



LEGISLATIVE COUNCIL

STANDING COMMITTEE ON SOCIAL ISSUES

# Gay and Transgender hate crimes between 1970 and 2010

Final report



Report 58

May 2021

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Standing Committee on Social Issues

# **Gay and Transgender hate crimes between 1970 and 2010**

## Final report

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## Terms of reference

1. That with reference to the May 2018 report of ACON *In Pursuit of Truth and Justice* and the progress made by NSW Police through Strike Force Parrabell, the Standing Committee on Social Issues inquire into and report on the response to Gay and Transgender hate crimes between 1970 and 2010 and current developments in policy and practice in relation to such crimes, and in particular:
  - (a) the violent crimes committed in New South Wales between 1970 and 2010 where the victim of that crime was a member of the LGBTIQ community and where the relevant crime was the subject of a report to the NSW Police Force, including:
    - (i) whether there existed impediments within the criminal justice system that impacted the protection of LGBTIQ people in New South Wales and the delivery of justice to victims of LGBTIQ hate crimes and their families, with reference to case studies of particular matters including but not limited to Alan Rosendale, Scott Johnson, John Russell and Ross Warren,
    - (ii) to the extent that past impediments are identified, how effectively these have been addressed by current policy and practice,
  - (b) in relation to LGBTIQ hate crimes more generally:
    - (i) what role the so-called 'gay panic' defence played in the culture of LGBTIQ hate crimes between 1970 and 2010, and
    - (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.
2. That the minutes of proceedings, evidence, all papers, documents, reports and records received by the Standing Committee on Social Issues during its inquiry into Gay and Transgender hate crimes between 1970 and 2010 in the previous parliament, be referred to the Standing Committee on Social Issues.

The terms of reference were referred to the committee by the Legislative Council on 15 October 2019.<sup>1</sup>

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<sup>1</sup> *Minutes*, NSW Legislative Council, 15 October 2019, pp 498-499.

## Committee details

### Committee members

<b>The Hon Shayne Mallard MLC</b>	Liberal Party	<i>Chair</i>
<b>The Hon Daniel Mookhey MLC</b>	Australian Labor Party	<i>Deputy Chair</i>
<b>Ms Abigail Boyd MLC</b>	The Greens	
<b>The Hon Ben Franklin MLC</b>	The Nationals	
<b>The Hon Rose Jackson MLC</b>	Australian Labor Party	
<b>The Hon Taylor Martin MLC</b>	Liberal Party	
<b>Revd the Hon Fred Nile MLC</b>	Christian Democratic Party	
<b>The Hon Mark Pearson MLC*</b>	Animal Justice Party	
<b>The Hon Natalie Ward MLC</b>	Liberal Party	

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\* The Hon Mark Pearson MLC is a participating member for the duration of the inquiry.



## Chair's foreword

*The community, friends and families still grieve and remember the loved ones lost to hate,  
and they continue to wait for healing through truth.*

Mr Craig Hollands, inquiry participant

While decades have passed since the brutality and tragedy of history's gay and transgender hate crimes, this committee has come to know all too well that the hurt from these crimes has not. Indeed, the continued pursuit of justice by victims and their families, loved ones and advocates tell of a journey towards healing that for some has barely begun.

With this re-established inquiry, the committee has been privileged with the personal stories of many that – together with evidence from the initial inquiry into this subject – have collectively painted a deeply painful and distressing picture of the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) experience of hate crime between 1970 and 2010.

It is from this picture that the committee makes three important findings in this inquiry, the first of which points to the enduring physical, mental and emotional trauma many victims of gay and transgender hate crime often carry as a result of their experiences. The committee's second finding relates to the historical failure of the NSW Police Force in its responsibility to properly investigate cases of historical gay and transgender hate crime, which in turn has undermined the confidence of LGBTIQ communities in the NSW Police Force and the criminal justice system more broadly. Together, these themes speak to the committee's third finding which is that, for many victims of LGBTIQ hate crime and their families, the acknowledgment of past wrongs by those who failed to protect and deliver justice for LGBTIQ people is a necessary and significant step towards healing.

For the committee, these findings go hand in hand with a call to action. To this end, the key recommendation of this inquiry is that the NSW Government establish a judicial inquiry or other form of expert review to inquire into unsolved cases of suspected gay and transgender hate crime deaths. For too long these deaths have remained unresolved and unanswered for, leaving a hole in the lives of victims' families and loved ones. The committee believes that now is the time to act before the receding window of opportunity to obtain evidence relating to these decades old crimes closes.

Further recommendations to encourage transparency and support for the LGBTIQ community are also made, including an update on the implementation of the recommendations made in the NSW Police Strike Force Parrabell report; ensuring the adequacy of victim support services for people touched by LGBTIQ hate crimes; supporting the completion of the Bondi Memorial in Marks Park, Bondi; and ensuring LGBTIQ hate crimes are adequately captured and recorded by the police.

With this consensus report, I would like to thank my fellow committee members for their collaboration and considered engagement throughout this important inquiry. I would also like to acknowledge the committee secretariat for their professional support and hard work.

Above all, I would like to thank the many individuals who have shared their deeply personal stories and the advocates who have tirelessly worked to pursue justice for victims of LGBTIQ hate crime and their families. Your contributions to this inquiry have been invaluable and we are grateful for your time, energy and personal sacrifice. We hope this report and recommendations play some part in moving your journey towards healing forward.

I commend this report to the House.

A handwritten signature in black ink that reads "Shayne Mallard". The signature is written in a cursive, flowing style.

The Hon Shayne Mallard MLC  
**Committee Chair**

## Findings

- Finding 1** 27  
That victims of gay and transgender hate crime often carry enduring physical, mental and emotional trauma as a result of their experiences.
- Finding 2** 27  
That historically the NSW Police Force failed in its responsibility to properly investigate cases of historical gay and transgender hate crime and this has undermined the confidence of lesbian, gay, bisexual, transgender, intersex and queer (LGBTBIQ) communities in the NSW Police Force and the criminal justice system more broadly.
- Finding 3** 28  
That for many victims of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) hate crime and their families, the acknowledgement of past wrongs by those who failed to protect and deliver justice for LGBTIQ people is a necessary and significant step towards healing.

## Recommendations

- Recommendation 1** **34**  
That the NSW Government establish a judicial inquiry or other form of expert review to inquire into unsolved cases of suspected gay and transgender hate crime deaths.
- Recommendation 2** **35**  
That the NSW Government, in its response to this final report on Gay and Transgender hate crimes between 1970 and 2010, provide a comprehensive update on the implementation of the recommendations made in the final report of the NSW Police Strike Force Parrabell.
- Recommendation 3** **40**  
That the NSW Government ensure that adequate victim support services are made available and widely promoted to survivors of and people who have lost a loved one to historical gay and transgender hate crimes, including providing funding and resources to third party organisations engaged in direct client services.
- Recommendation 4** **40**  
That the NSW Government provide further funding and/or support to ensure the completion of the Bondi Memorial in Marks Park, Bondi, in honour of the victims and survivors of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) hate crime.
- Recommendation 5** **48**  
That the NSW Police Force ensure that its computerised operational policing system (COPS) adequately captures and records lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) hate crimes.

## Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 15 October 2019.

The committee received 36 submissions and four supplementary submissions.

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

The committee also conducted one site visit to Marks Park, Bondi.

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

## Procedural issues

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

**Content warning**

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

**Seeking support**

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

# Chapter 1 Background

This chapter provides background information on the initial inquiry into Gay and Transgender hate crimes between 1970 and 2010, conducted in the 56<sup>th</sup> Parliament. This includes an overview of the interim report tabled in February 2019 and the NSW Government response to that report, received in August 2019. The chapter then provides an update on key developments since the initial inquiry involving the case of Scott Johnson, and concludes with a brief outline of the nature and purpose of the current inquiry.

