

**INQUIRY INTO GAY AND TRANSGENDER HATE CRIMES  
BETWEEN 1970 AND 2010 - 57TH PARLIAMENT**

**Organisation:** NSW Gay and Lesbian Rights Lobby

**Date Received:** 28 February 2020

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## **Gay and Lesbian Rights Lobby**

**LEGISLATIVE COUNCIL  
STANDING COMMITTEE ON SOCIAL ISSUES  
Inquiry into Gay and Transgender Hate Crimes Between  
1970 and 2010**

**February 28, 2020**



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# Gay and Lesbian Rights Lobby

## About the NSW Gay and Lesbian Rights Lobby

The New South Wales Gay and Lesbian Rights Lobby (“GLRL”) welcomes the opportunity to comment as part of the NSW Legislative Council Standing Committee on Social Issues's Inquiry into Gay and Transgender Hate Crimes Between 1970 and 2010. The GLRL has a proud history of advocating on behalf of gay men, lesbians and their families. Indeed, in 2018 the GLRL celebrated over 30 years of being an advocate for our community. In those decades, the GLRL has established strong ties to the community, consulting with our members and hearing their stories, many of them describing incidents of violence, discrimination and hatred. In the past 30 years, the GLRL has been comprised of volunteers who have lived these experiences too. We draw on our history of bearing witness to those stories in making this submission.

The GLRL has a proud history. We are the peak organisation representing the rights of gay and lesbian people. We advocate on behalf of the gay and lesbian community and their families, as well as joining advocacy efforts of our partners and allies across the LGBTIQ community. We work closely with bisexual, transgender and intersex organisations, and all Members of Parliament to advance the rights of our communities in NSW. The GLRL has been in continuous existence since 1988, but the origins of our organisation date back to the 1970s and the efforts to decriminalise homosexual acts and to provide phone counselling support to community members impacted by bigotry.

The GLRL has established strong ties to the community, consulting with our members and hearing their stories, many of them describing incidents of violence, discrimination and hatred. In the past 31 years, our community-based organisation has been comprised of volunteers with lived experience of this bigotry. We draw on our history of bearing witness to those stories in making this submission.

A full list of our advocacy efforts is published on our website and in our annual reports.

In line with our submission, any questions are welcome and can be directed to Jack Whitney Convenor of the GLRL, on [redacted] and [redacted].

**Stay proud,**

**Jack Whitney**  
Convenor, NSW Gay and Lesbian Rights Lobby



## Introduction

This submission is an extension to our original submission of 7 November 2018. In the intervening period, the Inquiry's interim report was released in February 2019. That report contained 4 recommendations, including that the NSW Legislative Council re-establish the inquiry into Gay and Transgender hate crimes between 1970 and 2010 in the 57<sup>th</sup> Parliament. As recommended, the inquiry was reopened following the March 2019 election.

The interim report drew attention to the practices and efforts of the committee to use appropriate language, questioning techniques and to support potentially vulnerable witnesses throughout the inquiry process. The GLRL would like to commend the Inquiry for its efforts on this front and re-iterate that they be implemented again for any additional hearings in regional areas.

While the GLRL appreciates and recognises the good will behind the Committee's commitment to this Inquiry, the terms of reference are inadequate in a number of ways detailed in this submission. Where this submission deviates from the Terms of Reference, specifically (a) and (b), the Committee should receive those comments or stories under the catchall term, (c).

## Terms of Reference

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



# Gay and Lesbian Rights Lobby

## 1. Impediments To Protection And Delivery Of Justice

### (i) Impediments within the justice system, including the NSW Police Force

As per our earlier submission, we note that elevated, extreme and brutal violence was inflicted on LGBTIQ people, particularly gay men, between 1970 and 2000 and that this was acknowledged in the Final Report of Strike Force Parrabell. That report goes on to note that there were limitations to the Strike Force's work, including that it could not consider some of the incidents recorded by the GLRL and ACON, as "[u]nfortunately, fear associated with antigay attitudes of officers within the NSW Police Force at the time prevented these reports being formally recorded, which in turn meant that crimes were not investigated".<sup>1</sup>

Additionally, many members of our community have told us that they did, in fact, report incidents to the police at some point, but were turned away without a formal report recorded. For example, this account from a gay male who did not give his age:

*"My neighbour[...] threatens me on a daily basis cause I'm gay. When I contact police for help they don't do anything except they told me to suck it up. I live in fear every day."*<sup>2</sup>

As a consequence, we again urge the inquiry to interpret its terms broadly and to welcome witnesses whose accounts would have fallen outside the parameters of Strike Force Parrabel. It is certain that there are many victims and survivors of violence whose experiences of violence would not have been formally recorded due to the perception and reality of police indifference to LGBTIQ identified victims.

