appear as a witness in the hearing on 9 November 2018 but offering to provide answers to any questions on notice.

***Sent***

- 30 October 2018 – Letters from the Chair to Ms Jennifer Howard of Everymind, Ms Rebecca Pryor of Everymind and Mr Chris Nelson of ACON thanking them for their private briefing of the committee on 24 October 2018.

Resolved, on the motion of Mr Donnelly: That the committee keep confidential correspondence dated 24 September 2018 from an anonymous stakeholder as it contains sensitive/identifying information.

## **5. Inquiry into gay and transgender hate crimes between 1970 and 2010**

### **5.1 Proposed timeline**

Resolved, on the motion of Revd Mr Nile: That the committee table an interim report in late January 2019, recommending that the inquiry be re-established in the 57<sup>th</sup> Parliament.

### **5.2 Public submissions**

The following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 4, 6, 12, 14, 16, 17, 19, 20, 23, 24, 26, 27, 29 and 30.

### **5.3 Partially confidential submissions**

Resolved, on the motion of Mr Donnelly: That the committee authorise the publication of submission nos 2, 8, 9, 11, 13, 22 and 25, with the exception of identifying information which is to remain confidential, as per the request of the author and with the exception of adverse mention which is to remain confidential as per the recommendation of the secretariat.

### **5.4 Confidential submissions**

Resolved, on the motion of Mrs Ward: That the committee keep submission nos. 3, 10, 21 and 28 confidential, as per the request of the author, as they contain identifying and/or sensitive information.

### **5.5 Use of offensive terminology in evidence**

Resolved, on the motion of Mr Donnelly: That for the duration of the inquiry into Gay and Transgender hate crimes between 1970 and 2010:

- (a) evidence containing offensive expressions be published, subject to the committee clerk identifying terms of particular concern and bringing those terms to the attention of the committee for consideration,
- (b) the Chair include in his opening statement at each hearing a warning to people observing proceedings that, owing to the nature of the hate crimes being considered by this inquiry, evidence may contain strong or offensive language,
- (c) the following statement be published on the inquiry website:  
**"Strong or offensive language used in evidence**  
Owing to the nature of the hate crimes being considered by this inquiry, some of the evidence received during hearings and in submissions may include strong or offensive language."

### **5.6 Allocation of time for questioning**

Resolved, on the motion of Mrs Ward: That an informal approach be taken to the allocation of time for questioning between members, guided by a share of approximately 80 per cent of time to substantive members and a share of approximately 20 per cent of time to participating members.

### **5.7 Protocol for support of witnesses and other inquiry participants**

The committee confirmed the protocol for support of witnesses and other inquiry participants, as previously circulated.

### **5.8 Witness list for public hearing**

The committee confirmed the proposed hearing schedule for 9 November 2018, as previously agreed by email.

### 5.9 Participating members

- Resolved, on the motion of Mr Donnelly: That Ms Faehrmann, who has advised the committee that she intends to participate for the duration of the inquiry into Gay and Transgender hate crimes, be provided with copies of meeting papers and unpublished submissions.
- Resolved on the motion of Mr Donnelly: That Mr Pearson and Ms Faehrmann, who are participating members on the inquiry into Gay and Transgender hate crimes between 1970 and 2010, be provided with confidential committee inquiry documents, including the Chair's draft report.

### 5.10 Tendered documents

Resolved, on the motion of Mrs Ward: That the committee authorise publication of the following documents:

- A powerpoint presentation by Everymind and ACON on 'Mindframe'
- An information sheet by ACON entitled, 'A language guide: Trans and gender diverse inclusion'
- A health information sheet by National LGBTI Health Alliance entitled, 'Inclusive language guide: Respecting people of intersex, trans and gender diverse experience'
- A guide by the Victorian Equal Opportunity and Human Rights Commission entitled, 'Guide for media: Reporting on gender identity'.

### 5.11 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The Chair made a statement acknowledging the murder victims the subject of this inquiry, and other victims of hate violence in the community.

Members and officers stood in their places as a mark of respect.

The following witnesses were sworn and examined:

- Dr Justin Koonin, President, ACON
- Mr Nicolas Parkhill, Chief Executive Officer, ACON
- Mr Michael Atkinson, Program Manager, Safety, Inclusion and Historical Justice, ACON

Mr Parkhill tendered the following document and requested that the document be kept confidential:

- Documents titled "Gay hate dossiers"

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Tony Crandell, Assistant Commissioner, NSW Police Force

Mr Crandell tendered the following document and requested that the document be kept confidential:

- Case Summaries, Strike Force Parabell (confidential)

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Ms Lauren Foy, Co-convenor, NSW Gay and Lesbian Rights Lobby
- Mr Nathan Johnstone, Committee Member, NSW Gay and Lesbian Rights Lobby

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:



- Mr Nicholas Stewart, Partner, Dowson Turco Lawyers '

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Larry Galbraith, Former Editor and Journalist
- Mr Alex Greenwich MP, Member for Sydney

Mr Galbraith tendered the following documents:

- Article entitled "He touched me" by Larry Galbraith
- Article entitled "Extreme Prejudice" in the Good Weekend by Martyn Goddard

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Duncan McNab, Author, former NSW Police Force Detective

The evidence concluded and the witness withdrew.

The public and the media withdrew.

The public hearing concluded at 4:47 pm.

#### **5.12 Tendered documents**

Resolved, on the motion of Ms Sharpe: That the committee keep confidential the following document tendered during the public hearing:

- Document entitled "Gay hate dossiers" tendered by Mr Parkhill
- Case Summaries, Strike Force Parabell tendered by Assistant Commissioner Crandell.

Resolved, on the motion of Mrs Ward: That the committee accept and publish the following documents tendered during the public hearing:

- Article titled "He touched me" by Larry Galbraith, tendered by Mr Galbraith
- Article titled "Extreme Prejudice" by Martyn Goddard, Good Weekend, tendered by Mr Galbraith.

#### **5.13 Site visit**

Resolved, on the motion of Ms Sharpe: That the committee participate in a visit of inspection to Marks Park, Bondi and accept the offer of ACON to provide a guided tour of the site.

