

**INQUIRY INTO GAY AND TRANSGENDER HATE CRIMES
BETWEEN 1970 AND 2010**

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Hon. Shayne Mallard, MLC
Committee Chair
Parliament of New South Wales
6 Macquarie Street, Sydney

Dear Shayne Mallard MLC and Committee members,

We congratulate the Committee for calling this inquiry into Gay and Transgender Hate Crimes between 1970 and 2010. As criminologists and historians, we welcome the chance to contribute our research on LGBTIQ people's experiences with the criminal justice system, and to recommend steps towards justice and community healing. We note, however, that historical gay and transgender hate crimes were not confined to NSW and experiences of violence and failures of the state are nationwide problems.

Points a) and b) of the Committee's terms of reference relate to reported hate crimes and the so-called 'gay-panic' defence. Point c) is any other related matter. While our comments directly address Point c) they have significance for understanding issues raised in both a) and b).

Our submission has two parts. The first concerns the historical and contemporary experience of hate crimes against LGBTIQ people. We discuss the nature and manifestations of homophobia and transphobia historically, the LGBTIQ community's relationship with police and how police actions have limited reporting of offences, and we provide key findings from contemporary research on LGBTIQ experiences of violence and hate crimes.

Second, we make four recommendations to achieve historical justice for those wronged by system failures and past violence. The first is a public apology from the NSW Parliament and NSW Police to victims and survivors of hate crimes recognising their violent experiences and failures of the state to protect the community. Second, we recommend amendment of the *Victims Compensation Act 1996* to remove current time limits on victim's compensation for historical hate crimes. Third, we recommend calling for a national inquiry into LGBTIQ hate crimes. Finally, we recommend the expansion of the LGBTIQ awareness training to improve community trust in police.

We are happy to provide further information to the Committee on any of the information contained in this submission.

Yours Sincerely,

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Part 1: Homophobia, Hate Crimes and LGBTIQ Experience

1 a) Historical Context of Homophobia and Policing

Before 1984 in NSW all male homosexual acts were criminal offences whether they occurred in public or in private and whether they were consensual or not. The vigour with which police prosecuted homosexual acts and homosexual men is illustrated through the statements made in the 1950s by NSW Police Commissioner Colin Delaney.

In 1958, Commissioner Delaney described homosexuality as ‘Australia’s greatest menace’.¹ He had earlier offered the same message to detectives of the Central Intelligence Branch’s vice squad telling them that homosexuals were a ‘cancer in the community’, who threatened to damage society’s ‘moral welfare’.² The decade of the 1950s was marked by increasing social surveillance, discrimination, and violence directed toward homosexual men.

As policing homosexuality reached its peak, more cases came to court that revealed damning allegations of policing practices that included entrapment, false statements and blackmail. These allegations offered serious challenges to police integrity.³ Questions about police tactics in arresting homosexuals had been raised more than a decade earlier, in the high-profile arrest in 1943 of the editor-in-chief of the *Daily Telegraph* on a homosexual morals charge, whereupon it was revealed that police had made two hundred arrests of homosexuals in the previous year, all of which resulted in guilty pleas or verdicts.⁴ And earlier again, in the 1930s, NSW vice-squad officers arrested 150 men in just two years for homosexual offences occurring in a single toilet block.⁵ Like other Australian jurisdictions, NSW has a long history of police surveillance and entrapment of homosexual men.⁶

Cultures of surveillance and police corruption in relation to the treatment of gay men and LGBTIQ communities continued through the decades of the fifties, sixties and the seventies, culminating in 1978 in the police response to the First Mardi Gras, which resulted in the police prosecuting and bashing those involved and the public naming of gay and lesbian protesters leading to individual shame, vilification and loss of employment as well as collective trauma and anguish for the gay and lesbian communities. The treatment of gay and lesbian protesters at the First Mardi Gras was the subject of an apology by the NSW Parliament and the NSW Police Commissioner in 2016.

Since the early 1980s, NSW police has worked to repair relations with the LGBTIQ community. We recognise that significant efforts have been made – including the introduction of Gay and Lesbian Liaison Officers (GLLOs) – and via the advocacy of community organisations such as NSW Gay and

¹ *SMH*, ‘Homosexual menace in Australia’, 11 June 1958, p. 5.

² *SMH*, ‘Police Force Overhaul’, 19 November 1952, p. 3.