## Overview of the initial inquiry

- 1.1 The initial inquiry was referred to the committee by the Legislative Council in September 2018. The inquiry was established in recognition that hate crimes committed against lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) communities have taken place across a range of contexts over a sustained period of time.
- 1.2 With reference to seminal reports documenting these crimes, namely, ACON's '*In Pursuit of Truth and Justice*' (ACON report) and NSW Police Strike Force Parrabell's final report (*Parrabell report*)<sup>2</sup>, the inquiry aimed to investigate whether there existed impediments within the New South Wales criminal justice system that impacted on the protection of LGBTIQ people, and the delivery of justice to victims of LGBTIQ hate crimes and their families. Where impediments existed, the inquiry sought to determine whether they have been effectively addressed by current policy and practice.
- 1.3 While acknowledging the range of experiences of victims of LGBTIQ hate crimes, the inquiry focused, in particular, on those crimes that resulted in violent death or disappearance. By considering these cases, including those referred to in the terms of reference, the inquiry sought to understand not only the circumstances of these crimes, but the response they drew from the criminal justice system, particularly the NSW Police Force.

## The interim report

- 1.4 Tabled on 26 February 2019, the interim report canvassed a range of issues, including:
  - the views and attitudes towards the LGBTIQ community over time
  - the nature of historical gay hate crimes, as highlighted, in particular, by the cases of Scott Johnson, John Russell, Ross Warren and Alan Rosendale
  - the role and response of police to gay and transgender hate crimes over the period being inquired
  - the 'gay panic' defence
  - the underreporting of gay and transgender hate crimes, both in the past and at present

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<sup>2</sup> For further detail about both the ACON report and final report of the NSW Police Strike Force Parrabell, please refer to Standing Committee on Social Issues, NSW Legislative Council, *Gay and Transgender hate crimes between 1970 and 2010 – Interim report* (2019), pp 9-16.

- the experience of hate crime today, including the current relationship between the LGBTIQ community and the police, and the experiences of rural and regional LGBTIQ communities.<sup>3</sup>

1.5 The committee made two findings in its interim report, as detailed below.

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**Finding 1** That a prevailing acceptance of and indifference towards violence and hostility directed at gay men principally during the period prior to the mid-1990s impacted on the protection of and delivery of justice to victims of hate crime, including but not limited to Mr Alan Rosendale, Mr Scott Johnson, Mr John Russell and Mr Ross Warren.

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**Finding 2** That the NSW Police Force is responsible for ensuring that all interactions by police with the general public and the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) community is done with both respect and professionalism. These are, and continue to be, key priorities for the NSW Police Force.

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1.6 In addition, the committee made four recommendations, as detailed below.

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**Recommendation 1** That the NSW Legislative Council re-establish the inquiry into Gay and Transgender hate crimes between 1970 and 2010 in the 57th Parliament and the terms of reference for further inquiry and report be subject to a decision of the House.

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**Recommendation 2** That all evidence received and records produced by the Standing Committee on Social Issues during its inquiry into Gay and Transgender hate crimes between 1970 and 2010 in the 56<sup>th</sup> Parliament, be made available to the Standing Committee on Social Issues for further inquiry and report in the 57th Parliament.

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**Recommendation 3** That the NSW Police Force ensure that all officers have the skills and knowledge to engage with lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) people respectfully and equally.

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**Recommendation 4** That, should the inquiry be re-established consistent with Recommendation 1, the committee invite witnesses to address the issue of the appropriate mechanism for independent review of past gay and transgender hate crimes.

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<sup>3</sup> Standing Committee on Social Issues, NSW Legislative Council, *Gay and Transgender hate crimes between 1970 and 2010 – Interim report* (2019).



### The NSW Government response to the interim report

1.7 The NSW Government response to the interim report was received on 19 August 2019 from the Hon. David Elliott MP, Minister for Police and Emergency Services.

1.8 Noting that the majority of recommendations related to the re-establishment of the inquiry in the 57<sup>th</sup> Parliament, Minister Elliott noted Recommendation 3 as specific to the NSW Police Force. In response to this recommendation, Minister Elliott stated:

The NSW Government takes this recommendation seriously and I can assure you the NSW Police Force, under the leadership of Commissioner Mick Fuller, is already implementing measures to this end.<sup>4</sup>

1.9 Minister Elliott went on to advise that the NSW Police Force had accepted all 12 of the recommendations made in the *Parrabell* report, and that the measures being taken to implement these recommendations 'are evidence of the improvements being made to ensure Officers have the skills and knowledge to engage with LGBTIQ people respectfully and equally'.<sup>5</sup> Minister Elliott informed that 'significant progress against the recommendations' are being made by the NSW Police Force, and highlighted the following:

- revised bias crime indicator assessment tools supported by appropriate training packages
- a review of internal policies ensuring open-mindedness regarding motive
- ongoing internal ethical and cultural training to specifically include LGBTIQ experiences, and
- ongoing improvements to ensure bias crimes are centrally captured for state-wide investigations.<sup>6</sup>

1.10 Minister Elliott concluded by stating that, while the inquiry identified 'historically negative attitudes' from police officers towards members of the LGBTIQ community, he is 'confident the views and attitudes of the NSW Police Force today towards this community are positive, respectful and professional'.<sup>7</sup>

### Stakeholder response to the interim report and NSW Government response

1.11 Both the interim report and NSW Government response to the report drew comments from a number of stakeholders participating in the current inquiry.

<sup>4</sup> Correspondence from the Hon. David Elliott MP, Minister for Police and Emergency Services, to the Chair of the Standing Committee on Social Issues, providing the government response to the inquiry into Gay and Transgender hate crimes between 1970 and 2010, 29 August 2019.

<sup>5</sup> Correspondence from the Hon. David Elliott MP, Minister for Police and Emergency Services, to the Chair of the Standing Committee on Social Issues, providing the government response to the inquiry into Gay and Transgender hate crimes between 1970 and 2010, 29 August 2019.

<sup>6</sup> Correspondence from the Hon. David Elliott MP, Minister for Police and Emergency Services, to the Chair of the Standing Committee on Social Issues, providing the government response to the inquiry into Gay and Transgender hate crimes between 1970 and 2010, 29 August 2019.

<sup>7</sup> Correspondence from the Hon. David Elliott MP, Minister for Police and Emergency Services, to the Chair of the Standing Committee on Social Issues, providing the government response to the inquiry into Gay and Transgender hate crimes between 1970 and 2010, 29 August 2019.

*Stakeholder response to the interim report*

**1.12** In response to the interim report more broadly, Mr Nicolas Parkhill, Chief Executive Officer of ACON, stated that the report was 'an excellent piece of work in that it absolutely documented the context within which these crimes were committed and the broader societal issues that were playing out at that time'. He added: 'As a piece of policy work, it is incredibly valuable that that history and the history of New South Wales and what has happened to our communities has been documented in such a way'.<sup>8</sup>

**1.13** However, Mr Parkhill indicated that there were 'gaps' in the report, namely with respect to the recommendations.<sup>9</sup> ACON's submission explained that, while the inquiry 'acknowledged the severity of these past hate crimes, the incomplete nature of the findings and recommendations failed to provide confidence that all the issues had been explored thoroughly'.<sup>10</sup> ACON stated:

While the previous inquiry was vital in beginning the process of healing and justice, it did not provide adequate answers, and fell short of the work required to deliver closure and healing for victims, their families and loved ones.<sup>11</sup>

**1.14** ACON maintained that the recommendations 'do very little to address the needs of victims of these crimes, aside from the acknowledgment that they occurred'.<sup>12</sup> Mr Parkhill likewise asserted that, given the amount of work that had been done in this space, including the work of the committee, more detailed recommendations reflective of these efforts and what could be done to address the issues would have been 'useful' as well as recommendations seeking accountability on the part of the NSW Government:

Given the amount of evidence that has been presented to the Committee, given the amount of recommendations made both in the Strike Force *Parrabell* report and in ACON's *In Pursuit of Truth and Justice* report, and given the recommendations we made in our initial submission to the first inquiry, picking up some of those recommendations and providing more detailed recommendations in a report about what could be addressed or what could be done to address the situation would be useful, along with some recommendations around the accountability of those recommendations back on the New South Wales Government and, indeed, also back to the community about how those recommendations ... are being progressed.<sup>13</sup>

**1.15** Of the findings and recommendations made, ACON 'welcomed' the two findings but commented on their 'broad' nature and inadequacy in addressing other key concerns and needs of the LGBTIQ community, particularly in light of 'more robust' and relevant comments made by the committee throughout the report.<sup>14</sup>

<sup>8</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 13 November 2020, p 3.