### **6. Adjournment**

Committee adjourned at 4.51pm, until Tuesday 27 November in the Macquarie Room, Parliament House (public hearing).

Jenelle Moore  
**Clerk to the Committee**

**Minutes no. 16**

Tuesday 27 November 2018

Standing Committee on Social Issues

Macquarie Room, Parliament House, 9.47 am

**1. Members present**

Mr Mallard, Chair

Mr Donnelly, Deputy Chair

Mr Khan

Revd Mr Nile

Mr Pearson

Ms Faehrmann (left the meeting at 1:00pm)

Ms Sharpe

Mrs Ward

**2. Apologies****3. Previous minutes**

Resolved, on the motion of Mr Donnelly: That draft minutes no. 15 be confirmed.

**4. Correspondence**

The committee noted the following items of correspondence:

***Received***

- 12 November 2018 – Email from Mr Duncan McNab to the committee providing further information relating to matters raised during the public hearing held on 9 November 2018
- 12 and 16 November 2018 – Emails from Mr Nicholas Stewart, Dowson Turco Lawyers, requesting a copy of video footage from the hearing of 9 November 2018 12, 13, 19 and 22 November 2018 – Emails from Mr Matthew Campbell to the secretariat regarding a submission made by Mr Campbell
- 19 November 2018 – Email from Dr Allen George, Lecturer in Socio-Legal Studies, Department of Sociology and Social Policy, University of Sydney to the secretariat attaching an abstract of a research paper entitled 'Hate Crimes against Lesbians and Gay Men in New South Wales: Accumulated Knowledge of Victimisation via Five Reports'.

**5. Inquiry into gay and transgender hate crimes between 1970 and 2010****5.1 Public Submissions**

The committee noted that the following submissions were published under the authorisation of the resolution appointing the committee: submission nos 5, 31, 32, 33.

**5.2 Confidential submission**

Resolved, on the motion of Rev'd Nile: That the committee keep submission no.32a confidential, as per the request of the author, as it contains identifying and/or sensitive information.

**5.3 Other submissions**

The committee noted the following:

- Dowson Turco have been granted an extension for their submission to 7 December 2018, as previously agreed by the committee by email
- The Inner City Legal Centre have advised the secretariat that it does not intend to lodge a submission to the inquiry as they have not been able to contact their clients to obtain their consent to incorporate their case studies into a submission.
- Australian Lawyers for Human Rights have been granted an extension for their submission to 30 November 2018, as previously agreed by the committee by email.

#### **5.4 Answers to questions on notice**

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Mr Michael Atkinson, ACON, received 22 November 2018
- answers to questions on notice from Ms Lauren Foy, NSW Gay and Lesbian Rights Lobby, received 12 November 2018.

#### **5.5 Request for hearing footage**

Resolved, on the motion of Revd Mr Nile: That the committee authorise the release of video footage of Mr Nicholas Stewart's appearance before the committee on 9 November 2018 to Mr Stewart and advise Mr Stewart that the footage should not be published or distributed, other than is necessary to assist in the preparation of his submission to the committee.

#### **5.6 Postponement of site visit**

The committee noted the postponement of the site visit to Marks Park on 28 November 2018 to facilitate the attendance of members at the funeral of a former member of the Legislative Council

#### **5.7 Public hearing – 27 and 28 November 2018**

Resolved, on the motion of Revd Mr Nile: That the committee approve the proposed hearing schedules for 27 and 28 November 2018, as previously agreed over email.

#### **5.8 Public hearing**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined, via Skype:

- Mr Steve Johnson, brother of Scott Johnson.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Paul Simes, witness of gay hate violence.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Alan Rosendale, survivor of gay hate violence.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr David McMahon, survivor of gay hate violence.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Rick Feneley, Journalist.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Professor Stephen Tomsen, Professor of Criminology and Criminal Justice, School of Social Sciences and Psychology, Western Sydney University.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Peter Rolfe, President, Support After Murder Inc.

Mr Rolfe tendered the following document:

- Letter to the committee from Mr Peter Rolfe providing additional information, dated 27 November 2018.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Michael Atkinson, survivor of gay hate violence.

The evidence concluded and the witness withdrew.

The public and the media withdrew.

The public hearing concluded at 4.03 pm.

## 6. Adjournment

The committee adjourned at 4.08 pm, *sine die*.

Jenelle Moore  
Clerk to the Committee

### Minutes no. 17

28 November 2018

Standing Committee on Social Issues

Macquarie Room, Parliament House, 9.45 am.

#### 1. Members present

Mr Mallard, Chair

Mr Donnelly, Deputy Chair

Mr Khan

Revd Mr Nile (from 10.32 am)

Mr Pearson (from 10.00 am)

Ms Faehrmann

Ms Sharpe

Mrs Ward

#### 2. Apologies

#### 3. Inquiry into gay and transgender hate crimes between 1970 and 2010

##### 3.1 Submission nos 18 and 18a

The committee considered the publication status of submission nos 18 and 18a.

Resolved, on the motion of Mr Khan: That submission nos 18 and 18a be kept confidential, together with correspondence from the author dated 12, 13, 19 and 22 November 2018.

### **3.2 Public hearing**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Dr Allen George, University of Sydney

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined via teleconference:

- Professor Willem de Lint, Professor in Criminal Justice, College of Business, Government and Law, Flinders University
- Associate Professor Derek Dalton, College of Business, Government and Law, Flinders University

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Andy Kaladelfos, Lecturer in Criminology, School of Social Sciences, University of New South Wales
- Associate Professor Shirleene Robinson, Honorary Research Fellow, Discipline of Modern History and Politics, Macquarie University

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Steve Page, Former NSW Police Force Detective Sergeant

The evidence concluded and the witness withdrew.

The public and the media withdrew.

The public hearing concluded at 1.30 pm.

### **3.3 Tended documents**

Resolved, on the motion of Revd Mr Nile: That the committee accept and publish the following document tendered during the public hearing of 27 November 2018:

- Letter to the committee from Mr Peter Rolfe providing additional information, dated 27 November 2018.