This is likely to be exacerbated in regional areas in which the limited availability of GLLO officers and reluctance to identify bias or homophobia as motivating an attack will further deter reporting of violent incidents.

As per our previous submission, the GLRL does not consider the terms of reference of this Inquiry to limit consideration of these incidents either because a report was not made or a report was not recorded by NSW Police Force. **By its own admission, the NSW Police Force has acted as an impediment within the criminal justice system reducing the extent of protection and justice for the LGBTIQ people.** A formal apology to victims and families remains overdue. Indeed, we note that the NSW Police are still considering a formal apology to the victims of killings, despite acknowledging homophobia as the factor behind these murders<sup>3</sup>.

The attempt to link social attitudes of the past to systemic failings of the NSW Police Force in the opening statement of a long-anticipated report into hate crimes was more than just tone-deaf. **Far from inspiring confidence and trust in our community, it reinforced feelings of hurt, misunderstanding and distrust. It shows just how far is left to go for the NSW Police Force in 2020.**

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<sup>1</sup> NSW Police Force, (2018) *Strike Force Parrabell: Final Report*, p 14-15.

<sup>2</sup> Horner, J, (2013) *In their own words: Lesbian, gay, bisexual, trans\* and intersex Australians speak about discrimination*. Sydney: NSW Gay and Lesbian Rights Lobby, p 22.

<sup>3</sup><https://www.news.com.au/national/nsw-act/crime/nsw-police-says-homophobia-behind-27-unsolved-sydney-murders/news-story/ff03a4cdc513611b7bc7fcbbb>



### **(ii) Does current practice and policy address historically identified impediments within the justice system, including the NSW Police Force**

At the time of preparing our previous submission, we noted that we also believe there is mounting evidence NSW Police has failed to properly address its internal culture relating to LGBTIQ people and crimes affecting them. Shocking revelations about an alleged culture of institutional homophobia within NSW Police, including bullying of employees at Newtown Local Area Command, and a failure to take cases of domestic violence seriously when reported by LGBTIQ people were among the indicators identified. Since our earlier submission, the allegations of homophobic bullying at Newtown LAC have been the subject of successful civil action after previous refusals to investigate. This is an uncanny echo of how many of the cases considered in Strike Force Parrabel were catalysed – through privately funded investigations and legal action. It is deeply shameful that it required civil action for NSW Police to acknowledge and address homophobia within its ranks in recent times.

**The trust to which our community can place in the NSW Police Force will continue to suffer as long as the Force continues to fail to come to grips with its culture of homophobia.**

As per our previous submission, we want to see ongoing education modules relating to LGBTIQ people as a standard of employment for every employee of NSW Police Force, from the Commissioner down. It is no longer good enough to have a handful of ‘trained’ GLLOs, unevenly distributed across the state. Indeed, as much has been recommended in the Final Report of Strike Force Parrabell at Recommendations 4 and 8.<sup>4</sup> Further, it is of the utmost importance that a review of the effectiveness and appropriateness of the Law Enforcement Conduct Commission ("LECC") be evaluated in order to provide better regulation and independent oversight of the NSWPF going forward.

An individual living in any corner of this state should be able to deal with any NSW Police Officer or any other public service employee with confidence, knowing they will be treated equally and respectfully. Until that becomes a reality, NSW Police have not done enough to earn the community’s confidence and NSW Parliament, sadly, must act to make it a reality for LGBTIQ people.