<sup>9</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 13 November 2020, p 3.

<sup>10</sup> Submission 12, ACON, p 5.

<sup>11</sup> Submission 12, ACON, p 5.

<sup>12</sup> Submission 12, ACON, p 9.

<sup>13</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 13 November 2020, p 3.

<sup>14</sup> Submission 12, ACON, p 7.

- 1.16** ACON also commented on Recommendation 3 regarding the NSW Police Force. It argued that such a recommendation 'fails to recognise the historical context that this Inquiry examined'. ACON explained:

We would assert that the New South Wales Police Force also needs to consider the impact of their policing and its effect on our communities in the past. It is only in conjunction with ongoing reflection on these issues that skills and knowledge will have any effect on the relationship between our communities and the Police.<sup>15</sup>

- 1.17** ACON insisted that '[t]here must also be consideration of the impact of culture in policing. No amount of skills and knowledge will assist officers or community members while pervasive homophobic attitudes are present in policing'.<sup>16</sup>

- 1.18** Others were similarly critical of the interim report and its consideration of certain issues. For example, Mr Craig Hollands expressed concerns that the interim report 'does not properly address the role of the NSW Police Force in the injustices facing the LGBTQI+ community during the period of inquiry'.<sup>17</sup> Mr Alastair Lawrie shared a similar view, asserting that the interim report 'appears to frame NSW Police as passively reflecting the homophobia and transphobia of NSW society, rather than being an active contributor to this discrimination and intolerance'.<sup>18</sup> He explained:

The overall impression of ... comments [made in the interim report] is that NSW Police was only ever a 'mirror' reflecting society's homophobia and transphobia back to itself, rather than an organisation with agency that itself generated homophobia and transphobia through its own culture, policies and operational decisions.<sup>19</sup>

- 1.19** The current inquiry received further evidence on this issue and such as will consider the role of police and police culture in chapter 2.

- 1.20** Mr Lawrie's also raised concerns about the discussions in the interim report relating to the 'gay panic' defence, in particular, the absence of any findings or recommendations on the subject. He argued that attention needs to be drawn to the 'deleterious impact of the gay panic defence, not just on the individual victims whose lives were treated as somehow being less worthy by the criminal justice system, but also the entire LGBT community'.<sup>20</sup>

- 1.21** The interim report also drew criticism from the NSW Beat Project which argued that the interim report 'does little to empower victims to report homophobic violence, yet contributes to a sense of a 'social license' enabling perpetrators – both police and bashers, to continue to act on their prejudices and moral values...'.<sup>21</sup> Moreover, the NSW Beat Project asserted the interim report 'overlooked' the actions of the Beats Working Group, a Government-led interagency initiative,

<sup>15</sup> Submission 12, ACON, p 11.

<sup>16</sup> Submission 12, ACON, p 11.

<sup>17</sup> Submission 24, Mr Craig Hollands, p 1.

<sup>18</sup> Submission 39, Mr Alastair Lawrie, p 3.

<sup>19</sup> Submission 39, Mr Alastair Lawrie, p 3.

<sup>20</sup> Submission 39, Mr Alastair Lawrie, p 6.

<sup>21</sup> Submission 32, NSW Beat Project, p 5.

which it believes had failed to adequately address hate crimes, and the shame and stigma around beat use.<sup>22</sup>

### *Stakeholder response to the NSW Government response*

- 1.22** In response to the NSW Government response to the interim report, a number of inquiry participants expressed deep disappointment and concern. Mr Parkhill, ACON, for example, described the government response as 'somewhat tone-deaf' to the issues and experiences that were raised over the course of the initial inquiry. He said:

As you can often expect, it was a very dry, bureaucratic letter. The issues that we are talking about are not dry and bureaucratic. They absolutely touch on people's lives. They touch on issues such as violence, trauma and ongoing grief.<sup>23</sup>

- 1.23** ACON strongly criticised the government response for failing to not only acknowledge the horror of past gay hate crimes and the police response to them but to provide reassurances to the community that past wrongs would not be repeated. ACON stated:

The crimes that occurred in the past are abhorrent, and the police response to these crimes was negligent at best. These facts are known by our communities. ACON was extremely disappointed that no such acknowledgment was included in Minister Elliot's response. ACON believes that the response from the NSW Government must include assurances to the families and loved ones of the victims of these horrific crimes, as well as the LGBTQ community as a whole, that the wrongs and failures of the past will be prevented from reoccurring.<sup>24</sup>

- 1.24** According to Mr Parkhill, the government response evoked feelings of being ignored or 'dismissed', reminiscent of a continued 'pattern of disengagement'. He remarked: 'It is almost business as usual and that can be upsetting and frustrating and can feel as though you are being your head against a brick wall'.<sup>25</sup> Mr Parkhill explained:

At an individual level, at a personal level and certainly at an organisational level, it feels like we are not being listened to or we are being dismissed. The work that so many others are also doing is being dismissed and the bravery of people who have come forward to share their stories has been dismissed. It feels as though it speaks to a pattern of disengagement, disbelief, not owning what has happened before and not taking the appropriate steps to try to heal or work towards resolution. It comes across as dismissive or kind of like, "go away", rather than doing any meaningful work.<sup>26</sup>

- 1.25** Mr Brent Mackie, Associate Director, Policy, Strategy and Research, ACON, shared this view, describing such government responses that appear to dismiss 'so much work, including the work of this Committee and of a range of people and community activists who have devoted an enormous amount of energy in this space', as "'insulting" in some ways'.<sup>27</sup>

<sup>22</sup> Submission 32, NSW Beat Project, p 1.

<sup>23</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 13 November 2020, p 3.

<sup>24</sup> Submission 12, ACON, p 13.

<sup>25</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 13 November 2020, p 4.

<sup>26</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 13 November 2020, p 4.

<sup>27</sup> Evidence, Mr Brent Mackie, Associate Director, Policy, Strategy and Research, ACON, 13 November 2020, p 5.