### **3.4 Publication of attachments to submission**

Resolved, on the motion of Mr Khan: That the committee publish the following attachments to submission no. 31, redacted of sensitive or identifying information:

- Document entitled "Police centre office, 14 College St Darlinghurst NSW circa 1989"
- Copy of witness statement dated 21 August 2018
- Copy of document entitled "Crime Information Report"
- Copy of document entitled "Statement of a Witness"

### **3.5 Other business**

Resolved, on the motion of Mr Khan: That the Chair request copies of the court decisions in the following matters:

- Inquest into the death of John Russell and inquest into the suspected deaths of Ross Warren and Gilles Mattaini – Senior Deputy State Coroner Jacqueline Milledge, 9 March 2005
- Scott Johnson – First coronial inquest by State Coroner, Derrick Hand, 16 March 1989
- Scott Johnson – Second coronial inquest by the Deputy State Coroner Carmel Forbes, 27 June 2012
- Scott Johnson – Third coronial inquest by the State Coroner, Michael Barnes, 30 November 2017

Resolved, on the motion of Mr Khan: That the committee invite Commissioner Mick Fuller, NSW Police Force, to attend a public hearing to speak to evidence received by the committee regarding police officers whose actions may have had the effect of obstructing investigations into historic hate crimes.

#### 4. **Adjournment**

The committee adjourned at 1.36 pm, *sine die*.

Jenelle Moore  
**Clerk to the Committee**

#### **Draft minutes no. 18**

Wednesday 20 February 2019

Standing Committee on Social Issues

McKell Room, Parliament House, Sydney at 10.00 am

#### 1. **Members present**

Mr Mallard, *Chair*  
 Mr Donnelly, *Deputy Chair*  
 Mr Khan  
 Revd Mr Nile  
 Mr Pearson.

#### 2. **Apologies**

Ms Sharpe  
 Mrs Ward.

#### 3. **Previous minutes**

Resolved, on the motion of Mr Donnelly: That draft minutes 16 and 17 be confirmed

#### 4. **Revised minutes**

Resolved, on the motion of Mr Donnelly: That revised minutes no. 15 be confirmed

#### 5. **Correspondence**

The Committee noted the following items of correspondence:

##### ***Received***

- 26 November 2018 – Email from Mr Rick Fenely to the secretariat containing links to articles and additional information regarding gay hate crimes.
- 5 December 2018 – Email from Ms Vivian Evans, Principal Director, Uther Webster and Evans Solicitors, to the secretariat in response to a request from the committee, attaching:
  - Findings of State Coroner Derrick Hand in the first coronial inquest into the death of Mr Scott Johnson, dated 16 March 1989
  - Findings of Deputy State Coroner Carmel Forbes in the second coronial inquest into the death of Mr Scott Johnson, dated 27 June 2012

- Findings of Senior Deputy State Coroner Jacqueline Milledge in the inquest into the death of Mr John Alan Russell and inquests into the suspected deaths of Mr Ross Bradley Warren and Mr Gilles Jacques Mattaini, dated 9 March 2015
- 28 December 2018 – Email from Dr Andy Kaladelfos and Associate Professor Shirleene Robinson in relation to a clarification of the transcript of 28 November 2018
- 14 January 2019 – Email from Ms Renee Armstrong, Administrative Manager, Office of the Commissioner, NSW Police Force to secretariat, advising that Commissioner Fuller is unable to attend hearing on 24 January 2019 and will provide a written response to transcript of November 2018 by 2 February 2019
- 15 and 19 February 2019 – Emails from Ms Renee Armstrong, Administrative Manager, Office of the Commissioner, NSW Police Force in response to a request for an attachment identified but not provided in attachments to supplementary answers to questions on notice received 4 February 2019.

**Sent**

- 17 January 2019 – Letter from the secretariat to Mr Michael Barnes, Former NSW Coroner, advising that the hearing scheduled for 24 January 2019 has been postponed until further notice
- 25 January 2019 – Email from the secretariat to Mr Nicholas Stewart, Dowson Turco Lawyers, regarding the publication status of answers to questions on notice, together with attachments, received 4 December 2018

Resolved, on the motion of Mr Khan: That correspondence from Mr Rick Fenely dated 26 November 2018 be kept confidential at the recommendation of the secretariat, as it contains sensitive or identifying information.

Resolved, on the motion of Mr Donnelly: That correspondence from Ms Vivian Evans dated 5 December 2018, together with three attachments containing transcripts of inquest proceedings, be published.

**6. Inquiry into gay and transgender hate crimes between 1970 and 2010****6.1 Public submissions**

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos 1, 34, 35 and 36.

**6.2 Publication of attachments to submissions**

Resolved, on the motion of Mr Donnelly: That the committee authorise the publication of attachment nos 1, 2, 3, 9 and 15 to submission no. 32 of Ms Sue Thompson, at the author's request, as previously agreed to via email.

**6.3 Partially confidential submission**

Resolved, on the motion of Mr Donnelly: That the committee keep the following information confidential, as per the recommendation of the secretariat: potential adverse mention in submission no. 7.

**6.4 Answers to questions on notice**

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Answers to questions on notice from Mr Larry Galbraith (Document 1), received 15 December 2018
- Answers to questions on notice and answers to supplementary questions on notice from Mr Allen George, received 20 December 2018
- Answers to questions on notice from Mr Michael Atkinson, received 21 December 2018
- Answers to questions on notice and answers to supplementary questions from Professor Stephen Tomsen, received 21 December 2018
- Answers to questions on notice and answers to supplementary questions from Professor Willem de Lint, Flinders University, received 21 December 2018
- Answers to questions on notice and answers to supplementary questions from Dr Andy Kaladelfos and Associate Professor Shirleene Robinson, received 28 December 2018

- Answers to questions on notice from Assistant Commissioner Tony Crandell, NSW Police Force, with the exception of attachments
- Answers to supplementary questions on notice from Assistant Commissioner Tony Crandell, NSW Police Force, received 4 February 2019, with the exception of attachments.

