

INQUIRY INTO GAY AND TRANSGENDER HATE CRIMES BETWEEN 1970 AND 2010

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HERE FOR HEALTH

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Hate Crimes Between 1970 and 2010

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ACKNOWLEDGEMENT

ACON acknowledges the traditional custodians of the lands on which we work. We pay our respects to Aboriginal and Torres Strait Islander people both past, present and emerging.

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ABOUT ACON

ACON is New South Wales' leading health promotion organisation specialising in HIV prevention, HIV support and lesbian, gay, bisexual, transgender and intersex (LGBTI) health. Established in 1985 as the AIDS Council of NSW, our mission is to enhance the health and wellbeing of our communities by ending HIV transmission among gay and homosexually active men, and promoting the lifelong health of LGBTI people and people with HIV.

INTRODUCTION

Violence experienced by gay, lesbian, bisexual, transgender intersex and queer (LGBTIQ) people in NSW since the 1970s has claimed or affected the lives of far too many. We know the impact of these violent crimes and the helplessness in the face of impunity not only left a painful legacy for the victims' loved ones, survivors and their families, but the broader LGBTIQ community.

The NSW Legislative Council's inquiry into gay and transgender hate crimes between 1970 and 2010 represents a welcome opportunity for the NSW Parliament to identify factors that contributed to these hate crimes, reflect on shortcomings in criminal justice institutions, their processes and efforts to change, and consider the extent to which they are equipped to prevent such crimes and injustice from occurring again.

This submission builds on a report published by ACON in 2018, titled *In Pursuit of Truth and Justice: Documenting Gay and Transgender Prejudice Killings in NSW in the Late 20th Century* (*In Pursuit of Truth and Justice*).

In Pursuit of Truth and Justice provided an evidence informed community account of a violent and traumatic period for gay men and transgender persons in the history of NSW. It comprised of a community-led appraisal of 88 suspected anti-gay and related homicides committed between 1976 and 2000, 30 of which remain unsolved. Many of these attacks were gruesome, including bashings, stabbings, body mutilation and dismemberment.



Graffiti found on an inner Sydney wall in October 2018



A 2005-2006 sticker for the Anti Violence Project's Safe Place program

In Pursuit of Truth and Justice does not represent an exhaustive list of violent crimes that were perpetrated against LGBTIQ people in NSW between 1976 and 2000 – many crimes went unreported – nor did it review any crime occurring after 2000.

The aim of the report was to prompt actions which would assist in the delivery of justice for victims and survivors, 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.

Throughout this submission, reference is made to the NSW Police Force's review of 86 cases – an effort called Strike Force Parrabell (*Parrabell*). This Report from the NSW Police Force, and the recommendations contained within it, will be referred to throughout this Submission from ACON.

The structure of ACON's submission addresses the Terms of Reference for the NSW Legislative Council's Standing Committee on Social Issues Inquiry.

Our recommendations are a mix of those made within our *In Pursuit of Truth and Justice Report*, our reflections on the recommendations made by NSW Police Force in Parrabell, and some additional recommendations that we feel are appropriate.

This Inquiry has a retrospective, historical focus. For many, safety and lack of confidence in law enforcement, in the justice system and in the manner in which real change has occurred in Australian society are issues that are as pressing now as they were then.

While we no longer have a routine and 'accepted' culture of homophobic, transphobic and biphobic bashing as 'sport' in our community – it is also true that LGBTIQ people in NSW still carry scars, trauma and indeed still feel unsafe in many places in our State today.

We commend the holding of this Inquiry.

These are efforts we hope will contribute to the immensely difficult and ongoing healing process of individuals and our community, and an increased confidence that real change has been made and will continue.

COUNT & COUNTER

ANTI-LESBIAN AND ANTI-GAY VIOLENCE

FAGGOT

LEZZO

*Just words? Next time, it might
be fists and feet.*

Words can be more than just talk.

Every time you're harassed,
attacked or victimised for being
lesbian or gay – on the street,
at work, at home, anytime
anywhere – report it!

REPORT IT!

02-360 6687

Count and Counter is a violence monitoring
project. Your reports are critical in focussing
attention on hate-crimes, in making the
system more responsive, and in making
NSW a safer place for all of us.



LESBIAN AND GAY ANTI-VIOLENCE PROJECT

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Fax (02) 380 5848

A Project of the Gay and Lesbian Rights Lobby Inc
Funded by the NSW Health Department

(A) VIOLENT CRIMES AGAINST LGBTIQ PEOPLE IN NSW (1970-2010)

(I) IMPEDIMENTS WITHIN THE CRIMINAL JUSTICE SYSTEM THAT IMPACTED THE PROTECTION OF LGBTIQ PEOPLE AND THE DELIVERY OF JUSTICE IN NSW

Of the 88 cases reviewed by ACON's *In Pursuit of Truth and Justice*, approximately 30 remain unsolved. The report found that prevailing societal attitudes about homosexuality and systemic homophobia across public institutions were noted in police and legal professions. This pervasive homophobia negatively and profoundly impacted on if, and how, gay hate crimes were identified, investigated, prosecuted and sentenced.

In Pursuit of Truth and Justice focused on the period between the 1976 and 2000, and was released in May 2018, two months earlier than the June 2018 release of the NSW Police Force (NSWPF) *Strike Force Parrabell* report and Academic Review (conducted by Flinders University), which also examined crimes in the period between 1976 and 2000.

Parrabell found that in many circumstances it was impossible to determine whether a bias motivation existed for crimes. These results are frustrating, given that *Parrabell* focused only on casefile information, and as such, had limitations around how it could re-examine these crimes. *Parrabell* noted that in some instances evidence from cases was unavailable, due to potential careless collection and storage practices.

Our community are aware that a number of perpetrators of violent, bias motivated crimes remain at large, and this is at least in part due to apathy, poor practice and systemic homophobia rampant in our justice system over the last few decades.

There are also crimes from beyond 2000, and indeed up to the present day which have potential bias motivations that could be investigated. The persistence of bias motivated offences against LGBTIQ populations in the new millennium, and the perceived obfuscation or ignorance related the handling of these offences, is felt strongly by our communities. As noted in the Human Rights Law Centre report¹, "hate crimes have ripple effects that affect a much broader community than those directly affected."

COMMUNITY PERCEPTIONS AND ATTITUDES

It is important to contextualise the attitudes and behaviours of many people in NSW over the last five decades when reviewing the role of the criminal justice system in protecting LGBTIQ people. For much of this time, and still today LGBTIQ people have been the victims of individual and systemic bias and hate.

The *End the Hate*² report notes that "hate crimes do not occur in a vacuum, they are a violent manifestation of prejudice which can be pervasive in the wider community. Specific laws that address hate crime are necessary to demonstrate our society's condemnation of crimes committed based on prejudice"

Despite recent community support for gay and lesbian people through the marriage equality postal vote, it is prudent to recall a time when homosexuality was criminalised and 'poofter

bashing' was a 'sport', a socially acceptable activity – indeed some of the perpetrators of crimes against gay men in the 70s and 80s describe 'poofter bashing' as a regular activity³.

In the NSWPF's *Strike Force Parrabell* Report, there is an unqualified admission.

"The NSW Police Force is acutely aware of and acknowledges without qualification both it and society's acceptance of gay bashings and shocking violence directed at gay men and the LGBTIQ community between 1976 and 2000." (NSW Police Force *Strike Force Parrabell* Report, 2018, p14)

This statement alone warrants this Inquiry.