**1.26** As ACON stated in its submission, and as endorsed by others such as Mr Lawrie, 'the brevity of the response, and its ignorance of the full subject matter of the Report, is disappointing' and 'reinforces the view held by some in the community that the issues related to this Inquiry are far from a priority for the New South Wales Police Force'.<sup>28</sup>

**1.27** Mr Parkhill also contended that a broader, more detailed whole-of-government response acknowledging the issues across the entire criminal justice system as well as the health system would have been 'appropriate', rather than a response which largely referred to the work of the NSW Police Force only. He explained:

The issues that are addressed through this whole process are not just limited to the NSW Police Force, but to the broader judicial system and the health system. It would have been appropriate to have had a more detailed, whole-of-government response to it, and also some context into the issues that were being discussed within the Government's response.<sup>29</sup>

**1.28** Of the references made to the work of the NSW Police Force, ACON drew attention to the Minister's statement that the NSW Police Force 'is implementing measures to address Recommendation 3'. ACON questioned the examples provided by the Minister of the improvements being made, arguing that they 'do not adequately explain how and by what means that this is happening'.<sup>30</sup>

**1.29** The Gay and Lesbian Rights Lobby also commented on the government response. They noted the initiatives described by the Minister, such as the bias crime indicators and ongoing training, but expressed concern 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'.<sup>31</sup>

**1.30** Ms Sue Thompson, former NSW Police Force Gay/Lesbian Consultant, spoke of the Minister's assurances that the current views and attitudes of the NSW Police towards the LGBTIQ community are, as he described, 'positive, respectful and professional'. She remarked that it was 'not wise' to express such confidence given the unfolding of the Scott Johnson case, which she believed was an 'absolutely haphazard form of justice'. She explained:

...I understand our desire to be ideal but it is not wise to express that confidence. If you look impartially and look at the 10 years until there was an arrest in the Scott Johnson matter. If you look at what happened under Macnamir, under Parrabell and then under the Flinders review, it is one of the most disappointing eras of public service process that I have ever seen in terms of letting people down. Justice in the Scott Johnson case has only come about by an absolutely haphazard form of justice that brought together a really unique combination of people...You cannot say that has just changed overnight. It does not and it cannot...<sup>32</sup>

**1.31** The case of Scott Johnson is discussed in further detail in the next section.

<sup>28</sup> Submission 12, ACON, p 12.

<sup>29</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 13 November 2020, p 3.

<sup>30</sup> Submission 12, ACON, p 13.

<sup>31</sup> Submission 14, Gay and Lesbian Rights Lobby, p 9.

<sup>32</sup> Evidence, Ms Sue Thompson, former Gay/Lesbian Client Consultant, NSW Police Force, 30 November 2020, p 10.

### Committee comment

- 1.32** The committee acknowledges the stakeholder response to both the interim report and NSW Government response to the interim report. The matters raised by inquiry participants will be considered within the context of the issues discussed in rest of the report.

### Key developments since the initial inquiry

- 1.33** Since the initial inquiry, there have been significant developments in the case of murdered gay hate crime victim, Mr Scott Johnson.

#### The case of Scott Johnson

- 1.34** Mr Scott Johnson was an American man studying in Australia. On 10 December 1988, Scott's naked body was discovered at the base of a cliff in North Head in Manly.
- 1.35** Upon the discovery of Scott's body, Manly Police ruled his death as a suicide. Three coronial inquests were subsequently held over the span of almost 30 years, with the last of these inquests finding in 2017 that Scott fell from the cliff top 'as a result of actual or threatened violence from unidentified persons who attacked him because they perceived him to be homosexual'.<sup>33</sup>
- 1.36** Soon after the commencement of the initial Social Issues Committee inquiry, the police established a new taskforce to investigate Scott's death as a homicide, pursuing the outcomes and leads from the coronial inquest as part of a fresh investigation.
- 1.37** To assist with the investigations, a \$1 million reward for new information was announced by NSW Police Commissioner Mick Fuller in December 2018. This was later matched by Scott's brother, Mr Steve Johnson, who announced a personal contribution of an additional \$1 million to the reward in March 2020.<sup>34</sup>
- 1.38** In May 2020, a man was arrested and charged with the murder of Scott Johnson.<sup>35</sup>
- 1.39** At the time of the arrest, lead detective, Detective Chief Inspector Peter Yeomans, stated: 'It couldn't have been solved without the community coming forward with information'.<sup>36</sup>

<sup>33</sup> Standing Committee on Social Issues, NSW Legislative Council, *Gay and Transgender hate crimes between 1970 and 2010 – Interim report* (2019), p 19.

<sup>34</sup> NSW Police Force, *Death of Scott Johnson*, [https://www.police.nsw.gov.au/can\\_you\\_help\\_us/rewards/1000000\\_reward/death\\_of\\_scott\\_johnson](https://www.police.nsw.gov.au/can_you_help_us/rewards/1000000_reward/death_of_scott_johnson).

<sup>35</sup> The Sydney Morning Herald, 'Man charged with murder after 1988 allege gay-hate killing of Scott Johnson, 12 May 2020, <https://www.smh.com.au/national/nsw/man-arrested-over-1988-murder-of-scott-johnson-20200512-p54s2z.html>.

<sup>36</sup> ABC News, 'Scott Johnson's accused gay hate killer 'wasn't surprised' by arrest, police say', 13 May 2020, <https://www.abc.net.au/news/2020-05-13/scott-johnson-accused-killer-wasnt-surprised-by-arrest/12241442>.

- 1.40 For a more comprehensive account of the case of Scott Johnson prior to these most recent developments, please refer to the interim report.<sup>37</sup>

### **The current inquiry**

- 1.41 Following the commencement of the 57<sup>th</sup> Parliament, the Legislative Council agreed to the principal recommendation of the interim report and re-established the inquiry into Gay and Transgender hate crimes between 1970 and 2010 on 15 October 2019, referring the same terms of reference to the committee for further inquiry and report.
- 1.42 The inquiry was reinstated primarily to provide further opportunity for more stories about the LGBTIQ experience of hate crime to be told and to come to a greater understanding of the response these experiences have drawn from the criminal justice system, and the NSW Police Force in particular, both in the past and at present. In doing so, any impediments impacting on the protection of and delivery of justice to the LGBTIQ community can be examined.
- 1.43 The committee principally considered evidence to the current inquiry in its final report but has referred where necessary to evidence received during the initial inquiry, as captured by the interim report.

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<sup>37</sup> Standing Committee on Social Issues, NSW Legislative Council, *Gay and Transgender hate crimes between 1970 and 2010 – Interim report* (2019), pp 17-20 and pp 37-39.





## Chapter 2 Pursuing justice

This chapter considers a range of issues raised by inquiry participants as part of the ongoing pursuit of justice for victims of gay and transgender hate crimes and crimes against the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) community more broadly. It begins with further reflections on historical gay hate crimes following on from the evidence received in the initial inquiry. These reflections highlighted a number of key themes, including the trauma endured by victims, the police culture of the time, and the need to acknowledge past wrongs. The chapter then examines the call for further investigation of historical gay hate crimes, including the call for a judicial inquiry. Finally the chapter considers how victims of historical gay and transgender hate crimes can be supported and honoured moving forward.

### Further reflections on historical gay and transgender hate crimes

- 2.1 Following on from the initial inquiry, further reflections on historical gay and transgender hate crimes were shared with the committee during the current inquiry, including numerous personal stories and experiences of hate crime and violence from the LGBTIQ community.
- 2.2 While various issues have been raised over the course of the two inquiries, several overarching themes have emerged from the evidence. Among these is the reality that those touched by gay and transgender hate crime often carry deep and enduring physical, mental and emotional traumas from their experiences. Another theme centres around the culture of the NSW Police Force during the period being inquired. Together these speak to yet another theme of seeking healing and justice through the acknowledgment of past wrongs committed against gay and transgender people and the broader LGBTIQ community.
- 2.3 The following sections examine these themes more closely and consider them within the broader context of some of the key questions in this inquiry around impediments within the criminal justice system that impacted on the protection of and the delivery of justice to the LGBTIQ community.