#### **6.5 Answers to questions on notice – partially confidential**

Resolved, on the motion of Mr Donnelly: That the committee authorise the partial publication of answers to questions on notice from Mr Peter Rolfe, received 24 December 2018, with the exception of identifying information which shall remain confidential

#### **6.6 Answers to questions on notice – confidential**

Resolved, on the motion of Mr Khan: That answers to questions, together with attachments, provided by Mr Nicholas Stewart, Dowson Turco Lawyers, received 4 December 2018, be kept confidential at the request of the author

Resolved, on the motion of Mr Khan: That answers to questions provided by Mr Rick Fenely, received 11 December 2018, be kept confidential at the request of the author

Resolved, on the motion of Mr Khan: That supplementary answers to questions on notice, together with attachments, provided by Mr Steve Page, received 18 February 2019, be kept confidential at the recommendation of the secretariat (attached on confidential USB in sealed envelope).

#### **6.7 Publication status of attachment to answers to questions – Mr Larry Galbraith**

Resolved, on the motion of Mr Donnelly: That an attachment to answers to questions provided by Mr Larry Galbraith (Document 2), received 15 December 2018, be published, subject to redaction by the secretariat of identifying or identifying information.

#### **6.8 Transcript Clarification – Mr Steve Johnson**

Resolved, on the motion of Revd Mr Nile: That a footnote be included in the transcript of 27 November 2018 noting several comments received from Mr Steve Johnson clarifying excerpts of evidence given over Skype interrupted by a faulty internet connection.

#### **6.9 Transcript Clarification – Dr Andy Kaladefos and Associate Professor Shirleene Robinson**

Resolved, on the motion of Revd Mr Nile: That a footnote be included in the transcript of 28 November 2018 noting the clarification received from Dr Any Kaladelfos and Associate Proessor Shirleene Robinson.

#### **6.10 Publication status of various evidence – NSW Police Force**

The committee considered the publication status of the following documents :

- Submission no. 20a.
- Attachments A and B to answers to questions on notice from Assistant Commissioner Tony Crandell, NSW Police Force, received 21 January 2019
- Attachments to answers to supplementary questions on notice from Assistant Commissioner Tony Crandell, NSW Police Force, received 4 February 2019.

Resolved, on the motion of Mr Khan: That the secretariat contact the NSW Police Force to request that it provide reasons why the documents provided should remain confidential.

The committee noted the receipt of the following correspondence:

- 20 February 2019 – Email from Ms Renee Armstrong, Administrative Manager, Office of the Commissioner, NSW Police Force providing reasons why certain documents provided should remain confidential, and others could be published.

Resolved, on the motion of Mr Khan: That submission no. 20a remain confidential at the request of the author.



Resolved, on the motion of Revd Mr Nile: That Attachments A and B to answers to questions on notice from Assistant Commissioner Tony Crandell, NSW Police Force, received 21 January 2019, remain confidential at the request of the author.

Resolved, on the motion of Mr Donnelly: That:

- (a) the attachments to supplementary questions on notice from Assistant Commissioner Tony Crandell, NSW Police Force, received 4 February 2019, be published
- (b) the attachments to supplementary questions on notice from Assistant Commissioner Tony Crandell, NSW Police Force, received 4 February 2019, be made available on the inquiry website.

Resolved, on the motion of Mr Khan: That correspondence from Ms Renee Armstrong, NSW Police Force, received 20 February 2019, remain confidential.

#### **6.11 Consideration of Chair's draft report**

The Chair submitted his draft report entitled 'Gay and Transgender hate crimes between 1970 and 2010' which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Donnelly: That the words 'Interim Report' be inserted below the report title.

Resolved, on the motion of Mr Donnelly: That the secretariat be authorised to review the use of language throughout the report and change the words 'hate crimes' to 'bias crimes' where appropriate.

Resolved, on the motion of Mr Donnelly: That paragraph 1.11 be amended to omit 'workshop provided by Everymind and ACON to be particularly beneficial' and insert instead 'workshop provided by Everymind and ACON to be beneficial'.

Resolved, on the motion of Mr Donnelly: That paragraph 1.14 be amended by omitting 'verbal violence, or institutional violence' and inserting instead 'verbal violence'.

Resolved, on the motion of Mr Donnelly: That the following new paragraph be inserted after paragraph 1.16:

'For the purpose of this inquiry homophobia will be defined as a hatred or fear of homosexuals and homosexuality.'

Resolved, on the motion of Mr Donnelly: That the following new paragraph be inserted after paragraph 1.16:

'For the purpose of this inquiry transphobia will be defined as a hatred or fear of transsexual/transgender people.'

Resolved, on the motion of Mr Khan: That paragraph 1.59 be amended by omitting 'The report' and inserting instead 'The ACON report'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.2 be amended by omitting 'discussed in detail below' and inserting instead 'discussed below'.

Resolved, on the motion of Mr Donnelly: That the following new paragraph be inserted after paragraph 2.2:

'It is important to note that with these case studies below they are only a summary of the circumstances and details around the particular matters. Those wishing to familiarise themselves more extensively with the matters, should examine primary source documents that may be found in the footnotes and elsewhere.'

Resolved, on the motion of Mr Donnelly: That paragraph 2.108 be amended by omitting 'attacks and murders were often committed' and inserting instead 'attacks and murders were committed'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.110 be amended by omitting 'Rooted in gay and transgender hate,' before 'A number of motives for these crimes were identified'.

Resolved, on the motion of Revd Mr Nile: That paragraph 2.124 be amended by omitting 'impacted on him so deeply he had become introverted' and inserting instead 'impacted on him so deeply he had developed stress-related conditions, including alopecia and psoriasis'.

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 3.1:  
 'It is important to recognise that the NSW Police Force as with many other organisations in our society is the subject of constant cultural and attitudinal change. It is thus not appropriate to consider the police culture and attitudes towards the LGBTIQ community in 1970 and suggest that that culture and those attitudes were the same in 2010. Indeed, the evidence received by the committee demonstrates that there were significant steps taken by the NSW Police Force over this period of time to address earlier shortcomings.'

Resolved, on the motion of Mr Donnelly: That the following new paragraph be inserted after paragraph 3.7:  
 'It is important to note that the circumstances and details around the investigations described below are only a summary. Those wishing to familiarise themselves more extensively with the matters, should examine primary source documents that may be found in the footnotes and elsewhere.'

