

**Submission
No 34**

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

Organisation: Dowson Turco Lawyers

Date Received: 5 December 2018



Submission to The Parliamentary Inquiry into Gay and Transgender Hate Crimes Between 1970 and 2010

Newtown Office

15 SOHO Building, 572 King St
Newtown NSW 2042

CBD Office

Suite 704, 22 Market St
Sydney NSW 200

Mail

PO Box 1030
Newtown NSW 2042

Phone & Fax

Phone 02 9519 3088
Fax 02 9519 3022

Email & Web

Email admin@dowsonturco.com.au
Web www.dowsonturco.com.au

About Dowson Turco Lawyers

Dowson Turco Lawyers is Australia's only out loud and proud® and private LGBT law firm of our size. We service all communities in the areas of family law, criminal law, property law, estate law, commercial law, employment law and immigration law.

Introduction

Dowson Turco Lawyers welcomes the NSW Parliamentary inquiry into gay and transgender hate crimes between 1970 and 2010.

Having represented victims of targeted homophobic violence, we understand the lasting pain and trauma, endured by the lack of justice and resulting from the failure of institutions to protect the LGBT community and hold the perpetrators of violent hate crimes to account.

Perceptions and attitudes towards the LGBT community

During the 1970s, the world was experiencing the aftermath of an "immoral" United States-led Vietnam war, which gave impetus to conditions for social questioning and challenges to the then, norms about race, women's rights, sexual orientation, and authority.

While those times were fertile for voices of change, there were equally corrupt political elements in authority, quelling dissent.

From the 1960s to, well into, the mid-1990s, the police (as an arm of government) were used as an instrument to subdue "radical elements" and in doing so, engaged in direct discrimination against these communities. Many protests were met head-on by police on horses. Against this backdrop, LGBT communities started to openly question and assert their human rights.

As a result of the increasing visibility of the LGBT community, some people within the community, became easy targets for violence. And in an environment of political conservatism, police were buoyed to maintain the 'moral' standards of the pre-60s. It followed that police forces across Australia were frequently in conflict with the voices for change.

This discrimination and violence, against the LGBT communities, survived what others may call the liberated 60s and 70s. Prejudice and extreme elements operated without hindrance against the LGBT community while institutionalised homophobia was present in the form of criminalisation of homosexual behaviour. Indeed, the NSW Police Force accepts it was part of this element in Australian society.¹

In 1978, 53 men and women were arrested at Sydney's first Gay and Lesbian Mardi Gras Parade.² During those arrests, excessive violence was used and scenes of police brutality were broadcast to television sets across the country.

¹ NSW Police Force, 'Strikeforce Parrabell Final Report' (2018).

² Ben Windsor, 'A definitive timeline of LGBT+ rights in Australia', SBS (Online) 12 August 2016 <<https://www.sbs.com.au/topics/sexuality/agenda/article/2016/08/12/definitive-timeline-lgbt-rights-australia>>.

Dowson Turco is of the view that this State-sanctioned police brutality and institutionalised homophobia led to a mistrust of the NSW Police Force within the LGBT community and also encouraged certain other parts of society to harass, discriminate against, vilify, assault and even murder members of the LGBT community.

If those incidents of hatred were reported to police, they were not always taken seriously by police.³

Homosexual acts were finally decriminalised in NSW in 1984 and, as a result, many people in the LGBT community began living their lives more freely, openly and visibly. But this visibility also fuelled further homophobia and moral panic.

Gay bashing as a sport

It is well-established that gay bashings were alarmingly common between the 1970s and 2000s,⁴ homophobic people in the general public as well as members of the police felt empowered to enact violence against lesbians, gays and transgender women.

ACON's report into hate crimes against LGBT people, *In Pursuit of Justice*, found that many public bashings involved multiple assailants who would egg each other on during these frequently planned and cowardly attacks.

Gay bashings during this period, commonly occurred in victims' homes and at gay beats in the inner city, the east of Sydney and the inner west of Sydney, as well as other known gay hang-outs.⁵

The HIV/AIDS Epidemic and The Grim Reaper Campaign

With the advent of the growing AIDS epidemic in the early 80s, social paranoia raged out of control. Society's response was that the disease was a gay person's disease. The paranoia fuelled heightened discrimination, vilification and hate-fuelled violence.⁶

While it is certainly undisputed that a national health campaign was required to better inform the Australian public about HIV/AIDS, 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.⁷

³ Stephen Tomsen and Tyrone Kirchengast, 'Victim's Rights, Truth and Justice: denial of legitimate victimhood in anti-homosexual violence and killings in New South Wales.'

⁴ ACON, 'In pursuit of Truth & Justice'; Parramatta NSW Police Force, 'Strikeforce Parramatta Final Report' (2018); Stephen Tomsen and Tyrone Kirchengast, 'Victim's Rights, Truth and Justice: denial of legitimate victimhood in anti-homosexual violence and killings in New South Wales.'

⁵ ACON, 'In pursuit of Truth & Justice.'

⁶ Jennifer Power, 'Lessons from the history of HIV/AIDS in Australia – how activism changed the image of an illness,' *The Conversation* (Online) 1 December 2011 <<https://theconversation.com/lessons-from-the-history-of-hiv-aids-in-australia-how-activism-changed-the-image-of-an-illness-4052>>.

⁷ ACON, 'In pursuit of Truth & Justice'.