#### Understanding the trauma

- 2.4 One of the fundamental themes highlighted by the evidence to this inquiry is the profound impact of gay and transgender hate crimes on individuals and the wider LGBTIQ community.
- 2.5 While the initial inquiry primarily focused on the tragic cases of those who died or disappeared as a result of the crimes perpetrated against them, the current inquiry provided further opportunity to hear the stories of those who suffered violence but ultimately survived.
- 2.6 In telling these stories, inquiry participants revealed the enduring physical, mental and emotional traumas some people have carried and continue to carry from their experiences. It is a narrative shared by many across both inquiries, and one that inquiry participants urged to be acknowledged for a greater understanding of the deep-seated challenges faced by the LGBTIQ community, particularly in the 1970s, 1980s and 1990s.
- 2.7 In reference to the multi-faceted effects of hate crimes on individuals and the wider LGBTIQ community, ACON stated:

Hate crimes hurt both physically and emotionally, individually and communally and have – for some – resulted in isolation, vulnerability and internalised stigma. These cases speak to the risks for LGBTI people associated with visibility and with occupying public space. They illustrate the barriers that stigma creates to ensuring protection, redress and accountability for crimes such as these.<sup>38</sup>

- 2.8 Indeed, many spoke of these physical and emotional hurts.<sup>39</sup> For example, one gay inquiry participant discussed his experience of being savagely beaten by a gang on George Street in the late 1980s. He was deeply traumatised by the attack as he thought he was going to die. In addition to the numerous physical injuries he sustained from being beaten to unconsciousness, including serious injuries to his nose, broken teeth, inguinal hernias and inner ear impairment, the inquiry participant stated:

The mental trauma was the worst. I was afraid to go out of a night for a long time – particularly by myself. I never had that fear before and it took me many years to get over it. I never really have gotten over it completely.<sup>40</sup>

- 2.9 Similar traumas were also reflected by transgender people participating in the inquiry.<sup>41</sup> For example, Connor Montgomery, a F2M transgender man, shared that he had experienced numerous beatings in his life, including having a noose put around his neck in high school. He also told of his experience in public housing where he was harassed for many years but was deemed to be the problem and was therefore the one to be moved. Connor stated that he is now a recluse and believes he will 'never recover my life ...'.<sup>42</sup>
- 2.10 Recognising that the experiences of different individuals vary widely, the following case study featuring Mr Stewart South provides further insight into the personal toll gay hate crimes can have on some of its victims.

#### Case study – Mr Stewart South<sup>43</sup>

Stewart is a 69 year old gay man. Throughout his life, he has been violently bashed, verbally abused and vilified because of his sexuality.

In the late 1970s, Stewart was attacked by a gang of men with wooden planks as he sat on a park bench in North Sydney. He managed to escape but did not report the incident to the police as he 'knew what their reaction would be'.

Assuming he would be safer on Oxford Street, he began frequenting gay venues but was again assaulted in the early 1980s as he was walking down the street. A man punched him in the face, fracturing his cheekbone, bursting his eye socket and breaking his teeth. The police were called to the hospital where Stewart was. They asked him some questions and took Stewart's personal details. Stewart never heard from them again. Following this attack, Stewart's memory was greatly diminished, affecting his ability to work.

<sup>38</sup> Submission 12, ACON, p 7.

<sup>39</sup> For example, Submission 8, Chris Kitchener; Submission 20, Name suppressed; Submission 25, Ms Megan Slinning; Submission 27, Name suppressed; Submission 29, Pancho Mulongeni.

<sup>40</sup> Submission 21, Name suppressed, p 1.

<sup>41</sup> For example, Submission 6, Name suppressed, p 1.

<sup>42</sup> Submission 5, Connor Montgomery, p 1.

<sup>43</sup> This case study has been drawn from Submission 31, Mr Stewart South.

In the mid-1990s, Stewart was again violently assaulted, this time outside his home in North Sydney. He was punched in the head by a group of men and blacked out. When he regained consciousness, he found himself lying in a pool of blood amongst the garbage bins at the back of his building. His friend took him to the hospital but was sent home a short time later without having had any scans done. The following day, Stewart's father took him to the police station, however, the Desk Sergeant appeared 'totally disinterested'. When pressed for some assistance, the Desk Sergeant said nothing could be done and walked away.

As a result of these attacks and others, Stewart suffers from depression, post-traumatic stress disorder, agoraphobia and significant memory loss, which he says has 'totally ruined my life'. Since the mid-late 1990s, he has been unable to work or to enjoy the things he once loved to do, like going to the opera, the theatre or the cinemas. He cannot go out alone to unknown places and has been unable to find a partner.

Stewart says that he has 'missed so much in my life all because of society's hatred of gay men and women'.

## Police culture

- 2.11** Another theme highlighted by the evidence was the culture of the NSW Police Force of the time, noting that in the period being inquired the police, as with other organisations and the wider community, were the subject of constant cultural and attitudinal change. Following on from discussions about the police in the interim report, several inquiry participants provided further commentary on the role of the police in the marginalisation of the LGBTIQ community, particularly in the 1970s, 1980s and 1990s.
- 2.12** As noted in the initial inquiry's findings, there was a prevailing acceptance of and indifference towards the violence and hostility directed at gay men particularly in the period prior to the mid-1990s. This was recognised in the final report of the NSW Police Strike Force Parrabell (*Parrabell* report), which unequivocally acknowledged the role of police in marginalising gay and transgender people and the wider LGBTIQ community in the past:
- The NSW Police Force is acutely aware of and acknowledges without qualification both its and society's acceptance of gay bashings and shocking violence directed at gay men, and the LGBTIQ community between 1976 and 2000.<sup>44</sup>
- ...
- The NSW Police Force must acknowledge and has, to some extent, acknowledged its part in marginalisation of the LGBTIQ community during the 1970s, 80s and 90s especially.<sup>45</sup>
- 2.13** Participants to this inquiry discussed the impact of this dynamic much in the same way as those in the initial inquiry. For example, many spoke of a 'deep distrust' of the police owing to a history of police indifference, disinterest, and at times, hostility. Mr Daniel Glick, an American investigative journalist hired by the Johnson family to look into the circumstances of Scott's death, observed from his investigations:

<sup>44</sup> NSW Police Force, *Strike Force Parrabell Final Report* (2018), p 14.

<sup>45</sup> NSW Police Force, *Strike Force Parrabell Final Report* (2018), p 16.

I would hypothesise that almost every gay man who lived in the greater Sydney area in the 1970s, 1980s, or 1990s either personally experienced homophobic violence and/or intimidation, or knew of somebody who had. Almost uniformly, those men recounted a deep distrust for the police, and several told me stories I could not verify about being treated shabbily by police themselves.<sup>46</sup>

- 2.14** Mr Duncan McNab, former NSW Police Force detective, likewise spoke of the lack of trust and inherent fear gay and transgender people had of the police. He recalled the case of a man who had been violently assaulted in a urinal at a Collaroy surf club in the early 1980s. Mr McNab said that the victim had been so severely beaten it was not clear whether he would survive. Fortunately, he did. When Mr McNab visited the man in hospital to interview him, Mr McNab was struck by how terrified the victim was of him as a policeman. Mr McNab stated:

... [W]hat struck me that day and it still sticks with me—and I can remember him lying swathed in bandages at the hospital—was that he was more terrified of us, the detectives, than he was of the assailants that had beaten him to death that night. He was terrified.<sup>47</sup>

- 2.15** Mr McNab attributed that fear not only to the social consequences of being gay at the time but to the 'appalling reputation' of the NSW Police throughout the gay and transgender community. Mr McNab asserted that he did not think it unreasonable that 'a lot of gay men ... would go into Darlinghurst police station to report an assault and, on occasions, they would be thumped by the coppers in the police station: How dare you report this! Now go home'.<sup>48</sup>

- 2.16** Indeed, the Pride History Group expressed a similar point, asserting that many gay and transgender hate crimes went unreported because of this mistrust and fear of the police:

Discrimination and violence, including by perpetrators within the police force, meant that many historical hate crimes against LGBTIQ+ went unreported due to fear of reprisals as well as a lack of trust in the system and belief that justice would not be served.<sup>49</sup>

- 2.17** In the same way, Ms Sue Thompson, former NSW Police Force Gay/Lesbian Consultant, argued that such was the fear held by the gay and transgender community that the resistance to reporting any crimes of violence was 'huge', even as efforts to get people to come forward began to mount in the 1990s.<sup>50</sup> She stated: 'It is a bad history that is very well known and well covered in the gay press so there was a very strong reluctance to ever go to the police for help'.<sup>51</sup>

<sup>46</sup> Submission 4, Mr Daniel Glick, p 2.