Resolved, on the motion of Mr Khan: That paragraph 3.43 be omitted: 'Similarly, Professor Stephen Tomsen, stated that 'the history of police disregard for victims and lax investigation in many cases mean that it now reasonable to expect a formal NSW Police apology to victims and survivors of this violence'. [FOOTNOTE: Evidence, Professor Stephen Tomsen, Professor of Criminology and Criminal Justice, School of Social Science and Psychology, University of Western Sydney, 27 November 2018, p 38.]

Resolved, on the motion of Mr Khan: The paragraph 3.44 be amended by inserting 'Professor Stephen Tomsen', after 'These calls were also made by ACON,'.

Resolved, on the motion of Mr Donnelly: That the following new paragraph be inserted after paragraph 3.44:

'The NSW Police Force was not asked in their evidence to the inquiry, either written or oral, whether or not they believed an apology should be made to those who have experienced bias-motivated crimes.'

Resolved, on the motion of Mr Khan: That paragraph 3.46 be omitted: 'The committee has also been struck by the prevailing social hostility that has motivated many instances of bias or hate crime and, in particular, the way in which this has coloured the police response to such crimes.'

Resolved, on the motion of Mr Khan: That paragraph 3.47 be amended by omitting 'The committee has been left in no doubt that this has in turn impacted on the delivery of justice to victims and their families.' after 'The NSW Police Force has stated it is "acutely aware of and acknowledges without qualification" both the 'elevated, extreme and often brutal' level of violence inflicted on gay men and its role in the marginalisation of the LGBTIQ community "during the 1970s, 80s and 90s especially".'

Resolved, on the motion of Mr Donnelly: That paragraph 3.47 be amended by inserting 'some of' before 'the LGBTIQ community today'.

Resolved, on the motion of Mr Khan: That paragraph 3.48 be amended by omitting 'The committee understands how this response has and continues to undermine confidence in LGBTIQ related crimes being investigated properly.' after 'The committee was greatly disturbed by the evidence it received, not only of the crimes themselves, but of the response it drew from the police at the time.'

Resolved, on the motion of Mr Khan: That paragraph 3.49 be amended by inserting 'principally during the period prior to the mid-1990s' after 'violence and hostility directed at gay men'.

Resolved, on the motion of Mr Khan: That paragraph 3.50 be omitted: 'Moreover, the committee finds that the NSW Police Force failed in its responsibility to properly investigate cases of historic hate crime and this has undermined the confidence of LGBTIQ communities in the NSW Police Force and the criminal justice system more broadly.'

Resolved, on the motion of Mr Khan: That Finding 2 be omitted:

**'Finding 2**

That the NSW Police Force failed in its responsibility to properly investigate cases of historic hate crime and this has undermined the confidence of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) communities in the NSW Police Force and the criminal justice system more broadly.'

Resolved, on the motion of Mr Khan: That Finding 1 be amended by inserting 'principally during the period prior to the mid-1990s' after 'violence and hostility directed at gay men'.

Resolved, on the motion of Mr Khan: That paragraph 3.51 be omitted: 'The committee acknowledges the call made by some inquiry participants to issue a formal apology to the LGBTIQ community for the injustices they endured at the hands of the criminal justice system.'

Resolved, on the motion of Mr Khan: That paragraph 3.52 be amended by omitting 'While the committee recognises that a public acknowledgment of victims and survivors of gay hate crime in this way would mark a significant move towards healing for the LGBTIQ community,' before 'the committee feels that there are many more stories to be told about the LGBTIQ experience of hate crime that the committee has not yet heard owing to the limited time allocated to this inquiry.'

Resolved, on the motion of Mr Donnelly: That paragraph 3.52 be amended by omitting 'the committee feels' and inserting instead 'The committee believes'.

Resolved, on the motion of Mr Donnelly: That paragraph 3.53 be amended by inserting at the end: 'The Terms of Reference for further inquiry and report will be subject to a decision of the House.'

Resolved, on the motion of Mr Donnelly: That Recommendation 1 be amended by inserting at the end: 'The Terms of Reference for further inquiry and report will be subject to a decision of the House.'

Resolved, on the motion of Mr Khan: That the section heading 'A shift in police culture?' be amended by omitting '?'.

Resolved, on the motion of Mr Donnelly: That paragraph 3.54 be amended by omitting 'The committee heard evidence that a divisive culture' and inserting instead 'The committee heard evidence from some witnesses that a challenging culture'.

Resolved, on the motion of Mr Khan: That paragraph 3.66 be omitted: 'However, Professor Tomsen was of the view that this 'degree of [community] liaison and ... sense of innovation have dropped considerably since'. [FOOTNOTE: Submission 16, Professor Stephen Tomsen, p 1.]

Resolved, on the motion of Mr Khan: That paragraph 3.67 be omitted: 'Professor Tomsen argued that this could be attributed partly to 'a wider pattern of the NSW police "Force" distancing itself from the Avery reforms and the advent of other styles of policing that do not place emphasis on direct community trust building'. [FOOTNOTE: Submission 16, Professor Stephen Tomsen, p 1.]

Resolved, on the motion of Mr Donnelly: That paragraph 3.69 be omitted: 'The committee accepts the view put forward by a number of inquiry participants that the homophobic culture within NSW Police during the time period examined has significantly obstructed the delivery of justice for members of the LGBTIQ community subjected to violence and hate crimes, in addition to further marginalising a community that already felt 'rejected' by many in society.'

Resolved, on the motion of Mr Donnelly: That paragraph 3.70 be amended by inserting 'positive' before 'shift in police culture'.

Resolved, on the motion of Mr Donnelly: That paragraph 3.71 be amended by omitting 'noteworthy efforts' and inserting instead 'important efforts'.

Resolved, on the motion of Mr Khan: That paragraph 3.71 be amended by omitting 'However, the committee is of the view that, on reflection, these programs and initiatives have not fully removed anti-gay culture or prejudice among the NSW Police Force, nor healed the relationship between police and the LGBTIQ community.' after 'The committee considers these programs and initiatives to be important efforts of the NSW Police Force, and acknowledges the sentiments expressed by Assistant Commissioner Anthony Crandell regarding past practices and conduct of police towards the gay and transgender community.'