We welcome this honest assessment from an institution of the State that is duty bound to uphold the law, to protect citizens according to the law and in cases where the law is broken, conduct investigations that provide for convictions, such that consequences flow for perpetrators. Indeed as a society, we expect the Police and Judiciary to ensure that consequences flow from breaking laws that our democratically elected Parliament deem appropriate. In essence, as a society, we have a basic expectation that especially in the most serious of crimes, law will be upheld.

To have our Police Force admit without qualification that it accepted this violence perpetrated on a particular group in our community is an extraordinary admission.

It is an admission that underscores the need for more effort and new resources to be made available in a range of areas to both look at the crimes in this period of time (both those reported to Police and those that were not), but also on actions that rectify and indeed irrevocably change the culture, attitudes, tools and practices that allowed NSW LGBTIQ citizens to live in fear, and in some cases, die without justice.

While we welcome the resources and effort that went into *Parrabell* – it did not fulfill the stated aim –

"To bring the NSW Police Force and the LGBTIQ community closer together by doing all that is possible from this point in history." (NSW Police Force *Strike Force Parrabell* Report, 2018, p18)

As *Parrabell* and *In Pursuit of Truth and Justice* both note, the impact of the HIV/AIDS epidemic, especially in the early years, emboldened homophobic perpetrators to externalise their bias through abuse, exclusion and abhorrent acts of violence.⁴

As noted in reports about hate crimes against the gay community, "Violence against lesbians and gay men is often random and brutal. A powerful message of hatred and intolerance is sent to all lesbians and gay men whenever someone is attacked because of their sexual preference."⁵

There is a perception that some groups which were designed to advocate for victims of crime were affected heavily by these community perceptions, and indeed those who were victims of crimes while engaged in sex at beats or sex work, or other sexual engagements that were not viewed as morally acceptable were

¹Human Rights Law Centre (2018) *End the Hate – Responding to prejudice motivated speech and violence against the LGBTI community*

²Human Rights Law Centre (2018) *End the Hate – Responding to prejudice motivated speech and violence against the LGBTI community*

³Tomsen, S (2002), *Hatred, Murder and Male Honour: Anti-homosexual Homicides in New South Wales, 1980 -2000* Australian Institute of Criminology research and Public Policy Series [43]

⁴ Mason, G. (1993) *Violence Against Lesbians and Gay Men*. Violence Prevention Today [2]

⁵Tomsen, S (2002), *Hatred, Murder and Male Honour: Anti-homosexual Homicides in New South Wales, 1980 -2000* Australian Institute of Criminology research and Public Policy Series [43]

ignored or viewed as ‘less than’ other victims of crime, and were made to feel they ‘deserved’ the treatment they received at the hands of attackers.

While elements of contemporary society may have become more inclusive for many LGBTIQ people, data indicates that homophobia, biphobia and transphobia continue to impact on people’s lives. This is part of the explanation as to why suicide rates for LGBTIQ people are still extremely elevated compared to the general population. Data from 2014 indicates that over 42% of LGBTI people hide their sexuality or gender at corporate events and 39% of LGBTI people hide these important aspects of themselves at work.⁶

“The LGBTI community is diverse. The prevalence, experience and impact of prejudice motivated crime and incidents can affect individuals and groups in very different ways.

“For example, research does not fully explain anecdotal reports that transgender women of colour and people from culturally and linguistically diverse communities are disproportionately targeted by hate conduct.

“There is very little available data on the experiences of hate conduct targeting by intersex people. In addition the experience of a young intersex person is very different to the experiences of young LGBT people, who have access to more readily available information and specialist support services.

“The intersection of different aspects of identity can also have an impact on how LGBTI people experience prejudice motivated crime and incidents.”

End the Hate – Responding to prejudice motivated speech and violence against the LGBTI community

Australian Human Rights Law Centre

The data collected by the Human Rights Commission also highlighted the significant negative experience of trans people in particular, who “experience significantly higher rates of non-physical and physical abuse compared with gay men and women”.

The NSWPF have for many years stressed the importance of not confining the issues of gay and lesbian hate crimes to metropolitan areas. A 1997 document⁷ highlighted the fact that of the 32 gay hate related killings in NSW, less than half occurred in the city, and seven occurred in non-metropolitan or rural locations.

ACON understands from our work in these communities that increased levels of homophobia are often present, and less services exist to provide support for LGBTIQ communities. We also know that some areas of NSW have experienced a diaspora of LGBTIQ people with complex histories of trauma, complicated often by living with HIV and a sense of isolation as they age.

The actions recommended by NSWPF in *Parrabell* need to be actioned in a transparent and accountable way. We need to co-design what an educational and cultural change process looks like so there is greater confidence within LGBTIQ communities that the NSWPF takes these matters seriously and is embarking on a change process – which will need to go beyond a one-off training package. This submission outlines other things that can be done to bring meaning to this process where the prevalent feeling is one of grief, loss and betrayal.

POLICING IN NSW

Homophobia shaped the development and enforcement of laws that had violent and lasting impacts on the community. Homosexual acts were only decriminalised in NSW in 1984, and until such time (and indeed until well after the decriminalisation), police were familiar with implementing ‘entrapment’ powers which involved covert policing behaviours, in which officers would pose as homosexual men at beats and other locations to incite an arrest.

Further, ‘Homosexual Advance Defence’ laws which were only repealed in NSW in 2014 resulted in varying levels of justice for gay male victims of homicide. Such issues played hand in hand with general community attitudes around homosexuality, which were often misguided and based on a stigmatised and biased view of the community, affected greatly by reporting of the HIV/AIDS epidemic early years.⁸ Those in the justice system could rely on the support or silence of the community.

While some cases received thorough police investigation, this was certainly not the standard for all cases. For example, a prejudice motive was considered by police only for some investigations but not routinely.⁹ This is not solely attributable to homophobic attitudes within the NSW Police Force, but it did mean evidence was not uncovered in some cases and/or cases never progressed to court.

The police response to investigation of gay hate crimes was criticised in 1992 by the NSW State Coroner who noted deep concern, widespread homophobia and the failure of inquiries into bias related killings. In 2005, the Deputy State Coroner Milledge echoed these concerns noting the police investigations into deaths and disappearances of men around Bondi Cliffs (in particular Scott Johnson), calling the work “shameful” and “lacklustre”.

Indeed, in delivering her findings Milledge noted of the police work that “to characterise it as an investigation is to give it a label it does not deserve.”¹⁰ Her thoughts were echoed by Steve Page, a former NSWPF officer who resigned before Milledge became involved in the coronial review. Page posed the question “You have to ask, would police have been so dismissive of the deaths had the victims been any other group of citizens – let’s say doctors, school teachers, women or children?”¹¹

The poor response to crimes where LGBTIQ individuals were victims were symptomatic of a sense of homophobia perceived by police. Community members saw police as perpetrators of violence against LGBTIQ people and unresponsive when dealing with them as victims.