As part of our submission we would also like to acknowledge that there has been improvement. There is a noted collaboration between NSW Police and ACON for their anti-violence project, encouraging LGBTIQ people to report violence and provide education campaigns about violence in the community and in same-sex relationships.<sup>5</sup>

There are Gay and Lesbian Liaison Officer (GLLO) who are trained in working with LGBTIQ people, and this includes learning how to respond to same-sex domestic violence and training DV specialist police.<sup>6</sup> There is the GLLO (LGBTIQ Liaison Officer) Program<sup>7</sup>, however the GLLO has been less successful recently due to changed management styles with key staff departures around 2000. We would also like to note that NSW Police have regular meetings with LGBT state organisations through advisory meetings<sup>8</sup>, including PFLAG, Twenty10, Gender Centre, ICLC. This is written into their strategy and seen

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<sup>4</sup> NSW Police Force, (2018) *Strike Force Parrabell: Final Report*, p 40.

<sup>5</sup> *Handbook of LGBT Communities, Crime, and Justice*, pp. 157.

<sup>6</sup> *Intimate Partner Violence in LGBTQ Lives*, p270.

<sup>7</sup> *NSW Police Strategy*, pp. 24, 48,

<sup>8</sup> *Queering Planning: Challenging Heteronormative Assumptions and Reframing Planning Practice*,



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as integral to the successful implementation of their plan, which also suggests that all NSW police staff have the skills and knowledge to work with the LGBTIQ community<sup>9</sup>

### Recommendations

#### Recommendation 1

**All NSW Police Force members to undergo training to sensitively deal with the LGBTIQ community (existing recommendation).**

#### Recommendation 2

**We therefore recommend ongoing education modules relating to LGBTIQ people as a standard of employment for every employee of NSW Police Force.**

#### Recommendation 3

**We therefore recommend a regular review of the effectiveness and appropriateness of the Law Enforcement Conduct Commission in order to provide better regulation and oversight.**

#### Recommendation 4

**Improved internal policies for interactions with the LGBTIQ community, such as updated policies for searching for transgender and gender non-conforming individuals.**

## 2. Access To Justice

It is well-accepted that LGBTIQ people are more likely to face discrimination, vilification, and violence. It is also established that LGBTIQ people are unlikely to pursue avenues of redress. Recent high profile court such as the Isreal Folau case and ongoing exemptions to anti-discrimination law in religious education contribute to an environment in which LGBTIQ people in NSW continue to experience unsupportive social and community environments, in which their right to peaceful existence free from vilification remains a topic of debate. This is complemented by a federal government which is seeking to privilege religious freedom at the expense of the LGBTIQ community and resisting collecting information of our community in the ABS Census. Coupled with a marriage equality survey in which 'No' votes have been broadly interpreted as correlating to levels homophobia, the LGBTIQ community remains poorly served by the mechanisms of state. One of the most visible arms of the state is of course the NSW Police Force.

A general distrust of the state is likely to manifest in a reluctance to report both historic and contemporary violence. As per our previous submission, the GLRL suggests that this Inquiry should consider the broader implications of gay hate crimes and the context in which they occur.<sup>10</sup> A culture in which victims are not empowered to seek redress for acts of discrimination creates a sense of a 'social license' enabling perpetrators to continue to act on their prejudices and emboldens them to escalate these acts. A similar analysis was adopted by the NSW Police Force in the Final Report of Strike Force Parrabell.<sup>11</sup>

It follows that to prevent a culture that empowers gay hate crimes, and instead cultivate a culture of

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<sup>9</sup> *NSW Police Strategy*, pp. 51, 3.97

<sup>10</sup> As much is permissible under Term of Reference (c).

<sup>11</sup> See e.g. NSW Police Force, (2018) *Strike Force Parrabell: Final Report*, p 14.





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empowerment for LGBTIQ people, avenues for redress must exist, be well-known, and trustworthy, and tacit approval of discrimination by state institutions must not be allowed to exist.

For these reasons, services which assist disempowered LGBTIQ people to access redress must be strengthened. In 2014, the Productivity Commission recommended that the community legal sector have its funding increased by \$200 million. For example, the Inner-City Legal Centre, which provides free legal services to LGBTIQ people, is reliant on funding from the Federal and State governments. Similarly, the Legal Aid Commission of NSW holds an integral role in ensuring justice for marginalised LGBTIQ people attempting to navigate the legal system in relation to discrimination.