The “Gay Panic Defence”

Dowson Turco Lawyers is pleased to learn that the inquiry will investigate the impact of the so-called “gay panic defence” on the attitudes toward justice for LGBT victims.

Rather than a “defence” at law, the “gay panic defence” was, until recently in NSW, legislated as a form of extreme provocation which could be raised by an accused to mitigate a charge of murder and reduce the charge to one of manslaughter.

In NSW, between 1993 and 1995, 13 defendants succeeded in reducing their charges on the basis of homosexual provocation.⁸

In 1997, the High Court upheld the common law ‘right’ to raise homosexual provocation in the case of *R v Green*.⁹

In NSW in 2014, amendments to the *Crimes Act 1900*, by way of the *Crimes Amendment (Provocation) Act 2014*, reduced the scope of provocation to exclude “non-violent sexual advances to the accused”. While this was a welcome development, this amendment came too late for many victims and victims’ families. Indeed, in September 1998, a working party comprising eminent lawyers and members of the LGBT community, recommended the adoption of the following measures:¹⁰

- 1 The 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.
- 2 The Attorney General to 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.
- 3 The removal of NSW laws that discriminate against gays and lesbians, including those criminal laws which impose a discriminatory age of consent upon gay men in New South Wales.
- 4 The commencement of a campaign of community education by the Crime Prevention Division, within the Attorney General's Department, against the use of homophobic violence in response to a non-violent homosexual advance.
- 5 The monitoring of Homosexual Advance Defence (hereafter referred to as “HAD”) cases by Justice Agencies, including the Director of Public Prosecutions (hereafter referred to as the “DPP”) and the NSW Police Service.
- 6 The establishment of an ongoing monitoring committee, convened by the Criminal Law Review Division within the Attorney General's Department, with regard to HAD.
- 7 Continuing judicial education with regard to HAD.
- 8 The establishment of a Gay and Lesbian issues liaison officer within the Attorney General's Department.

⁸ Ben Winsor, ‘A sordid history of the gay panic defence in Australia’, SBS (Online) 12 August 2016 <<https://www.sbs.com.au/topics/sexuality/agenda/article/2016/08/12/sordid-history-gay-panic-defence-australia>>.

⁹ (1997) 191 CLR 334.

¹⁰ New South Wales Attorney-General's Working Party on the Review of the Homosexual Advance Defence, *Homosexual Advance Defence*, Final Report of the Working Party (September 1998).

- 9 Continued training of detectives, with regard to investigatory techniques directed towards rebutting a possible HAD.

The working party also put forward for consideration the following options:

- 1 As a more rigorous alternative to recommendation 2, above, legislation mandating the requirement of such a direction, in appropriate criminal trials in New South Wales.
- 2 The abolition, by way of legislative reform, of the defence of provocation in New South Wales.

It is Dowson Turco's 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.

It is also Dowson Turco's view 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.

Strikeforce Parrabell

The Strikeforce Parrabell Report by the NSW Police Force was welcomed by Dowson Turco Lawyers, despite its failings. This is because, the Parrabell Report evidences an admission by the NSW Police Force that it failed the LGBT community in respect of its response to many hate crimes reported to the organisation.

However, Parrabell was set up to review its historical investigative files rather than to undertake any further independent investigation of those files and complaints.¹¹ Its objective was to identify whether bias was a factor in investigations of hate crimes and it is Dowson Turco Lawyers' position that bias cannot be identified from a review of historical investigation files.

It follows that Parrabell merely scratched the surface on uncovering the issues within the NSW Police Force which prevented justice for victims of gay and transgender hate crimes in NSW.

Unfortunately, many perpetrators of horrific violent acts against LGBT people, remain at large due to the many failures of the NSW Police Force. While Dowson Turco Lawyers accepts the NSW Police Force's ostensible willingness to change its culture and approach to the LGBTI community, we would like to see the NSW Police Force fully investigate its responses to hate crime incidents of the past and to interrogate the many shortcomings of the original investigating officers, including why they did not follow certain leads, did not interview certain witnesses, lost evidence or failed to support families of victims.

Alan Rosendale

Dowson Turco Lawyers acts for Alan Rosendale who was bashed in a violent assault at a gay beat near South Dowling Street in 1989.

¹¹ Stephen Tomsen and Tyrone Kirchengast, 'Victim's Rights, Truth and Justice: denial of legitimate victimhood in anti-homosexual violence and killings in New South Wales.'

Paul Simes, a third-party independent witness, recorded the number plate of the vehicle carrying the perpetrators and it was subsequently confirmed that the number plate was that of a NSW Police Force vehicle.

Mr Simes made a notification of the event to the NSW Police Force and says around this time, he received a phone call from Fred Miller who was the Police Force's first gay and lesbian liaison officer, asking him to attend the police headquarters for a meeting with senior officers within the Police Force.

Mr Simes attended this meeting with senior police officers and was interviewed. Some weeks later he received another call from Mr Miller, who informed him that no further action could be taken in respect of the incident he witnessed.

The police re-opened the case when Mr Rosendale came forward as the victim after reading an interview with Mr Simes published in the Sydney Morning Herald in 2013. However, after interviewing both men, the police decided not to proceed with any substantial inquiries.

A number of freedom of information requests from both Mr Rosendale and Mr Simes have exposed very few records on the case.

Recommendations

Dowson Turco Lawyers recommends a royal commission with wide powers to compel witnesses to give evidence in relation to their involvement in committing hate crimes or in responding to reports of hate crimes.