⁶ Australian Human Rights Commission (2014) *Face the Facts: Lesbian, Gay Bisexual Trans and Intersex People*

⁷ Thompson, S (1997) *Purple Booklet: Improving Police Gay Lesbian Relations and Targeting Hate Crimes Against gays and Lesbians (1985 to 1997)*

⁸ Smit, P.J (2011) HIV-related stigma within communities of gay men: a literature review

⁹ ACON (2018) *In Pursuit of Truth and Justice*

¹⁰ Benny-Morrison, A (2016) *Unsolved homicide investigation reopens into Sydney’s gay killings* Sydney Morning Herald 22 October

¹¹ Abboud, P and Feenly R (2016) *Police admit blunders in gay-hate murder hunt* The Feed 4 October

THE EFFECTS OF HATE CONDUCT

INDIVIDUAL	TARGET COMMUNITY
Victims of hate conduct can experience significant physical, psychological and emotional harm, as well as long term repercussions on their sense of identity, self-worth and feelings of safety and belonging in the community or public	Members of a target group can feel threatened and vulnerable to victimisation when they are aware of individual incidents of prejudice and motivated speech, conduct and crimes, which has a broader impact on the entire group to which the victim belongs
OTHER MINORITY GROUPS	BROADER COMMUNITY
Other vulnerable and minority groups can also experience this threat to personal safety and community cohesion, particularly where the prejudice motivation is based on an ideology, doctrine or sentiment which has a negative view of a number of minority groups in society	In diverse and accepting communities, hate conduct diminishes out community as a whole. Instead of encouraging people to live together on an equal footing, the deliberate targeting of individuals within our community undermines our fundamental rights to live safely and be treated equally

Over time police departments across the country established programs which aimed to bridge an obvious gap between the community and police, however, these responses, such as the NSW Police appointment of a civilian client consultant did little to change the attitudes and behaviours of police working on the ground.

There was, however, some suggestion that these programs increased the reporting of crimes against LGBTIQ community members.¹³ A 2003 report notes that while 80% of LGBTI people say they would feel confident reporting abuse to police, only 13% of those who had experienced abuse or violence in the last year had reported the last incident.¹⁴ Interestingly this figure is not dissimilar to the results of a 1995 survey conducted by NSW Police at Fair Day in which 18% of people who had experienced abuse reported it to police, while 79% said they would report incidents to the police.¹⁵

This survey also noted that of those who did not report their abuse, 23% had a previous negative experience or perceived they would have a negative response from police. 64% believed their issue was not serious enough or that nothing could be done.

Both *Parrabell* (see page 15) and ACON's Anti-Violence Project (see page 17) confirm that fear associated with anti-gay, homophobic and transphobic attitudes of Police Officers and the NSWPF generally prevented crimes being reported. It is therefore noted that the Terms of Reference for this Inquiry are limited to those crimes that were reported during the prescribed timeframes. There is a need to consider how previous experiences of abuse and violence can be addressed, beyond the scope of this Inquiry.

It has been suggested that the interventions put in place by the police did not actually change the behaviours or actions of perpetrators, but empowered victims to avoid violence or abuse.¹⁶ Queer community members still lived their lives in fear of attack and while rates of violence were down, threats and abuse remained stable.

Further, it is important to reflect that *Parrabell* lists a range of reforms and progress that were made up until the late 1990s, however none are listed since.

This is almost 20 years ago, and as good and as important as these reforms are, they are insufficient. Further work is required, but also further monitoring is needed to ensure accountable implementation takes good intentions to operational, every-day policing practice.

JUDICIARY

Two extracts from *Parrabell* provide important context.

"History has shown legislation does not cure culture or indeed societal attitudes." (p16)

"Homosexual activity was contrary to NSW legislation until 1984, however Police culture and societal values took far longer to change." (p13)

In Pursuit of Truth and Justice reviewed a variety of publicly available judicial and coronial documents and found that societal homophobic attitudes came through in statements and rulings. The following excerpt from *In Pursuit of Truth and Justice* highlights the implicit and reflected biases made in judicial rulings:

"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."*¹⁷

Thomsen notes in his detailed report on gay-hate crimes in New South Wales that the legal system has been responsive to changing community attitudes to gay men (and by extension the LGBTIQ community) and as such has had to respond with fairness and equity to cases of violence and abuse against gay men.¹⁸

He notes that function of the law in punishing and discouraging hate related violence is clear, and as community perceptions of the LGBTIQ community have changed, the demand for their protection has been made clear. The impact of provocation defences until their repeal in NSW affected the community trust in sentencing, which is discussed later in this submission.

¹³ Human Rights Law Centre (2018) *End the Hate – Responding to prejudice motivated speech and violence against the LGBTI community*

¹⁴ Mason, G. (1993) *Violence Against Lesbians and Gay Men*. Violence Prevention Today [2]

¹⁵ NSW, Attorney General's Department, Crime Prevention Division (2003) '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

¹⁶ NSW, Attorney General's Department, Crime Prevention Division (2003) '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

¹⁷ NSW Police (1995) *Out of the Blue: A Police Survey of violence and harassment against gays and lesbians*

¹⁸ Russell, E. K (2017) *Queer Penalties: The Criminal Justice Paradigm in Lesbian and Gay Anti-Violence Politics*. *Critical Criminology* [25] 1

¹⁹ ACON (2018) *In Pursuit of Truth and Justice*

²⁰ Tomsen, S (2002), *Hatred, Murder and Male Honour: Anti-homosexual Homicides in New South Wales, 1980 -2000* Australian Institute of Criminology research and Public Policy Series (43)

Recommendation 1: That the NSW Police Force commit to investigating all outstanding cases and prosecuting where appropriate.

Recommendation 2: That Recommendation 8 of *Parrabell* (LGBTIQ education of every potential Police Officer at the Academy as part of recruit development and learning) be actioned but also extended, to include more advanced training of Officers each time they progress through the ranks to a more senior role.

Recommendation 3: That Recommendation 10 of *Parrabell* (equity and diversity awareness training) is not just about making the training available, but ensuring all levels of the NSWPF conduct this training periodically (for example, every 2 to 3 years), and that this training includes delivery of content from diverse, marginalised communities including LGBTIQ people sharing their lived experience.

Recommendation 4: That Recommendations 11 & 12 of *Parrabell* are implemented by NSWPF.

(II) HOW EFFECTIVELY PAST IMPEDIMENTS HAVE BEEN ADDRESSED BY CURRENT POLICY AND PRACTICE

POLICING IN NSW

NSW Police processes and cultures shifted with the advent of the Gay and Lesbian Liaison Officer (GLLO) program over 25 years ago and the development of policies for police working with LGBTIQ communities, however there are still ongoing issues with individuals and systems within NSWPF. A 2011 report¹⁹ found that:

- 16.5% of LGBTI respondents to a survey experienced unfair treatment by police
- 7.8% experienced a problem with their identity/sex/gender being recorded correctly in police documents
- 15.6% felt that police did not respond to or investigate crimes or threats they reported.