Finally, the tacit approval of discrimination must be avoided. Anti-discrimination laws, and their exemptions, have been the subject of wide-spread consideration in recent years. The swift public backlash to exemptions which permit discrimination by religious schools against LGBTIQ people are heartening. However, as yet, the GLRL eagerly awaits the removal of these exemptions. The research and lived experiences described above demonstrate how discrimination permitted by laws such as the *Anti-Discrimination Act 1977* (NSW) contribute to a culture which sees hate crimes committed against LGBTIQ people. The interests of religious institutions, when those institutions are publicly-funded and the act of discrimination is not required nor endorsed by that faith, are not sufficient justification.

We also continue to oppose the introduction of so-called 'special measures' to protect frontline workers such as police, such as proposals for mandatory blood testing for individuals accused of assaulting police. Proposals to do so fundamentally misunderstand the risks and transmission pathways of blood borne viruses and perpetuates stigma and discrimination against individuals based on their actual or perceived health status. Measures such as this contribute to mistrust of police.

### Recommendations

#### Recommendation 5

**Increased funding for community legal centers, including regional services and those who service high-rates of LGBTIQ people.**

#### Recommendation 6

**Updated Anti-discrimination law to remove religious exemptions and reduce the 'social license' for discrimination.**

#### Recommendation 7

**Review of NSW Public Health Act (2020) Section 79 to remove the criminalisation of Sexually Transmitted Infections (STIs) which for historic reasons has disproportionately been used to charge members of the LGBTIQ community.**

#### Recommendation 8

**That NSW continues to reject legislation to make testing for blood borne virus mandatory for individuals alleged to have assaulted police.**

### 3. Provocation And The So-called 'gay Panic' Defence

Many submissions and evidence given at the earlier Inquiry, including by then GLRL Co-Convenor Ms Lauren Foy clearly set out the injustice and inappropriateness of the gay panic defence. This is well covered in the interim report and we do not propose to elaborate on this matter any further in this



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submission other than to observe that the persistence of the defence, well after its discriminatory impact was identified, remains a stain on the NSW justice system. The gay panic defence is tightly linked to gender norms and expectations - the receipt of an unwanted male advance has never been a viable defence for women. It should be emphasised that the abhorrent justification at the root of the gay panic defence (that the gender or gender history of a person making an otherwise wanted advance is sufficient to 'provoke' violence) remains a part of cultural narratives which seek to justify violence perpetuated against members of the transgender community.

As part of our submission, the GLRL would like to specifically acknowledge the response to the report from The Hon. David Elliott MP, Minister for Police and Emergency Services, dated 15 July 2019. **We note that David Elliot MP, then Minister for the Police has accepted the recommendation of the inquiry and accepted all 12 recommendations of the Parrabell report.**

GLRL notes the NSW Police Force initiatives raised by the Minister in his response to the report, including revised bias crime indicators and ongoing training. However, we are concerned that the issue of tension between the LGBTIQ community and the NSW Police Force remains systemic and further work is required to truly mend this fractured relationship.

The Minister's response refers to the recommendations of Strike Force Parrabell and GLRL has previously raised concerns with the framing and scope of this report. In his response to Strike Force Parrabell, Assistant Commissioner Tony Crandell wrote, "Based on societal values and attitudes at the time, I acknowledge the likelihood of historical bias, whether in small groups or more widespread across the organisation".<sup>12</sup>

Attempts to frame violence and negligence from police as part of the broader community's historical values minimises the trauma experienced by those who suffered at the hands of perpetrators and police. Further, the limited scope of Strike Force Parabell meant many LGBTIQ community members who were fearful to interact with police or were turned away by police have not had their experiences appropriately captured in this now guiding set of recommendations.

While GLRL of course welcomes the NSW Police Force's acceptance of all of Strike Force Parabell's recommendations, we would urge further action and not simply a reliance on the outcomes of this narrow report. GLRL notes that the Minister's response refers to "ongoing internal ethical and cultural training to specifically include LGBTIQ experiences". However, GLRL believe that a separate package of training for **all** NSW police officers dealing specifically with interactions with the LGBTIQ community is required. We note that Assistant Commissioner Crandell, in his evidence to the inquiry, stated: "There is absolutely no reason why we could not put out educational material to more and more people."<sup>13</sup>

**GLRL urges the NSW Police Force to pursue ongoing education models relating to LGBTIQ people as standard for employment for every employee of the force from the commissioner down.**

And further, GLOs should be made as a resource to communities across NSW to ensure that LGBTIQ people in rural and regional communities especially are served by specialty liaison officers.