<sup>47</sup> Evidence, Mr Duncan McNab, former Detective, NSW Police Force, 13 November 2020, p 24.

<sup>48</sup> Evidence, Mr Duncan McNab, former Detective, NSW Police Force, 13 November 2020, p 24.

<sup>49</sup> Submission 15, Pride History Group, p 1.

<sup>50</sup> Evidence, Ms Sue Thompson, former Gay/Lesbian Consultant, NSW Police Force, 30 November 2020, p 3.

<sup>51</sup> Evidence, Ms Sue Thompson, former Gay/Lesbian Consultant, NSW Police Force, 30 November 2020, p 3.

- 2.18** The committee received evidence highlighting the reluctance of lesbian women and transgender people in particular to report hate crime and violence, prompting Ms Thompson to urge the committee 'not to underestimate the hate related violence also directed to lesbians' during the period being inquired.<sup>52</sup>
- 2.19** As noted in the interim report and again acknowledged during this inquiry, the incidence of crime and violence against lesbians was high, with a police survey conducted in the mid-1990s finding that lesbians were six times more likely to be victims of violence in a 12 month period.<sup>53</sup> Yet, according to Ms Thompson, 'lesbians were extremely unlikely to report to police',<sup>54</sup> based on a 'very deep mistrust that anyone would care'.<sup>55</sup> Ms Thompson explained that a female approaching a predominantly male police force to report a crime was almost inconceivable, and compounded by a sense among women of 'we are used to be at risk'<sup>56</sup>. Ms Thompson explained:
- Women are used to living with fear and violence in their lives. They have historically tended towards silence about violence and abuse, to soldier on, internalise it, be resilient, move on, not make a fuss, consider it "their lot in life". It is a complex issue. Even high profile lesbians who were bashed during my job would not report. In my perception their distrust of police, seen as a patriarchal organisation, was much higher than even gay men's mistrust of Police. As women they were used to not trusting men with their suffering and vulnerability. Also, as women they were used to putting their needs last and to not making a fuss about their own needs.<sup>57</sup>
- 2.20** Thus the true extent of lesbian and transgender hate crime and violence could not be known, particularly, as Professor Nicole Asquith, Secretary, Australian Hate Crime Network, observed: '...[T]here are range of crimes that occur with a hate motivation that just disappear into the crime statistics'.<sup>58</sup>
- 2.21** Indeed, the Australian Hate Crime Network (AHCN) drew attention to the *Parrabell* report, noting that 'the list of 88 hate crimes does not include reports of lesbian and bisexual deaths'. The AHCN argued that these deaths 'are likely to have been lost within general reports of homicide; most likely, domestic and family violence reports'.<sup>59</sup> Dr Asquith added that they would have probably been captured in domestic violence statistics 'because most lesbians die at the hands of an ex-male partner'.<sup>60</sup>

<sup>52</sup> Submission 26, Ms Sue Thompson, p 4.

<sup>53</sup> Evidence, Ms Sue Thompson, former Gay/Lesbian Consultant, NSW Police Force, 30 November 202, p 6.

<sup>54</sup> Submission 26, Ms Sue Thompson, p 4.

<sup>55</sup> Evidence, Ms Sue Thompson, former Gay/Lesbian Consultant, NSW Police Force, 30 November 202, p 6.

<sup>56</sup> Evidence, Ms Sue Thompson, former Gay/Lesbian Consultant, NSW Police Force, 30 November 202, p 6.

<sup>57</sup> Evidence, Ms Sue Thompson, former Gay/Lesbian Consultant, NSW Police Force, 30 November 202, p 6.

<sup>58</sup> Evidence, Dr Nicole Asquith, Secretary, Australian Hate Crime Network, 13 November 2020, p 38.

<sup>59</sup> Submission 13, Australian Hate Crime Network, p 2.

<sup>60</sup> Evidence, Dr Nicole Asquith, Secretary, Australian Hate Crime Network, 13 November 2020, p 38.

- 2.22 Ms Thompson shared this view, asserting that while 'gay hate related murders almost exclusively happened to gay men or transgender people', there were also cases where lesbians were murdered 'but these were often more easily classed as domestic violence related or where the motive was harder to determine'.<sup>61</sup>
- 2.23 According to Mr McNab, the police thus had a 'pretty shabby relationship with the gay community' – one that was characterised by 'years of terror' for gay and transgender people up until the mid-1990s as a result of a 'confluence of circumstances', including the prevalence of youth gangs targeting gay men, the onset of the AIDS epidemic, and the 'stench' of the homophobic thinking from the 1950s lingering in police officers who had risen through the ranks and had come to positions of power by the 1970s and 1980s.<sup>62</sup>

*Police culture as a 'mirror' of society*

- 2.24 But in this relationship were the police mere 'mirrors' of society's attitudes towards the gay and transgender community? As raised in chapter 1, some inquiry participants thought not, with Mr Alistair Lawrie, for example, disputing this 'mirror' characterisation.<sup>63</sup>
- 2.25 Mr Lawrie contended that, rather than merely reflecting societal attitudes, the police force is a 'key shaper' of them and that their law enforcement actions carry a "'normative" value'.<sup>64</sup> He cited the example of Police Commissioner Colin Delaney's 1958 comments describing homosexuality as 'Australia's greatest menace' and homosexuals a 'cancer in the community', and asserted that it is 'impossible to argue that these comments, from the "top cop" in the biggest jurisdiction in Australia, did not have an impact on societal homophobia'.<sup>65</sup> Moreover, Mr Lawrie argued that the failure of police to properly investigate gay and transgender hate crimes 'contributed to homophobia and transphobia in society' as it signaled to the community that gay and transgender people were "lesser" than other members of the community.<sup>66</sup>
- 2.26 Others also questioned the notion that police culture and practice simply reflected social norms at the time, with Mr Nicolas Parkhill, Chief Executive Officer, ACON, alluding to there being 'more' to it than just that given the 'inherent problems' with the criminal justice system that prevented justice from being delivered to hate crime victims. Whether it be apathy or homophobia, Mr Parkhill called for this to be 'unearthed':

... [W]hat we have seen, through the evidence that has been submitted, through documentaries that have been made and through books that were written by former police officers, is that there were inherent problems with the justice system in seeking truth and justice. Whether that was from apathy or whether it was from something more sinister like homophobia, what that was needs to be unearthed. What we have seen, though, is an acknowledgement from the NSW Police Force to say that at the time their practice reflected community norms and at that time the community norms were very negative towards members of our communities.

<sup>61</sup> Submission 26, Ms Sue Thompson, p 4.

<sup>62</sup> Evidence, Mr Duncan McNab, former Detective, NSW Police Force, 13 November 2020, p 25.

<sup>63</sup> See paragraph 1.18; Submission 39, Mr Alastair Lawrie, p 3.

<sup>64</sup> Submission 39, Mr Alastair Lawrie, p 3.

<sup>65</sup> Submission 39, Mr Alastair Lawrie, p 4.

<sup>66</sup> Submission 39, Mr Alastair Lawrie, p 4.

... [However] ... [t]here is something more that is playing out other than just reflecting community norms and that needs to be examined.<sup>67</sup>

- 2.27 The Gay and Lesbian Rights Lobby added that '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'.<sup>68</sup>

*A diversity of police attitudes and skills?*

- 2.28 Other participants of the current inquiry offered a different insight to the police culture, particularly prior to the decriminalisation of homosexuality, and discussed the 'hit and miss' quality of investigations.