The *End The Hate*²⁰ report notes “people who experience prejudice motivated conduct face distinct barriers when it comes to reporting these crimes to police. People from LGBTI communities are less likely to report violence, seek support or identify experiences of non-physical harassment and abuse as prejudice motivated crime, partly because of a fear of being outed as well as actual or perceived discrimination. Under reporting of crime or incidents to police occurs for a variety of reasons, including a lack of awareness about available offences, an inability to identify perpetrators, fears reporting will exacerbate bullying, cause victimisation or escalate the behaviour, and barriers caused by the significant psychological trauma and ongoing mental health impacts of being a victim of crime”

EXPERIENCES OF VIOLENCE

A report from the Human Rights Legal Centre²¹ quotes statistics from the Australian Human Rights Commission that highlights that “almost 75% of LGBTI people had experienced some type of bullying, harassment or violence on the basis of their sexual orientation, gender identity or sex characteristics”

In 1993 Gay Men and Lesbians Against Discrimination (GLAD) surveyed 1,000 lesbians and gay men in Victoria in order to determine the degree of violence and discrimination experienced as a direct consequence of sexual preference. The results of the survey²² revealed that an astonishing:

- 70% of women and men had experienced physical abuse, threats of violence or verbal abuse in a public place;
- 36% of women and 39% per cent of men reported being threatened with violence;
- 11% per cent of women and 20% per cent of men reported being assaulted;
- 12% of women and 18% per cent of men reported being harassed by the police, including 6% men and 2% % of women who reported being physically assaulted by the police.



Lesbian and Gay Anti-Violence Project poster from 1992

¹⁹ Inner City Legal Centre (2011) *Outing Injustice*

²⁰ Human Rights Law Centre (2018) *End the Hate - Responding to prejudice motivated speech and violence against the LGBTI community*

²¹ *ibid*

²² Mason, G. (1993) *Violence Against Lesbians and Gay Men. Violence Prevention Today* [2]

Sadly the survey concluded that verbal abuse and bashing were part-and-parcel of being gay or lesbian and being in a public place in the 1990s. The same survey found that survey 24% of lesbians and 35 % of gay men reported problems when they attempted to report a crime ranging from inadequate or inappropriate responses on a matter unrelated to sexuality, through to harassment and actual violence by the police.

This data is a clear indication that much more needs to be done and we would suggest that the recommendations contained in the *In Pursuit of Truth and Justice* report are a good start towards decreasing the impacts of gay-hate crime in the NSW community.

Recommendations already made by NSWPF in *Parrabell* also offer important, concrete actions. Recommendation 3 notes the inadequacy of the 10 Bias Crime Indicators currently used by operational Police, recommending greater rigor and user friendly implementation. This piece of work would not only benefit LGBTIQ people, but also other minorities where bias is a major issue.

Recommendation 4 relates to proper training and implementation of the new Bias Crime system to ensure it is used well and effectively to capture these crimes accurately.

Recommendation 5 states that revisions to the COPS data base are required to improve prompts for frontline police – a move that is very important, concrete action – especially as such reforms relate to bias crimes.

Changes to criminal investigation training (embedded throughout an Officer's career) and homicide investigation practice are also recommended in *Parrabell* (6 and 7), which are also welcome and important.

In recognition that many victims and witnesses of hate crimes do not feel comfortable reporting directly to police, the United Kingdom introduced Third Party Reporting whereby public sector and community sector organisations are trained to provide safe and private spaces for people to report hate crimes anonymously.

This method has been successfully used in Scotland where Police Scotland works in partnership with a wide variety of partners who perform the role of 3rd Party Reporting Centres. Staff within 3rd Party Reporting Centres are trained to assist a victim or witness in submitting a report to the police and can make such a report on the victim/witnesses behalf. Examples of 3rd Party Reporting Centres participating in the scheme range from Housing Associations to Victim Support offices and Voluntary Groups.

While a variety of organisations, such as crisis centres, refuges and colleges, act as third party reporting sites, they share a common thread of being open, accessible and community friendly services, and staff at the services receive training to ensure the psychological wellbeing of reporters and victims. The organisations are supported by police to create positive relationships without the stressful experience of reporting crime directly to an officer.

By providing the opportunity for people to report to people they are more comfortable with, the UK has seen an increase in reporting and investigation of hate crime.

CONTEMPORARY RELATIONSHIPS BETWEEN POLICE AND THE LGBTIQ COMMUNITY

It is clear that NSW Police have made significant changes to the way they work in order to ensure that LGBTIQ people feel more protected, and that a reduction of violence against LGBTIQ people occurs. Since 1997, the NSWPF have released four strategy documents which highlight the work needed to be undertaken to meet these goals. The latest Strategy²³ covers the four year period until 2020 and notes that it reflects the Force's "commitment to increasing trust and confidence in the NSW Police Force amongst members of the lesbian, gay, bisexual, transgender and intersex communities".

The Strategy also notes that bias motivated crime is under reported, and potentially is decreasing but offers little in the way of actions to reverse this trend.

The Strategy also outlines the inclusion of Bias Motivation as a contributing factor to an incident entered into the operational database (COPS) but does not speak to the development of an evidence informed bias assessment tool that could be implemented across operational policing which we believe would improve the quality of the data about bias motivated crimes.

We believe that any improvements in the identification and effective prosecution of bias motivated crime has significant impacts for other marginalised communities and works towards ending crime based on racism, anti-Semitism and other crimes influenced by bias.

NSW Police still face challenges in their community relations with the LGBTIQ community.

A more contemporary example of this can be illustrated by the alleged mistreatment of Jamie Jackson, a reveller at a Mardi Gras Parade.²⁴ Jamie was 18 at the time of the incident. Footage released of Mr Jackson showed police officers using excessive force and this drew significant criticism from the community and arguably, eroded trust in the police. The actions led to a protest on the steps of the Surry Hills Police Centre where the officer involved was deemed homophobic by speakers and audience members. NSW Police responded to these incidents through the development of documents such as the Mardi Gras Accord²⁵, and changes in how the large LGBTIQ event was policed.

Many in the NSW LGBTIQ community remember the bashing of Alan Rosendale in 1989. While this is almost 30 years ago, when new reports of homophobic and over-zealous policing emerge, the community is reminded of historic practices of police brutality. They remind our communities that despite ongoing attempts to repair relationships, the wounds of the past are still healing.

Despite the public profile of these cases, the then NSW Premier, Barry O'Farrell, refused to call for independent oversight of police actions, stating "The NSW Government believes it's important police continue to investigate critical incidents because they have the unique skills and expertise to look into these matters."²⁶

Criticism remains to this day about police investigating police, and recommendations in *In Pursuit of Truth and Justice*

²³ NSW Police Force (2016) Sexuality, Gender Diversity and Intersex Policy 2016-2020

²⁴ Young, M and Shorten, K (2013) Police accused of Mardi Gras brutality as cuffed man 'slammed on ground' News.com.au 7 March

²⁵ AAP (2014) Accord signed for Mardi Gras News.com.au February 14

²⁶ Ozturk, S (2013) Investigation Into Police Conduct Announced Star Observer Online, September 25

²⁷ Pattavina, A. et. al. (2007) A Comparison of the police Response to Heterosexual Versus Same Sex Intimate Partner Violence. Violence Against Women (13):4

are highlighted in this submission, noting that independent investigation (which could forseably now be undertaken by the Law Enforcement Conduct Commission) builds community trust and removes potential bias from any findings.

We believe that such actions also lead to a natural desire for reparation and acknowledgement, and as such an apology is required on behalf of those whose carriage of justice was denied due to failures in the system designed to protect individuals.

Police responses to other crimes in community have a current impact on the relationship and trust with community. International research has suggested that “gender and lifestyle of the involved parties have a significant effect on the police response to incidents”.²⁷ This research focused on police responses to same-sex intimate partner violence which it found to be misguided and homophobic, and that in relation to same sex relationships, intimate partner violence is reported even less often than bias motivated crimes. These kinds of statistics go some way to demonstrating that the ongoing negative relationship between some community members and the NSWPF is based on poor experiences they, or their peers, have had.