The poor relationship between LGBTIQ people and the NSW Police Force cannot simply be brushed aside as a relic of a bygone era. This relationship requires constant and active improvement in order to ensure that LGBTIQ people feel safe interacting with and reporting crimes to the NSW Police Force.

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<sup>12</sup> [www.police.nsw.gov.au/safety\\_and\\_prevention/your\\_community/working\\_with\\_lgbtqia/lgbtqia\\_accordian/strike\\_force\\_parrabell](http://www.police.nsw.gov.au/safety_and_prevention/your_community/working_with_lgbtqia/lgbtqia_accordian/strike_force_parrabell)

<sup>13</sup> Report 52 - February 2019, pg.4 6.



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LGBTIQ people require ongoing reassurance that every officer they come into contact with has the skills and sensitives needed to interact with our community.

### Recommendations

#### Recommendation 9

**State funding for the Transgender Anti-Violence Project, to enable suitably qualified support is available for individuals reporting violence to police and that alternative reporting mechanisms remain active.**

#### Recommendation 10

**State funding for the revival and expansion of the Anti-Violence Project previously run by ACON.**

#### Recommendation 11

**Support a large scale survey to investigate historic and current levels of underreporting violence to police.**

#### Recommendation 12

**In compliance with the aforementioned recommendations of the GLRL, special needs groups may be identified and seek positive discrimination measures to overcome past disadvantage. Any 'special measures' included in the report recommendations should be considered in light of international law and Australia's human rights obligations, including the need to consult with affected communities.**

#### Recommendation 13

**Given the limited scope of this Inquiry and Strike Force Parabell, if and when future inquiries are established that they include the broader LGBTIQ community who were no doubt fearful to interact with police.**



## Summary of recommendations

1. All NSW Police force members to undergo training to sensitively deal with the LGBTIQ community (existing recommendation).
2. We therefore recommend ongoing education modules relating to LGBTIQ people as a standard of employment for every employee of NSW Police Force.
3. We therefore recommend a regular review of the effectiveness and appropriateness of the Law Enforcement Conduct Commission in order to provide better regulation and oversight.
4. Improved internal policies for interactions with the LGBTIQ community, such as updated policies for searching for transgender and gender non-conforming individuals.
5. Increased funding for community legal centers, including regional services and those who service high-rates of LGBTIQ people.
6. Updated Anti-discrimination law to remove religious exemptions and reduce the 'social license' for discrimination.
7. Review of NSW Public Health Act (2020) Section 79 to remove the criminalisation of Sexually Transmitted Infections (STIs) which for historic reasons has disproportionately been used to charge members of the LGBTIQ community.
8. That NSW continues to reject legislation to make testing for blood borne virus mandatory for individuals alleged to have assaulted police.
9. State funding for the Transgender Anti-Violence Project, to enable suitably qualified support is available for individuals reporting violence to police and that alternative reporting mechanisms remain active.
10. State funding for the revival and expansion of the Anti-Violence Project previously run by ACON.
11. Support a large scale survey to investigate historic and current levels of underreporting violence to police.
12. In compliance with the aforementioned recommendations of the GLRL, special needs groups may be identified and seek positive discrimination measures to overcome past disadvantage. Any 'special measures' included in the report recommendations should be considered in light of international law and Australia's human rights obligations, including the need to consult with affected communities.
13. Given the limited scope of this Inquiry and Strike Force Parabell, if and when future inquiries are established that they include the broader LGBTIQ community who were no doubt fearful to interact with police.



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In closing, murder has always been a crime in NSW. Hate crime is a crime in NSW. A fair and decent civil society should not only actively try to strike down these crimes and hate where it occurs, but it should also acknowledge past wrongs when it fails to intervene.

As this inquiry has seen - this hate LGBTIQ Australians have experienced, solely for being LGBTIQ, is vast and wide.

Therefore, in making this submission the NSWGLRL seeks to highlight our position that an apology is overdue, that NSW Police has a responsibility to change its culture and provide training so that it can effectively serve the public, and that the services and community organisations that provide care to LGBTIQ Australians be funded so they can continue their important work.

In line with our submission, any questions are welcome and can be directed to Jack Whitney Convenor of the GLRL, on [redacted] and [redacted].

**Stay proud,**

**Jack Whitney**  
**Convenor, NSW Gay and Lesbian Rights Lobby**