- 2.29 For example, Mr John Ure, former Superintendent of Program Development and later Assistant Commissioner of the NSW Police Force, spoke of the police attitude to gay and transgender people when he entered the NSW Police Force in 1964. He told the committee that when he first joined, he and his peers were from the trades and had no academic qualifications, 'so we basically brought the attitude of the community, which was one of ignorance'.<sup>69</sup>

- 2.30 Mr Ure acknowledged that only six years prior to him entering the service, Commissioner Delaney had made his comments about homosexuality being 'Australia's greatest menace'. However, Mr Ure asserted that it 'did not impact on me or anyone else whom I worked with'. Instead, they were guided by the laws of the time which framed 'buggery or bestiality with humans or animals' as a serious criminal offence – a law that continued to be in place for the first 20 years of his service.<sup>70</sup> In an era where officers were trained above all else to know the letter of the law and to enforce it, Mr Ure posited that it was the illegality of the behavior 'that would have informed much if not most of the police attitude' rather than any anti-gay sentiment.<sup>71</sup>

- 2.31 Mr Ure said that at the time '[g]ay people were virtually invisible once you got away from this city area... they were all hidden'. So while gay men 'might have been a bit of a curiosity', the police, to his knowledge, 'did not have a particular attitude' towards them. But then, he said, there would have been those who 'for whatever reason, would have enough animus to perhaps harass them if they came ... in contact with them'. Such was the way of the police.<sup>72</sup>

- 2.32 In a somewhat similar vein, Mr McNab referred to an unpredictability and inconsistency in the way that justice was pursued for victims of gay and transgender hate crimes over time, stating that '[t]he worst thing was that it was hit and miss'.<sup>73</sup> Mr McNab asserted that there was just 'no consistent quality' to the investigations of these hate crimes based on who was running it. Mr McNab stated:

<sup>67</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 13 November 2020, p 4.

<sup>68</sup> Submission 14, Gay and Lesbian Rights Lobby, p 9.

<sup>69</sup> Evidence, Mr John Ure, former Superintendent, NSW Police Force, 30 November 2020, p 5.

<sup>70</sup> Evidence, Mr John Ure, former Superintendent, NSW Police Force, 30 November 2020, p 4.

<sup>71</sup> Evidence, Mr John Ure, former Superintendent, NSW Police Force, 30 November 2020, p 6.

<sup>72</sup> Evidence, Mr John Ure, former Superintendent, NSW Police Force, 30 November 2020, p 4.

<sup>73</sup> Evidence, Mr Duncan McNab, former Detective, NSW Police Force, 13 November 2020, p 27.

The problem was that the NSW Police Force had a very hit-and-miss approach to investigations of these serious crimes. There were a couple of instances where they did a terrific job. Men were quickly arrested, convicted and sent to prison for a long time, but a whole chunk of these crimes fell into the problem basket. They were not properly investigated, or they were barely investigated. Some of these crimes were passed off as suicide.<sup>74</sup>

- 2.33** Mr McNab gave the example of a murder in east Sydney which he said was 'handled superbly by a very good detective—arrests were made; convictions were secured; and people were in jail for very long time, which is where they belonged'.<sup>75</sup> In contrast, Mr McNab drew attention to the cases of Ross Warren and John Russell whose investigations he described as 'shabby, if in fact there was an investigation at all'.<sup>76</sup> Ross Warren and John Russell were the subject of a coronial inquest which found them both to have been murdered, after initial police investigations dismissed their deaths as accidental.<sup>77</sup>
- 2.34** However, when asked if there was evidence of some sort of organised police network that was deliberately suppressing investigations into gay hate murders and crimes, Mr McNab believed that there was not and that it was just the case that the quality of investigations varied on a 'case by case basis'.<sup>78</sup>
- 2.35** Likewise when questions about the suggestion that there was some form of police participation in the gangs of the 1980s that were targeting gay men. Mr McNab stated: 'There is not one shred of evidence that New South Wales police officers were part of the gangs. I think the issue with them is the negligence or disinterest that followed'.<sup>79</sup>

### ***'Pockets of resistance'***

- 2.36** While inquiry participants across both inquiries consistently recognised improvements to practice and a change in police attitudes towards the LGBTIQ community particularly since the 1990s, some argued that there have always been and still continue to be some 'pockets of resistance' within the NSW Police Force.
- 2.37** For example, the committee heard from Mr Rick Feneley, an investigative journalist who ran a series of stories on gay hate crime, who said that when he began his investigations in 2013, the police were 'shocked' and 'refused to be in that story'. He stated: 'I begged them to be involved and to respond to that story but they just shut it down'.<sup>80</sup> Mr Feneley explained:

<sup>74</sup> Evidence, Mr Duncan McNab, former Detective, NSW Police Force, 13 November 2020, p 26.

<sup>75</sup> Evidence, Mr Duncan McNab, former Detective, NSW Police Force, 13 November 2020, p 27.

<sup>76</sup> Evidence, Mr Duncan McNab, former Detective, NSW Police Force, 13 November 2020, p 27.

<sup>77</sup> For a more detailed account of the cases of Ross Warren and John Russell, please refer to Standing Committee on Social Issues, NSW Legislative Council, *Gay and Transgender hate crimes between 1970 and 2010 – Interim report* (2019), pp 23-25 and pp 36-37.

<sup>78</sup> Evidence, Mr Duncan McNab, former Detective, NSW Police Force, 13 November 2020, p 30.

<sup>79</sup> Evidence, Mr Duncan McNab, former Detective, NSW Police Force, 13 November 2020, p 28.

<sup>80</sup> Evidence, Mr Rick Feneley, Journalist, 30 November 2020, p 11.



There was not a peep from police ... There was a hostility coming from the cops at that point, which was unnecessary. There were already quite a lot of senior police who would have been willing to be more involved but, for whatever reason, at a public relations level or a commissioner level it was shut down.<sup>81</sup>

**2.38** Mr Feneley advised that only after a 'groundswell of pressure from many angles' did the police start responding, however, he noted 'it was very slow all the way up to the 2017 third inquest into the Scott Johnson case', which even until then he said the police were advising the Coroner against a finding of murder.<sup>82</sup>

**2.39** Similarly, Mr Glick, the investigative journalist hired by the Johnson family, drew attention to the police's handling of the Johnson case to demonstrate a 'resounding reluctance' on the part of the NSW Police Force to act. He asserted:

People have sought to explain some of these failures from 1988 on the culture of the police at the time, as well as prevailing societal attitudes towards homosexuality. However, even decades later, when we brought new evidence to bear on Scott's death, the resounding reluctance of the NSWPF to act was shocking.<sup>83</sup>

**2.40** Mr Glick added that, even when forced to investigate, the police pursued 'inconsequential tangents in Scott's case in order to defend their original position'. He asserted that the police 'repeatedly ignored solid leads that ultimately became part of the Coronial homicide ruling', concluding that this indicated to him 'that these problems persist to this day...'.<sup>84</sup>

**2.41** In maintaining his belief that there are still 'pockets of resistance' within the NSW Police Force today, Mr Feneley highlighted the case of Alan Rosendale, who was attacked by a group of men with wooden planks.<sup>85</sup> It was later found that another man, Paul Simes, had witnessed an attack at the same location also by a group of men with wooden planks, who he subsequently learned were police officers. The police have consistently maintained that the two incidents are unrelated.<sup>86</sup>

**2.42** Of this case, Mr Feneley called it an 'extraordinary lack of curiosity' that the police would not pursue an investigation into a case where the victim was still alive to tell his story. He said that for the police not to have addressed such a case leaves room for speculation as to why. For him, the case suggests a 'desperate reluctance from the top' to find out what happened. Mr Feneley explained:

<sup>81</sup> Evidence, Mr Rick Feneley, Journalist, 30 November 2020, p 11.