This indicates that police may not yet be fully resourced to support and respond to the specific needs of LGBTIQ communities. *In Pursuit of Truth and Justice* recommends “continued diversity training for NSW Police Officers, developed in conjunction with the LGBTI community” and we believe this would go some way to developing appropriate responses to the needs of a complex and heterogeneous population.

The recommendations of Parrabell include:

*“A policy position is taken by the NSW Police Force that assessments of crime are to commence from an open-mind position regarding motive, so that all motives, including bias motivation, are properly considered before any decision of exclusion.”*²⁸

We believe that in making this recommendation, the NSWPF are acknowledging that they continue to have serious issues with bias in police practice. To the lay person, it would seem a basic expectation that it is standard practice for investigations to be conducted with an open mind.

On a positive note, it should be acknowledged that NSW Police have been a member of Pride in Diversity since 2015. As an organisation, they have been highly engaged, and have participated in the Australian Equality Workplace Index (AWEI) benchmarking process since 2016, in line with their LGBTI inclusion strategy.

They have achieved silver or gold level in all 3 years they have participated (2016, 2017, 2018), putting them in the top 20% of participating organisations. In 2016 they also won 2 awards; Trans and Gender Diverse Inclusion award and Executive Leadership award. In 2017 they won the Intersex Inclusion award and Community Impact award, and they were also the highest ranking public sector organisation. In 2018 they were the 2nd highest ranking public sector organisation.

ANTI-VIOLENCE PROJECT FINDINGS

The NSW Anti-Violence Project (AVP) started in 1991 as a grassroots response to homophobic violence and abuse in the inner city where LGBTIQ people congregated and socialised. The project began as by running volunteer street patrols and starting a ‘whistle’ project in which members of the community were given a whistle to wear when going out and encouraged to attract attention if in a dangerous or threatening situation.

Funding from the New South Wales Attorney General’s Department allowed the Project to expand and employ staff and to develop education campaigns. The project worked directly with LGBTIQ communities, government and non-government agencies, as well as with community services to support LGBTIQ people who were the victims of violent crime.

The project acted as a third party reporter – allowing members of the community who had been abused or threatened to make a report to someone they trusted and felt safe with. With the consent of the victim, these reports were passed on to law enforcement to be followed up. It is our assertion that providing a space for these reports to be made to trusted organisations and businesses led to an increase in reporting of crimes, and supports our recommendation that third party reporting mechanisms be developed.



A Lesbian and Gay Anti-Violence Project poster for the Homophobia: What Are You Scared Of Campaign in 1998

²⁸ NSW Police Force (2018) Strike Force Parrabell Final Report

A key component of the of the AVP was the 'Safe Place' project which established physical refuges for LGBTIQ people who were experiencing street violence. Often these were local cafés, bars, shops and community friendly businesses. All Safe Places displayed a Safe Place symbol and charter which promoted equality and acceptance, with a commitment to protect victims and get help.

Between 2003-2009 the AVP recorded over 570 incidents of abuse and violent crime against LGBTIQ people in Inner City Sydney, of which over 330 were reported by gay men, 60 by lesbian women, 10 by transgender people and remaining 171 choosing not to disclose their identity. This data is not published, but remains important in describing community experiences of violence.

During that time the Project recorded over 169 incidences of physical assault, 18 sexual assaults, 16 thefts and over 368 incidences verbal abuse.

The data markers that were used to categorise these crimes mask the true nature of the horrific abuse and attacks on individuals, which include LGBTIQ people being set upon by large groups of assailants and beaten in the streets, alleyways and in parks; people being set upon and bashed with baseball bats, pieces of wood, bricks and metal bars and people being kicked and punched to the ground. Examples of the physical violence experienced by LGBTIQ people that illustrate this point include:

- A person who experienced harassment over two years including having their house firebombed, mail stolen, threatened with a knife, bashed, rocks thrown at their dog, their garden destroyed and their house graffitied with homophobic comments; and
- A person who was a victim of home invasion and robbery, and who was viciously verbally abused and sexually assaulted with a bottle and knife.

The AVP reports also include many examples of verbal abuse of LGBTIQ people, including being called 'faggots', 'poofta', being told 'you are all going to die', 'AIDS carrier' and 'dirty'. This verbal abuse was often accompanied by violent threats and physical assaults. Examples include:

- A gay man who walked past a road worker, while on the way to work and reported that the worker yelled at him "poofta" and then spat on him.
- A gay man who was walking along the street with his partner, and was belted by eggs from a passing car while the driver and passengers yelled "you fucking homos".

What is most disturbing about many of these incidences in the feeling of impunity the perpetrator felt while abusing the LGBTIQ person and powerlessness of the victim.

The ACON AVP offered information, support and referral in relation to these experiences of violence. This included information about legal, counselling, or compensation processes (including reporting to the police) or specific services available; speaking about what happened; or offering advocacy support. The AVP also worked directly with NSW Police both at an

individual level and broader policy level to address the impact of these crimes on the LGBTIQ community.

The data provided by the ACON Anti-Violence Project (AVP) paints a stark picture of the impact of violent crime on LGBTIQ people. It demonstrates that much of this violence was considered part of Australian cultural life, and speaks to the indifference victims faced from the government agencies such as the NSW Police Force.

In addition, the AVP also ran campaigns (as pictured below) in mainstream media and schools to challenge homophobic beliefs and attitudes. Funding for this kind of activity was not sustained and as such these projects ended.



A Lesbian and Gay Anti-Violence Project poster for the Homophobia: What Are You Scared Of Campaign in 1998

DATA COLLECTION AND ANALYSIS

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.

There also exists the need to collect this data with care and consideration, to avoid the potential for over policing of certain

²⁵ Russell, E. K. (2017) *Queer Penalties: The Criminal Justice Paradigm in Lesbian and Gay Anti-Violence Politics*. *Critical Criminology* (26) 1

²⁶ Russell, E. K. (2017) *Queer Penalties: The Criminal Justice Paradigm in Lesbian and Gay Anti-Violence Politics*. *Critical Criminology* (26) 1

²⁷ George, A. (2008) *Hate Crimes Against Lesbians and Gay Men in NSW: Accumulated Knowledge of Victimisation in Five Reports*

²⁸ Inner City Legal Centre (2011) *Outing Injustice*

areas (such as beats or large scale events such as Mardi Gras) in order to identify target areas and individuals.

Some concerns exist that given the tenuous relationship between LGBTIQ community members and police, any heightened response and prevention logic could be seen as over policing and criminalisation of queer communities.²⁹

As such, it is important that improved data collection is mindful of community need, and where systemic change is possible, it is supported by legislation and policy, for example, the mandatory reporting of bias motivated crime by police, and the use of evidence informed bias recognition tools by on the ground officers.

The importance of collecting, collating and storing data on bias motivated crime has recently been highlighted in *Parrabell*. Without accurate data it is impossible 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. It has been suggested that the historical information maintained by NSWPF on potential gay-hate crimes was poorly collected, reviewed without data standards or consultation and poorly maintained.

The data which does exist often relies on victimisation surveys, which play an important part in revealing hidden crimes and are used to “draw attention to state and legal failure to recognise this violence as violence and as an issue of law”.³⁰ Certainly, our anecdotal evidence from community members reflects the invisibility of these crimes and the reticence from some to see them as issues of law.