³ Lisa Featherstone and Amanda Kaladelfos, *Sex Crimes in the Fifties*, Victoria: Melbourne University Press, 2016, pp. 172-190; Garry Wotherspoon, *City of the Plain: History of a Gay Sub-culture*, Hale & Iremonger, Sydney, 1991; Wotherspoon, “‘The greatest menace facing Australia’: Homosexuality and the state in New South Wales during the Cold War’, *Labour History*, no. 56, 1989, pp. 15–28; Wotherspoon, “‘This nest of perverts’: Policing male homosexuality in Cold War Australia’, *Working Papers in Australian Studies*, no. 52, 1991, pp. 1–21; Graham Willett, ‘The darkest decade: Homophobia in 1950s Australia’, *Australian Historical Studies*, vol. 109, 1997, pp. 120–32; Willett, ‘From vice to homosexuality: Policing perversion in the 1950s’, in S. Robinson (ed.), *Homophobia: An Australian History*, Federation Press, Sydney, 2008, pp. 113–27.

⁴ Mark Finnane, *When Police Unionise: The Politics of Law and Order in Australia*, Sydney: Sydney Institute of Criminology, 2002, pp. 111-114.

⁵ Wotherspoon, *City of the Plain*, p. 69; Robert French, *Camping by a Billabong*, Sydney, Blackwattle 1993, pp. 48-49.

⁶ Yorick Smaal ‘Indecent and Indecorous Behaviour: Policing Homosex in turn-of-the-century Queensland’ in Graham Willett and Yorick Smaal (eds) *Intimacy, Violence and Activism: Gay and Lesbian Perspectives on Australasian History and Society*, Victoria, Monash University Publishing, 2013, pp. 56-73.

Lesbian Rights Lobby and ACON who have worked with police and provide varied community support, including counselling services and health care.

1 b) Experiences of LGBTIQ People and Police

Despite these efforts, the experiences of LGBTIQ people continue to show that there is still much work that needs to be done to repair community relations and to provide better methods of reporting and responding when police interact with LGBTIQ populations.

Research in a national survey of LGBTI people's experiences and use of LGBTI police liaison officers found much reluctance to use those specific services, with past negative experiences influencing LGBTI people's perceptions of police.⁷ A 2010 study revealed that moral-based decision making of NSW police led to disparate treatment and outcomes for consensual heterosexual and homosexual public sex.⁸ And most alarmingly findings from a recent Victorian study of same-sex attracted and gender diverse (SSAGD) young people's perceptions of police found that over 61 per cent of respondents identified fears of homophobic or transphobic attitudes within police as disincentive to report offences. More than half of SSAGD respondents said that they would *not* report a hate crime to police because of these perceptions.⁹ Approximately 68 per cent of survey participants said that they would prefer to report to an LGBTI Liaison Officer. A small number of participants in this study also shared first-hand experiences of homophobic or transphobic abuse and discrimination from police. Importantly, participants in this study believed that police were homophobic or transphobic despite most participants having minimal first-hand contact with police. These beliefs held in LGBTIQ communities show the long-standing effects of past injustices, and their current impact on community trust in police.

An earlier study on homophobic abuse and violence experienced by 600 gay men and lesbians in NSW found that the majority of participants (80 per cent) would report homophobic abuse or violence to the police if it were deemed to be serious enough.¹⁰ However, only 13 per cent of participants who had experienced violence in the previous year had reported the most recent incident to police. This study likewise found that younger gay and lesbian people were the *least* likely to indicate confidence in reporting to police, or to have reported incidents of homophobic abuse or violence.

In 2010, a Queensland study documented experiences of hate crimes against LGBTIQ populations. A survey of 1094 respondents, found that 72 per cent had experienced verbal abuse, 41 per cent had experienced threats of physical violence, and 23 per cent had experienced physical bias-motivated crime. Despite these figures, the study found a very low rate of reporting victimisation: 75 per cent of those who had experienced abuse did not report the offences to police or community organisations.¹¹

Importantly, we must recognise that distrust and lack of confidence in police amongst LGBTIQ communities are not relics of the past, or held only by those who lived through past injustices. These

⁷ Angela Dwyer, Matthew Ball, Christine Bond, Murray Lee and Thomas Crofts, *Exploring LGBTI Police Liaison Services: Factors Influencing Their Use and Effectiveness According to LGBTI People and LGBTI Police Liaison Officers*. Report to the Criminology Research Advisory Council, 2017.

⁸ Paul Johnson, 'The enforcement of morality: Law, policing and sexuality in New South Wales', *Australian and New Zealand Journal of Criminology*, vol. 43, no. 3, 2010, pp. 399-422.