Resolved, on the motion of Mr Khan: That the section heading 'Improvements to training for police officers' be amended by omitting 'Improvements to'.

Resolved, on the motion of Mr Donnelly: That paragraph 3.73 be amended by inserting 'Some' before 'Inquiry participants'.

Resolved, on the motion of Mr Donnelly: That paragraph 3.100 be omitted: 'The NSW Police Force is responsible for ensuring that, in all interactions with the police, LGBTIQ people are treated with respect. This should be a matter of priority.', and the following new paragraph be inserted instead:

'The NSW Police Force is responsible for ensuring that all interactions by police with the general public and the LGBTIQ community is done with both respect and professionalism. These are, and continue to be, key priorities for the NSW Police Force.'

Resolved, on the motion of Mr Khan: That the following new finding be inserted after paragraph 3.100:

**'Finding X**

The NSW Police Force is responsible for ensuring that all interactions by police with the general public and the LGBTIQ community is done with both respect and professionalism. These are, and continue to be, key priorities for the NSW Police Force.'

Resolved, on the motion of Mr Donnelly: That paragraph 3.101 be amended by omitting 'Moreover, the committee recommends that, to ensure that officers have these skills and knowledge, the NSW Police Force increase the time currently allocated to the training of new police recruits in modules relating to LGBTIQ people, and ensure that ongoing education to these officers is provided.' after 'In this regard, the committee recommends that the NSW Police Force ensure that all officers have the skills and knowledge to engage with LGBTIQ people respectfully and equally.'

Resolved, on the motion of Mr Donnelly: That:

- (a) Recommendation 4 be omitted:

**'Recommendation 4**

That the NSW Police Force, in meeting Recommendation 3, increase the time currently allocated to the training of new police recruits in modules relating to lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) people.

- (b) **Recommendation 5**

That the NSW Police Force implement a program of ongoing education modules relating to lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) people for all officers and other employees.'

Resolved, on the motion of Mr Khan: That paragraph 3.104 be amended by omitting 'greater' before 'access to these officers'

Resolved, on the motion of Mr Donnelly: That:

- (a) paragraph 3.105 be omitted:

'To this end, the committee recommends that the NSW Police Force increase the number of specialist LGBTIQ Liaison Officers, particularly in rural, regional and other areas that do not currently have access to such officers.'

- (b) paragraph 3.106 be omitted:

'The committee is also of the view that greater access to LGBTIQ Liaison Officers could be achieved by a service that allows LGBTIQ people to secure the assistance of a specialist officer. This could potentially be delivered through a booking platform, either online or by phone.'

- (c) Recommendation 7 be omitted:

**'Recommendation 7**

That the NSW Police Force increase the number of specialist Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (LGBTIQ) Liaison Officers, particularly in rural, regional and other areas that do not currently have access to such officers.'

- (d) Recommendation 8 be omitted:

**'Recommendation 8**

That the NSW Police Force implement a new service to enable lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) people to more readily access the services and support of a specialist officer to make it easier to report crimes or seek the assistance of police.'

Resolved, on the motion of Revd Nile: That Recommendation 6 be omitted:

**'Recommendation 6**

That the NSW Police Force change the name of the Gay and Lesbian Liaison Officer program to the Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (LGBTIQ) Liaison Officer Program.'

Resolved, on the motion of Mr Khan: That:

- (a) paragraph 3.114 omitted:

'Mr Nathan Johnstone, Committee Member, NSW Gay and Lesbian Rights Lobby argued that *Parrabell* implicitly implied that 'it was, if not legitimate, understandable that there were police failings in that time' as a result of society's views towards homosexuals. He stated that 'the idea that the police did not have a duty to thoroughly investigate those crimes at the time because there was some sort of societal bias comes through in that'. [FOOTNOTE: Evidence, Mr Nathan Johnstone, Committee Member, NSW Gay and Lesbian Rights Lobby, 9 November 2018, p 27.]

- (b) paragraph 3.115 be omitted:

'According to Mr Johnstone, *Parrabell* failed in delivering its objective as a result of the review being unable to find any documented evidence of police bias that may have contributed to the apparent lacking investigations of those cases reviewed. [FOOTNOTE: Evidence, Mr Nathan Johnstone, Committee Member, NSW Gay and Lesbian Rights Lobby, 9 November 2018, p 28.] He was of the view 'that there were means by which ... [Parrabell] could have come towards an understanding of whether perhaps people at least felt or perceived that certain investigations were affected by bias'. For example, witnesses and family members who were engaged with the police during the initial investigations could have been consulted for the purposes of *Parrabell* to determine if investigative bias was evident. [FOOTNOTE: Evidence, Mr Nathan Johnstone, Committee Member, NSW Gay and Lesbian Rights Lobby, 9 November 2018, p 28.]'

- (c) paragraph 3.116 be omitted:

'Acknowledging these concerns, Mr Alex Greenwich, Member for Sydney, Legislative Assembly observed that 'When police are investigating police, there will always be a concern about how thorough that investigation has been'. [FOOTNOTE: Evidence, Mr Alex Greenwich, Member for Sydney, Legislative Assembly, 9 November 2018, p 52.]

- (d) paragraph 3.117 be omitted:

'Professor Stephen Tomsen, Professor of Criminology and Criminal Justice, School of Social Science and Psychology, University of Western Sydney, was critical of what he described as the 'offensive tone' of the NSW Police Force's *Parrabell* report in 'trying to dismiss legitimate concerns about widespread violence as mere moral panic or as being mixed up with inflated claims about victimhood.' [FOOTNOTE: Evidence, Professor Stephen Tomsen, Professor of Criminology and Criminal Justice, School of Social Science and Psychology, Western Sydney University, 27 November 2018, p 35.] Professor Tomsen asserted:

Parrabell has drastically cut police estimates of the total long list of homicide cases and also the short list of unsolved cases. Unsolved numbers have been cut to a very low, implausible level given the nature of many of these homicides, especially stranger attacks related to casual sexual activity. ... Parrabell has a "trust us" tone in the way it is written but it does not give case specifics to judge whether or not most of these exclusions of so many cases are fair or reasonable. ... It is anecdotal in what it mentions or does not mention. It states that these matters that are being dismissed from consideration are suicides, accidents, anti-paedophile attacks or robberies that led to some killing. There is no detail on these cases for the reader to make a fair judgment about whether it is acceptable. [FOOTNOTE: Evidence, Professor Stephen Tomsen, Professor of Criminology and Criminal Justice, School of Social Science and Psychology, Western Sydney University, 27 November 2018, pp 35-36.]