Data about the experiences of trans and gender diverse people and people with variations in sex characteristics continues to be sparse. A 2008 review of five community safety related surveys of the LGBTIQ community was only able to report on a total of 3 trans participants despite a total pool of over 400 respondents.³¹ This data does not accurately reflect the anecdotal understanding ACON has of the experiences of these populations.

The Inner City Legal Centre, in a 2011 report, noted that “The specific experiences of the transgender communities highlight the extent of violence and discrimination. Discrimination and unfair treatment of transgendered people within lesbian and gay spaces leads to further marginalisation and isolation. Other recent reports have recommended specific protections for transgendered people in hate crimes legislation.”³²



A poster for the Cure Hate: Stop AIDS campaign by the Lesbian and Gay Anti-Violence Project and the ACON

Recommendation 5: That recommendations contained in the In Pursuit of Truth and Justice report are further examined by the Committee as options for decreasing the impacts of gay-hate crime in the NSW community.

Recommendation 6: That a project be funded – to be conducted jointly by ACON and NSWPF in partnership – that examines best practice models for a whole of community approach to improving LGBTIQ community safety; and that a model is piloted and evaluated in NSW.

Recommendation 7: Recommendations 3, 4, 5, 6 & 7 from *Parrabell* be implemented by NSWPF and progress updates are provided to NSW Parliament every six months over the next 4 years (and beyond if required) to ensure the community has transparency around, and gains confidence from, these changes.

Recommendation 8: That the Law Enforcement Conduct Commission or other appropriate independent body investigate and determine the involvement of individual members of NSW police and justice agencies in LGBTIQ hate crimes, and ensure that any wrongdoing or inaction is acknowledged and addressed.

Recommendation 9: That the NSW Government consider funding, and co-designing with ACON, a mainstream campaign to combat homophobia and transphobia and violence in NSW.

Recommendation 10: Introduce Third Party Reporting systems in NSW that encourage LGBTIQ people to report violent crimes – and where consent is given – providing these reports to Police.

Recommendation 11: Strong evidence exists to confirm that fear associated with anti-gay, homophobic and transphobic attitudes of Police Officers and the NSWPF generally prevented crimes being reported. The Terms of Reference for this Inquiry are limited to those crimes that were reported during the prescribed timeframes. There is a need to consider how previous experiences of abuse and violence since 1970 can be addressed, beyond the scope of this Inquiry.

Recommendation 12: That the NSW Government fund and commission research examining lesbian, bisexual, trans, gender diverse, intersex and queer peoples contemporary experience of hate crimes.

³² Inner City Legal Centre (2011) *Outing Injustice*

(B) IN RELATION TO LGBTIQ HATE CRIMES MORE GENERALLY

(I) ROLE OF THE ‘GAY PANIC’ DEFENCE IN LGBTIQ HATE CRIMES (1970- 2010)

The use of the “homosexual advance defence” or as it was more commonly known the “gay panic defence,” as a legal provocation to secure a reduced sentence in a murder trial, where the victim was a homosexual man contributed significantly to a social attitude that gay men were less equal than heterosexual men and that violence against homosexual men could be condoned to some extent.

It is important to note that this common parlance was never a formal defence stance in New South Wales, nor has it attained “the status of a recognised mental condition or a successful legal defence of insanity in its own right.”³³

The “gay panic defence” relied on sustaining a stereotype of the predatory homosexual man, it was designed to play on the general loathing in the community of homosexuality so as to invoke in jury members such a loathing of homosexuality that they would relate to the accused using fatal violence in response to an unwanted attempt by the victim to express physical homosexual affection.³⁴

The application of the informal defence also impacted community perception of the judicial system. In cases where the perpetrator had invoked the claim of provocation and had received a lenient sentence, trust in the fairness of the judicial system was eroded. This was especially true when the provocation claim was especially dubious (for example, a gang related attack), and while the lenient sentencing might have been more to do with the age or background of an assailant, the community did not trust that justice was being served.³⁵

It should also be noted that many of the cases in NSW in which this defence or partial defence was used occurred during a ‘dock statement’ in which a suspect cannot be cross examined, further removing community trust.³⁶

(II) HOW THE ‘GAY PANIC’ DEFENCE IMPACTED THE DELIVERY OF JUSTICE

The “gay panic defence” provided a major impediment to the proper scrutiny of claims of homophobia and homophobic violence on the part of investigating police and the judiciary who would often sympathise with the accused and reflected the views of the general population about homosexuality.

This entrenched homophobia in turn resulted in a sub-standard investigation and important information such as an understanding of homosexuality, or understanding of the psychology of homophobia were not considered which impacted all levels of proceedings including sentencing.

The prevalence of homophobia across Australian society at the time and the lack of organisation on the part of the gay community around homophobic violence, made it difficult for the community to publicly agitate for a fair trial around the death of the victim.

The gay panic defence further compounded the gay hate crimes by making them less easily detected or punished as gay hate crimes:

- if detected and charged, the gay panic defence allowed perpetrators to escape or receive a lighter punishment;
- perpetrators escaped punishment by playing on the stigma and discrimination which surrounded homosexuality and the stereotype of the predatory homosexual; and
- by expressing the defence – let alone when a jury accepted it – perpetrators claiming gay panic defence reinforced the notion that it was legitimate to respond to a homosexual man or a non-violent homosexual advance by using lethal violence.

Gay panic defence instilled and reinforced homophobia in society generally, in the Police and in the courts. As a phenomenon, gay panic defence thus became a vicious circle – homophobia feeding homophobia – in turn, making 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.

The defence also presented significant issues in regards to plausibility, in that in many cases when it was used, the only person who could speak to the details of the crime were the accused, or the deceased. In several cases in New South Wales were this defence was used by a perpetrator, there were no witnesses to the supposed advance, even when the advance was said to have happened at an earlier date.³⁷ Essentially, the plausibility of these claims of ‘homosexual advance’ without sufficient evidence is dubious at best.

The gay panic defence was abolished as a defence of provocation in New South Wales in 2014, however its impact on the justice system and the victims of gay hate crimes was significant and lasting. Members of the LGBTIQ community continue to hold memories of this institutional persecution.

(C) RELATED MATTERS

THE REPORT OF OPERATION STRIKEFORCE PARRABELL

As previously mentioned, in June 2018, NSWPF released the final report of Strike Force Parrabell, which reviewed 86 deaths identified as potentially involving gay-hate bias between 1976 and 2000.

ACON holds the view that while it is commendable resources were directed to this important work, the methodology of an ‘academic review’ and a paper review of flawed and in some cases incomplete investigative records does not fully represent the cases, history, motivations and for many, justice has not been furthered.

Parrabell included an academic review and case summaries of these deaths. Of the 88 case reviewed, 63 were declared solved, 23 remain unsolved and 2 were not reviewed. Of the 86 cases reviewed, 27 cases were determined to have had evidence or

³³ Tomsen, S [2002], *Hatred, Murder and Male Honour: Anti-homosexual Homicides in New South Wales, 1980 -2000* Australian Institute of Criminology research and Public Policy Series (43)

³⁴ Senate Committee on the Partial Defence of Provocation (2013) *The Partial Defence of Provocation*

³⁵ Tomsen, S [2002], *Hatred, Murder and Male Honour: Anti-homosexual Homicides in New South Wales, 1980 -2000* Australian Institute of Criminology research and Public Policy Series (43)

³⁶ NSW Attorney General's Department (1998) *Homosexual Advance Defence Working Party Final Report*

³⁷ Tomsen, S [2002], *Hatred, Murder and Male Honour: Anti-homosexual Homicides in New South Wales, 1980 -2000* Australian Institute of Criminology research and Public Policy Series (43)



"OFF TO THE GYM.