⁹ William Leonard and Bianca Fileborn, *Policing for Same Sex Attracted and Gender Diverse (SSASGD) young Victorians*, Monograph Series No 110, GLHV@ARCSHS, La Trobe University: Melbourne, 2018.

¹⁰ Attorney General's Department of NSW, *'You shouldn't have to hide to be safe': A Report on Homophobic Hostilities and Violence Against Gay Men and Lesbians in New South Wales*, Sydney: Attorney General's Department of NSW 2003.

¹¹ Alan Berman and Shirleene Robinson, *Speaking Out: Stopping Homophobic and Transphobic Abuse in Queensland*, Bowen Hills: Australian Academic Press, 2010.

are current issues and perceptions experienced by young LGBTIQ people and need to be addressed through community outreach and organisational change within police to ensure that *all* police members are provided with training and professional development on LGBTIQ awareness and inclusive policing practices.

Part 2: Recommendations to Achieve Justice

In 2018, ACON released their report *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in NSW in the Late 20th Century*.¹² The ACON report documents the killing of 88 gay and transgender people in NSW, and highlights that many more members of the LGBTIQ community experienced homophobic and transphobic violence during this time. Many of the murders remain unsolved, and the ACON report points to the complicity of police in their lack of examination of evidence, writing off killings as suicide or accidents rather than hate-motivated crime.

The most well-documented example is the killing of Scott Johnson in North Head, 1988, which was ruled a suicide until a third coronial inquest in 2017 found that Johnson's death was the result of a hate crime.¹³ The ACON report and the coronial inquest build upon the long-standing research of Professor Stephen Tomsen into the epidemic of hate crimes in New South Wales in the late twentieth century.¹⁴

Given the severity of historical hate crimes, the longevity of experiences of violence in the LGBTIQ community, the role of police in minimising hate-crimes, and the current lack of confidence in police within LGBTIQ populations, we recommend four ways to move towards justice and healing for the community and their relations with police.

Recommendation 1: Formal Apology by NSW Parliament and NSW Police

We recommend a formal apology by NSW Parliament and NSW Police, using the model created in 2016 with the apology for the state response to the 1978 Mardi Gras. An apology for inadequate state responses and admission of past wrongs to the LGBTIQ community will assist the healing process and create more confidence in the capacity of state institutions to protect vulnerable members of community.

Recommendation 2: Amend Section 26 (3c) of the Victims Compensation Act 1996.

We recommend amending Section 26 (3c) of the *Victims Compensation Act* 1996 to remove time limits on applications for victim compensation in the case of historical LGBTIQ hate crimes alongside current provisions available for sexual assault, domestic violence and child abuse. We recommend this change to time limits given the barriers to reporting offences at the time – namely police prejudice and the criminalisation of homosexuality – which prohibited safe reporting of LGBTIQ hate crimes.

Recommendation 3: Call for a National Inquiry into LGBTIQ Hate Crime

We recommend that the Committee calls for a national inquiry into historical and contemporary LGBTIQ Hate Crime. The conditions found in NSW of homophobia and transphobia, homophobic

¹² ACON, *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in NSW in the Late 20th Century*, 2018 < <https://www.acon.org.au/wp-content/uploads/2018/05/In-Pursuit-of-Truth-and-Justice-Report-FINAL-220518.pdf>>.

¹³ ABC News, 'Scott Johnson: Inside one brother's 30-year fight to find the truth', 1 December 2017 < <https://www.abc.net.au/news/2017-11-30/scott-johnson-inside-brothers-fight-to-find-the-truth/9211466>>

¹⁴ Stephen Tomsen, *Hatred, Murder and Male Honour: Anti-Homosexual Homicides in New South Wales, 1980-2010*, Canberra: Australian Institute of Criminology, 2002.

and transphobic violence and lack of response of the state were by no means unique. The research detailed in this submission identifies studies from Victoria and Queensland which show the enduring nature of bias-motivated crime experienced by LGBTIQ population. A national inquiry, with the powers of a Royal Commission, 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.

Recommendation 4: Mandatory Police LGBTIQ Awareness Training and Expansion of GLLOs

We recommend that NSW Police introduce mandatory LGBTIQ awareness training for *all* police officers and the expansion of the current GLLOs in NSW. Given 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, particular emphasis should be placed on fostering positive relationships with younger LGBTIQ people. Expanding the number and availability of GLLOs will promote the comfort and confidence of LGBTIQ people in reporting to police.