- (e) paragraph 3.118 be omitted:

In particular, Professor Tomsen was concerned that *Parrabell* infers that there have been no anti-transgender killings across 25 years of widespread violence which, in his view, would have been a 'remarkable outcome'. [FOOTNOTE: Evidence, Professor Stephen Tomsen, Professor of Criminology and Criminal Justice, School of Social Science and Psychology, Western Sydney University, 27 November 2018, p 37.]

Resolved, on the motion of Mr Donnelly: That:

- (a) paragraph 3.134 be omitted:

'Given that justice for these victims is long overdue and that so many people are vested in the outcome of these cases, the committee recommends that the Minister for Police direct the NSW Police Force to include in its annual report an update on the status of and progress made in solving the 23 unsolved cases identified in the final report of Strike Force Parrabell.

- (b) Recommendation 9 be omitted:

**Recommendation 9**

That the Minister for Police direct the NSW Police Force to include in its annual report an update on the status of and progress made in solving the 23 unsolved cases identified in the final report of Strike Force Parrabell.'

Resolved, on the motion of Mr Khan; That paragraph 3.135 be omitted: 'A number of inquiry participants have called for a Royal Commission to investigate the true incidence of hate crime against LGBTIQ people. The committee has earlier acknowledged that there are many stories about the LGBTIQ experience of hate crime that the committee has not yet heard owing to the limited time available for this inquiry.', and the following new paragraphs be inserted instead:

'A number of inquiry participants have called for a Royal Commission to investigate the extent of hate crimes against LGBTIQ people. The committee has heard evidence from a number of witnesses, both civilian and at least one police witness, that raised serious concerns regarding some past investigations. These incidents have related to the period prior to 1995. Unfortunately the committee process is not an adequate mechanism to determine serious issues of culpability and/or neglect.

The committee has not been able to reach a conclusion as to what mechanism of review is appropriate. The committee has not heard from a range of stakeholders on the issues of independent judicial review such as representatives of the Attorney-General's department, the Commissioner of Police, the Police Ministry, the NSW Police Association, the Coroner, the Commissioner of Law Enforcement Conduct Commission, and the NSW Ombudsman.

This committee believes it is appropriate that all stakeholders potentially effected by an independent review be again given the opportunity for input.

The question for any future committee is not whether there should be independent review but rather, what the form of that independent review is. The committee considers it is appropriate that in the next parliament any future committee invite witnesses to address the issue of the appropriate mechanism for independent review of past crimes.'

Resolved, on the motion of Mr Khan: That the following new recommendation be inserted after paragraph 3.135:

#### **'Recommendation X**

The committee recommends that the re-established inquiry invite witnesses to address the issue of the appropriate mechanism for independent review of past gay and transgender hates crimes.'

Resolved, on the motion of Mr Khan: That paragraph 3.136 be omitted: 'Absent these stories, the committee cannot make a fully informed determination on this important question or make recommendations regarding the nature and scope of such an inquiry. Should the Legislative Council take up our recommendation that this inquiry resume in the new parliament, the committee should take further evidence to better inform the best way forward.'

Resolved, on the motion of Mr Khan: That paragraph 4.15 be amended by:

- (a) omitting 'and impacted on both the gay and transgender community and society more broadly' before 'delivery of justice', and inserting instead: 'in the period 1970 to 2010'.

Resolved, on the motion of Mr Donnelly: That paragraph 4.15 be amended by inserting 'Some' before 'Inquiry participants'.

Resolved, on the motion of Mr Khan: That:

- (a) paragraph 4.21 be omitted:

'Mr Nathan Johnstone, Committee member, NSW Gay and Lesbian Rights Lobby summarised for the committee the legacy of the "gay panic" defence:

I certainly think that it feeds into the level of distrust or the damage to the relationship between perhaps our community and not just police but perhaps the whole criminal justice system. You have got at least, I think it was, 13 people in about a three- or five-year period ... who successfully used this before it was abolished. That is remarkable. ... That will still breed that culture and fuel that culture of distrust.' [FOOTNOTE: Evidence, Mr Nathan Johnstone, Committee member, NSW Gay and Lesbian Rights Lobby, 9 November 2018, p 30.]'

- (b) paragraph 4.22 be omitted:

'According to Mr Alastair Lawrie, the legacy of the "gay panic" defence can be observed in the "painful lessons" the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) community has learnt over the decades. These include:

- That the life of a gay man was valued at less than that of other victims,
- That a non-violent sexual advance by a gay man to another man was abhorrent, and that a violent response to such an advance was at least partially justified, and

- That the law enforcement and justice systems of NSW were not on our side. [FOOTNOTE: Submission 22, Mr Alastair Lawrie, p 3.]'

(c) paragraph 4.23 be omitted:

'In addition, Mr Lawrie stated that these same lessons also applied to the "perpetrators of anti-gay and anti-trans hate crimes ... [who] worked out that LGBTI people made for easy targets, both because we were unlikely to report crimes and, even if we did, that NSW Police were unlikely to do anything about it". [FOOTNOTE: Submission 22, Mr Alastair Lawrie, p 4.]'

Resolved, on the motion of Mr Khan: That:

(a) paragraph 4.32 omitted:

'While the *Crimes Act 1900* has been amended to finally reflect the recommendations of both the 1995 NSW Attorney General's Working Party on Homosexual Advance Defence and the parliamentary inquiry into the partial defence of provocation, the committee acknowledges that there is a 'gay panic' defence legacy.'