AGAIN.

HMMM, THOSE GUYS

LOOK A BIT SUSS...

DOING NOTHING. JUST

WAITING. SHOULD I

FLEX MY MUSCLES?

NAH.

BEST I CROSS

THE ROAD."

VIOLENCE CAN HAPPEN.

JUST BE AWARE.

Be aware of who is in front of you and behind you. If you feel something's wrong, cross the street, change direction, walk closer to traffic or run to a safe place. And be prepared for what may follow if you answer back to verbal harassment, as it's often a prelude to an attack. Trust your instincts.

For support, referral and information, or to make a report, call the Lesbian & Gay Anti-Violence Project.

360 6687 or 1 800 637 360

This poster is proudly sponsored by: Exchange Hotel, Flinders Hotel, Imperial Hotel, Newtown Hotel, Oxford Hotel, Out Public Relations & RPM Partiez.



A 1995 campaign poster by the Lesbian and Gay Anti-Violence Project

suspected evidence of bias crime – 5 of which remain unsolved. A further 25 were found to have insufficient information to make a determination.

Parrabell confirmed a substantial number of these crimes were motivated by anti-gay bias. It is also confirmed that there was a high proportion of cases where there was insufficient evidence to absolutely determine bias. The findings of Operation Parrabell were alarming and clearly demonstrated the acceptance by Police of pervasive bias, a lack of regard for the lives of gay men and an attitude that the extraordinarily high level of violent crimes that were directed to members of the LGBTIQ community during that time was relatively routine and understandable. Operation Parrabell also found that many of those crimes were never accounted for.

Given procedural and other limitations ACON seeks further action to determine the true extent of historical hate crimes against LGBTIQ people, not limited to the inconclusive list of 86 cases reviewed as part of Parrabell.

The Operation Strike Force Parrabell Report contained 12 key recommendations, which focused on reinforcing existing policing processes, policies and training.



A 2005 campaign poster by the Lesbian and Gay Anti-Violence Project and ACON

Parrabell recommended a range of new initiatives which include the development and implementation of a revised system for the early identification of bias crimes, the establishment of a compulsory LGBTIQ conference for Police, and an expanded Gay and Lesbian Liaison Officer Program.

While we endorsed Strike Force Parrabell Report's recommendations for a revised system that can assist frontline, operational officers to better identify and record bias crimes, we believe this needs to be coupled with a strengthening of Bias Crimes Unit's capacity to more fully respond to the needs of LGBTIQ community members. This would include a best practice model for identifying potential bias, and ensuring that all potential bias was recorded in the central operational policing system (COPS) in order for the information to be easily cross checked and analysed.

THE ONGOING HEALING OF COMMUNITY AND INDIVIDUALS

The effect of gay hate crimes and sub-par responses to those crimes has a long lasting effect on community. Many of the victims of these crimes who were fortunate to not lose their life, remain today affected by their experience, through psychological distress and distrust of service providers. These individuals have faced a sense of invisibility and powerlessness that has detrimental and defining impacts on their determinants of health.

We also are aware of the effect of those who lost friends, family and lovers as a result of these brutal attacks. These families, both biological and chosen also face a sense of erasure from systems that were willing to investigate deaths, or from judicial decisions that downplayed the horrendous ends to the loss of their loved ones.

It is our belief that there were significant issues with the delivery of justice for victims, which are felt to this day by those who remain with us, and in the families and friends of those who died. Contemporary Australian experience has highlighted the importance of acknowledging systemic failures and inappropriate actions of the past.

Examples of this include the apologies of the NSWPF and NSW Parliament to those who were beaten, outed and abused at the first 'Mardi Gras' in 1978 and the reparations provided to victims of institutional child abuse. These apologies and schemes promoted a sense of justice, prompted victims to share stories about the reality of their situation and demonstrated contrition and understanding of the importance of the wrongdoing.

Similar considerations and schemes would be appropriate for those whose suffering was worsened by poor responses and systemic homophobia. This would be well coordinated by a central office for equity within the Premier's department, ensuring that the response to these issue was part of a broad whole of government approach to addressing the unique issues of this significant portion of the NSW population.

Recent research³⁸ also highlights the important effects of hate related crime on the community at large. People feel vulnerable, avoid going about their regular routines and engender a sense of anger at perpetrators but also distrust in those charged to protect them. As such a community response beyond victims is appropriate and also timely.

³⁸ Paterson, J. et. al. (2018) The Sussex Hate Crime Report University of Sussex

In Pursuit of Truth and Justice also seeks a formal apology by the NSWPF to the LGBTIQ community for the inadequate or slow responses to violence throughout this period. It is our belief that there is a multitude of concerns including the application of the 'homosexual advance' provocation defence, the ongoing entrapment techniques employed by the police and continued systemic discrimination in responses to queer community members.

An apology from the NSW Police Force to the LGBTIQ community would send a positive sign to any same-sex attracted couples who are still too frightened to hold hands in many places around the state for fear of violence.

Importantly, it will go a long way in healing the grief and trauma experienced by victims, families and other members of our communities.

Over the last four years ACON has worked closely with Waverley Council on the establishment of a memorial in Mark's park to remember and honour the men who were murdered in homophobic hate crimes. In October 2018, Waverley Council committed \$100,000 to the project and allocated an area of the park for the memorial to be erected. We call on the NSW Government to consider how they can support the establishment of this project.

**NO MATTER
HOW SMALL THE
INCIDENT**

SPEAK UP

**AGAINST
HOMOPHOBIC
VIOLENCE**

Reporting homophobic violence makes it visible.
Then we can do something about it.

Speak to ACON's Lesbian and Gay Anti-Violence Project
on **9206 2116** or at **www.acon.org.au/anti-violence**
Freecall **1800 063 060**

Report all violence to the Police:
In an emergency: **000** Police Assistance Line: **131 444**

This campaign was produced with funding provided by the NSW Department of Corrective Services' Victims of Violent Crime Grants Program

Logos: NSW Government, ACON, CITY OF SYDNEY

A 2009 campaign poster by the Lesbian and Gay Anti-Violence Project and ACON

Recommendation 13: That NSW Parliament and NSW Police use public opportunities such as presented by the Bondi Memorial project, to publicly acknowledge victims and survivors - including an apology acknowledging the direct acts of homophobia enacted by individuals, the systemic homophobia and erasure by NSWPF, and the failings of the judicial system to provide justice.

Recommendation 14: Fund evidence informed LGBTIQ violence-specific support services which acknowledge the disproportionate violence experienced by LGBTIQ people and to start healing the legacy of violence.

Recommendation 15: Establish an office for equity in the Department of Premier and Cabinet to address issues of inequity and develop a whole of government response to LGBTIQ issues.

Recommendation 16: Explore options to provide financial and other forms of support to grieving loved ones and victims who come forward, including a redress type of scheme for both reported and non-reported crimes over these 40 years.

Recommendation 17: Further to Recommendation 7, that NSW Parliament requires that all recommendations taken forward from this Inquiry are subject to public accountability in the form of transparent reporting to the NSW Parliament every six months for the next 4 years, or until all actions are sufficiently imbedded and completed to the satisfaction of the Parliament.

Recommendation 18: That NSW Police and Parliament review and respond to the recommendations of the *In Pursuit of Truth and Justice* report, as outlined at the end of this submission.

CONCLUDING REMARKS

Firstly, in reviewing, recounting and communicating about this period in NSW LGBTIQ communities' history, ACON wishes to commend the resilience and strength of our communities – it takes strength to advocate for change and rights over decades. We acknowledge the content of this Submission is painful for many and we offer our support – now and always.

Policing and justice organisations are generally held in high esteem by the Australian community. Powers are afforded to them by our democratically elected representatives and with these powers, comes great responsibility.

This partially explains the deep emotion, frustration and grief of our communities when we feel let down by organisations and institutions who should be there to protect the safety of all.

We recognise it is not all the individuals within law and justice agencies and for those who are already on the journey of reform of these agencies, we urge you to continue to lift your voices.

This NSW Parliamentary Inquiry has the opportunity to commit to actions that are properly and transparently implemented. There must be an accountability for change if we are to create trust and improve the health and wellbeing of all people in NSW.

We hope that this submission helps the NSW Parliament embrace this opportunity.



LESBIANS DO HAVE RIGHTS!
HARASSMENT-IT'S NOT OK...
VIOLENCE-IT'S A CRIME!



LESBIAN AND GAY ANTI-VIOLENCE PROJECT

A project dedicated to eliminating violence against lesbians and gays.
PO Box 9 Darlinghurst 2010 Phone (02) 360 6687 Fax (02) 380 5848

This campaign is funded by
THE COMMONWEALTH OF AUSTRALIA THROUGH
THE OFFICE OF THE STATUS OF WOMEN

A 1994 poster from the Lesbian and Gay Anti Violence Project

RECOMMENDATIONS

Our recommendations are grounded in a restorative justice framework³⁹ and centre on seeking truth, compensation and support for victims. They further seek changes in policy and practices to prevent future crimes and injustice.

Recommendation 1: That the NSW Police Force commit to investigating all outstanding cases and prosecuting where appropriate.

Recommendation 2: That Recommendation 8 of *Parrabell* (LGBTIQ education of every potential Police Officer at the Academy as part of recruit development and learning) be actioned but also extended, to include more advanced training of Officers each time they progress through the ranks to a more senior role.

Recommendation 3: That Recommendation 10 of *Parrabell* (equity and diversity awareness training) is not just about making the training available, but ensuring all levels of the NSWPF conduct this training periodically (for example, every 2 to 3 years), and that this training includes delivery of content from diverse, marginalised communities including LGBTIQ people sharing their lived experience.

Recommendation 4: That Recommendations 11 & 12 of *Parrabell* are implemented by NSWPF.

Recommendation 5: That recommendations contained in the *In Pursuit of Truth and Justice* report are further examined by the Committee as options for decreasing the impacts of gay-hate crime in the NSW community.

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Recommendation 18: That NSW Police and Parliament review and respond to the recommendations of the *In Pursuit of Truth and Justice* report, as outlined at the end of this submission.

³⁹ Marshall, T. (1999). *Restorative Justice: An overview*. London: Home Office Research Development and Statistics Directorate.

IN PURSUIT OF TRUTH AND JUSTICE RECOMMENDATIONS

- 1.1 ACON recommends a Roundtable be supported and attended by key stakeholders including NSW Police Force, Victim Services, Attorney General's Office, and relevant community and legal services to explore issues relevant to historical violence including those contained in this report.
- 1.2 ACON recommends the establishment of a community-led Truth and Justice Inquiry to be carried out in partnership between relevant community organisations and the Attorney General's Office to comprehensively explore, understand and document the extent of historical violence experienced by the LGBTI community.
- 1.3 ACON recommends development of academic and/or community-led research that i) examines the impact of historical violence on the wellbeing of the LGBTI community, and ii) explores approaches for restorative justice and healing-based solutions.
- 2.1 ACON seeks acknowledgement or formal apology by the NSW Parliament and/or the NSW Police Force to the LGBTI community for the often inadequate or slow responses to violence throughout this period.
- 2.2 ACON recommends that state and local government authorities consider formal opportunities to acknowledge and honour the lives of victims and survivors of LGBTI violence, for example through participation in or contribution to the Bondi Memorial project, or similar.
- 3.1 ACON recommends funding be provided by Victim Services or a similar organisation for LGBTI counselling and other psychosocial support for people who were exposed to violence during the 1970s through 1990s. There are currently no funded LGBTI violence-specific counselling services. In particular, ACON recommends funding be provided to develop peer-led survivor support programs.
- 4.1 ACON recommends a formal and independent investigation into the actions of the various arms of the criminal justice system to fully understand the impediments to justice during this period in history, their relevance to current practices, and to identify opportunities to finalise unsolved cases.
- 4.2 ACON recommends establishment of a police taskforce or similar formal process to support and encourage survivors of violence and other community members with evidence relating to historical crimes to make an approach to the NSW Police Force to have their experiences recorded and investigated.
- 4.3 ACON supports ongoing and new strategies to build trust between police and the LGBTI community, to foster collaborative approaches that work to prevent violence and support victims of violent crimes. In particular, ACON supports exploring adaptation of third party reporting models, similar to that which has been successfully used in Scotland.
- 4.4 ACON Recommends the introduction of comprehensive data collection systems that provide detailed information relating to the incidence and severity of violence related crimes impacting the LGBTI communities in NSW. It is recommended this data collection system be trialled with NSW Police Force and the NSW Ministry of Health via hospitals.
- 5.1 ACON recommends the establishment of a specific unit to monitor crimes directed at LGBTI victims with accurate recording and publicity regarding all related homicides from 2000 onwards.
- 5.2 ACON recommends the development of a sexuality and gender identity prejudice assessment tool for use by police relevant to the NSW jurisdiction.
- 5.3 ACON recommends that the possibility of sexuality and gender identity prejudice is routinely considered in all homicides and that appropriate measures are explored to make this happen.
- 5.4 ACON recommends establishment of an ongoing action group, led by the NSW Gay and Lesbian Rights Lobby, to review existing legislation and policy to enhance protections for the LGBTI community and improve avenues for redress for violence and other related crimes. Where relevant this action group would advocate for the establishment of new laws or policy where gaps are identified.
- 6.1 ACON recommends the collaborative development of evidence-based primary prevention programs, such as an Onlooker Violence Prevention Campaign. Such campaigns engage LGBTI allies or 'pro-social' bystanders to de-escalate potential violence directed at LGBTI people by using their neutrality and/or existing relationship to influence a potential perpetrator.
- 6.2 ACON recommends the use of innovative methods to reduce LGBTI hate crimes such as, but not limited to:
 - 6.2.1 Information and intelligence gathering from the LGBTI community regarding crime 'hot spots' or other evidence of LGBTI hate and vilification that can be used in conjunction with traditional police enforcement approaches to prevent hate crimes.
 - 6.2.2 The development of specific LGBTI hate risk assessment tools to identify potential offenders (in a similar vein to risk assessment tools used to identify potential terrorists) combined with therapeutic options.
- 6.3 ACON recommends the development of a collaborative and community-led violence prevention and support program for transgender communities.
- 6.4 ACON recommends continued diversity training for NSW Police Officers, developed in conjunction with the LGBTI community.

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