(b) paragraph 4.33 be omitted:

'The committee supports the NSW Government's 2013 directive for the NSW Law Reform Commission to conduct a comprehensive review of the law of homicide and homicide defences, as initially recommended by the 2013 Legislative Council Select Committee on the Partial Defence of Provocation to ensure that recent legal reforms have effectively removed any potential for further injustice to occur. The committee therefore recommends that the NSW Attorney General issue a reference to the NSW Law Reform Commission to require it to undertake a comprehensive review of the law of homicide and homicide defences in New South Wales.'

(c) Recommendation 10 be omitted:

**'Recommendation 10**

That the NSW Attorney General issue a reference to the NSW Law Reform Commission to require that it undertake a comprehensive review of the law of homicide and homicide defences in New South Wales to ensure that recent legal reforms have effectively removed any potential for injustice to occur.'

Resolved, on the motion of Mr Khan: That:

(a) paragraph 4.34 be omitted:

'The evidence presented to the committee suggests that there may be a need to review the content of jury directions to make clear that courts are not courts of morals. The evidence also suggests that there would be benefit in review of jury directions to determine whether they adequately take into consideration issues that have affected the LGBTIQ community and the historical legacy of the 'gay panic' defence.'

(b) paragraph 4.35 be omitted:

'The committee believes it is important that such review occur to ensure that potential impediments within the justice system that have impacted the protection of LGBTIQ people and the delivery of justice to victims of hate crimes have been effectively removed. The committee therefore recommends that the Judicial Commission of New South Wales review the content of jury directions to ensure that they adequately ensure the fair and equal treatment of LGBTIQ people and acknowledge the historical legacy of the 'gay panic' defence.'



- (c) Recommendation 11 be omitted:

**Recommendation 11**

That the Judicial Commission of New South Wales review the content of jury directions to ensure that they adequately ensure the fair and equal treatment of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) people and acknowledge the historical legacy of the 'gay panic defence'.

- (d) paragraph 4.36 be omitted:

The committee is also mindful that the example presented by ACON suggests that there is a risk that prejudices held by judicial and other officers may impact on the LGBTIQ experience of criminal justice system, and on the delivery of justice. The committee acknowledges that a courtroom could be an intimidating and unwelcoming environment for anyone, particularly for LGBTIQ witnesses who may come to that environment with the backdrop of prevailing social hostilities and the legacy of the 'gay panic' defence.

- (e) paragraph 4.37 be omitted:

'The committee believes that there may be benefit in practising solicitors, judicial officers and other court officers undergoing training to ensure they have the skills and knowledge to engage with LGBTIQ people respectfully and equally. This could also extend to all those undergoing legal training and other related accreditation programs.'

- (f) paragraph 4.38 be omitted:

'However, the committee has received very little evidence regarding the LGBTIQ community's current experience of the courtroom, given the limited timeframe of this inquiry. The committee would value the opportunity to take further evidence on this issue should the Legislative Council take up its recommendation that this inquiry resume in the new parliament.'

Resolved, on the motion of Mr Khan: That:

- (a) paragraph 5.15 be omitted:

'However, according to Ms Lauren Foy, Co-convenor, NSW Gay and Lesbian Rights Lobby "there is mounting evidence that the NSW Police Force has failed to properly address its internal culture relating to LGBTI people and crimes affecting them". This was based on recent "allegations of cultural and institutional homophobia within the force, including bullying of employees at Newtown Local Area Command". [FOOTNOTE: Evidence, Ms Lauren Foy, Co-convenor, NSW Gay and Lesbian Rights Lobby, 9 November 2018, p 25.] Ms Foy claimed that this culture extended to the "highest levels of the NSW Police Force with the current commissioner involved in attempts to internally resolve the Newtown homophobia case". [FOOTNOTE: Evidence, Ms Lauren Foy, Co-convenor, NSW Gay and Lesbian Rights Lobby, 9 November 2018, p 25.]'

- (b) paragraph 5.16 be omitted:

'Ms Foy also spoke of her experience during the marriage equality campaign where she received an anonymous death threat in her letterbox and the disappointing response from the Ashfield Local Area Command:

I received a death threat during the marriage campaign. It was anonymous and it was in my letterbox at home. So somebody had researched where I lived. I took that to the Ashfield Local Area Command and I showed them ... They took some notes that I had come in and had reported it ... [The police] then said to me "Because it is anonymous, there is no way to be able to trace this. Thanks for coming in." [FOOTNOTE: Evidence, Ms Lauren Foy, Co-convenor, NSW Gay and Lesbian Rights Lobby, 9 November 2018, pp 25-26.]'

Resolved, on the motion of Mr Khan: That paragraph 5.17 be amended by omitting 'Although' before 'Assistant Commissioner Crandell'.

Resolved, on the motion of Mr Donnelly: That paragraph 5.19 be amended by inserting 'some evidence' after 'The committee heard'.

Resolved, on the motion of Mr Donnelly: That paragraph 5.32 be amended by inserting 'some' after 'a continued perception amongst'.

Resolved, on the motion of Mr Donnelly: That paragraph 5.37 be amended by omitting 'remain prevalent in society' and inserting instead 'continue to exist in society'.

Resolved, on the motion of Mr Donnelly: That paragraph 5.38 be amended by omitting 'The committee is regretful that the timeframe for this inquiry has not been sufficient to enable the committee to travel to regional and rural areas to hear about these experiences' before 'Should the Legislative Council', and inserting instead 'The committee acknowledges that the timeframe for this inquiry has not been sufficient to enable it to travel to regional and rural parts of the state'.

Resolved, on the motion of Revd Nile That:

- (a) the draft report, as amended, be the report of the committee and that the committee present the report to the House,
- (b) the transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report,
- (c) upon tabling, all unpublished attachments to submissions be kept confidential by the committee,
- (d) upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee,
- (e) the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling,
- (f) the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee,
- (g) the report be tabled on 26 February 2019.

#### 7. Legacy report – 56<sup>th</sup> Parliament

The Chair advised member of his intention to distribute his draft Legacy Report for the 56<sup>th</sup> Parliament to substantive members of the committee for consideration.

#### 8. Adjournment

The committee adjourned at 1.00 pm, *sine die*.

Jenelle Moore  
Clerk to the Committee