<sup>82</sup> Evidence, Mr Rick Feneley, Journalist, 30 November 2020, p 11.

<sup>83</sup> Submission 4, Mr Daniel Glick, p 3.

<sup>84</sup> Submission 4, Mr Daniel Glick, p 3.

<sup>85</sup> Evidence, Mr Rick Feneley, Journalist, 30 November 2020, p 12.

<sup>86</sup> Evidence, Mr Rick Feneley, Journalist, 30 November 2020, p 12; For a more detailed account of the case of Alan Rosendale, please refer to Standing Committee on Social Issues, NSW Legislative Council, *Gay and Transgender hate crimes between 1970 and 2010 – Interim report* (2019), pp 20-23.

... [T]he extraordinary lack of curiosity in the Police Force not to go back and spend some time in that case— they have just dismissed it out of hand—and their answer is that, "We have no evidence that it's [the assault witnessed by Paul Simes] the same case as Alan Rosendale."<sup>87</sup>

... [B]ecause police have not addressed this, people can only speculate about for what reason would a Police Force—a good clean new Police Force—not want to get to the bottom of what is a known police attack on ... gay men, in a park.

... For me, there are so many other cases but we are talking here about a man who was not murdered. He was bashed and he is still here to tell his story, but what that does say to me is that there is a desperate reluctance from the top not to find out what happened in this case.<sup>88</sup>

- 2.43** Mr Glick expressed a similar view, speculating that the Alan Rosendale case 'appears to present an ongoing effort on the part of the NSWPF to cover up, obfuscate, and otherwise deflect any serious attempt to find the responsible parties and hold them and their commanding officers to account'.<sup>89</sup>
- 2.44** The following case study shares the story of parents of a missing gay man. It highlights some of these issues raised in evidence about the attitude of police and their response to pursuing investigations of suspected gay hate crimes.

#### **Case study – Mr Robert Knight and Ms Robyn Conlan<sup>90</sup>**

Robert Knight and Robyn Conlan are the parents of Simon, a gay man who has been missing since July 2005.

When Robert and Robyn first reported their son missing to the police, Robyn told them that Simon identified as gay. In response, she was told that 'gays go missing all the time ... he'll turn up'.

Investigations began but not before an initial refusal by the Unsolved Homicide Team to investigate because the case had not been referred by the Coroner. Investigations eventually progressed but years later, nothing eventuated.

In February 2019, Robert and Robyn were told that Redfern Police Area Command (PAC) would be in contact to arrange a meeting, after a letter had been sent on their behalf by Peter Rolfe from Support After Murder to the Police Commissioner highlighting matters Robert and Robyn did not believe had been investigated in their son's case.

They did not hear from anyone after almost three weeks and so again Peter contacted the Commissioner expressing concerns that their inaction was because Simon is gay. They received a response almost immediately, with Peter being called and told that a meeting would be arranged.

In April 2019, Robert and Robyn met with officers at Redfern Police Station. Robert and Robyn brought a magazine article from 2013 in which the Crime Coordinator from Redfern PAC was reported to have said that Simon was well known in the Newtown area and that, despite conjecture that he may

<sup>87</sup> Evidence, Mr Rick Feneley, Journalist, 30 November 2020, p 12.

<sup>88</sup> Evidence, Mr Rick Feneley, Journalist, 30 November 2020, pp 12-13.

<sup>89</sup> Submission 4, Mr Daniel Glick, p 3.

<sup>90</sup> This case study has been drawn from Submission 34, Mr Robert Knight and Ms Robyn Conlan.

have contracted HIV, he was believed to be alive and well. Redfern PAC did not have a copy of the article.

Robert and Robyn were told that Simon's brief would be transferred to Kings Cross PAC for an independent review. Four months after their meeting, Robert and Robyn had still heard nothing from the police and so contacted Redfern PAC to follow up.

Following various delays, Robert and Robyn finally met with officers at Redfern Police Station in September 2019 to discuss the review report. Asking if they could take a copy of the report, they were refused because it was confidential. Instead they were given time to read it in the room, however, after 15 minutes they felt the attending officer getting impatient so they left.

Robert and Robyn have been most dissatisfied with the progress of investigations into their son's disappearance. Fifteen years after he went missing, they have been left wondering if it is because he is gay.

In November 2020, the NSW Government announced a reward of \$250,000 for new information, an increase from the \$100,000 reward previously announced in 2008.<sup>91</sup>

### Acknowledging past wrongs

- 2.45** Directly relevant to the other themes that have emerged from the evidence is the consistent messaging from inquiry participants that past wrongs must be acknowledged and addressed if there is to be healing and justice for those affected by hate crimes. As Ms Thompson, former NSW Police Force Gay/Lesbian Consultant, stated (upon reflecting on recent actions by the Queensland Police Commissioner):

...[H]ow powerful and important it is for government organisations, especially community role models like the Police, to quickly, openly and easily admit mistakes and be seen to make amends without a fuss or needing to be dragged kicking and screaming to the apology table. That is leadership and honour in my mind. It is powerful and it allows the world to heal and move on rather than be stuck on conflict.<sup>92</sup>

- 2.46** While numerous inquiry participants recognised that there has been significant improvement in the way the police treat and relate to the LGBTIQ community today,<sup>93</sup> some continued to look back to the failings of the past as the key to moving forward. For example, Mr Glick asserted:

Although it is undeniable that the NSWPF has made great strides in improving its policing practices and relationship with the LGBT community over the past decades, the failure of the police to admit its past mistakes and demonstrate its commitment to both truth and reconciliation remains, in my opinion, a roadblock to true accountability.<sup>94</sup>

<sup>91</sup> NSW Police Force, *Disappearance of Simon Knight*, [https://www.police.nsw.gov.au/can\\_you\\_help\\_us/rewards/250000\\_reward/\\$100,000\\_reward\\_to\\_help\\_solve\\_simon\\_knights\\_disappearance#:~:text=A%20coronial%20inquest%20conducted%20in,was%20announced%20at%20the%20time](https://www.police.nsw.gov.au/can_you_help_us/rewards/250000_reward/$100,000_reward_to_help_solve_simon_knights_disappearance#:~:text=A%20coronial%20inquest%20conducted%20in,was%20announced%20at%20the%20time).

<sup>92</sup> Submission 26, Ms Sue Thompson, p 4.

<sup>93</sup> For example, Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 13 November 2020, p 5; Submission 14, NSW Gay and Lesbian Rights Lobby, p 6.

<sup>94</sup> Submission 4, Mr Daniel Glick, p 3.

**2.47** Likewise, the Gay and Lesbian Rights Lobby argued: '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'.<sup>95</sup>

**2.48** Reflecting on past efforts to overcome the failings of the 1970s and 1980s to admit mistakes with openness and willingness, Ms Thompson expressed sadness that this has been seemingly replaced with a sense of defensiveness:

I am reminded by those excellent historical records, and can see and hear, an obvious openness and easy willingness in some highly respected senior police to openly admit the mistakes of the past, to seriously address the gay hate related murders etc without fear of admitting the truth. I feel sad to see that nowadays there appears to instead be a desire to seemingly lessen and minimise the violence and murders and to be defensive about the extent and reality of that epidemic of violence. This does everyone a disservice, the LGBTI community, the police who genuinely care and the Police as an organisation who should be community leaders and role models.<sup>96</sup>

**2.49** Ms Thompson emphasised that if the police failed to make amends for the past, a 'serious disservice' would be done to all:

If the NSW Police miss the opportunity of making amends for the past by trying to minimise the horror of the past on these issues they will do a serious disservice to their reputation, their honour and to the community they are meant to be still building bridges with. The truth sets us free to make peace and build strong futures together. Defensiveness causes damage and mistrust and stunts positive growth.<sup>97</sup>

**2.50** Indeed, the Australian Hate Crimes Network highlighted the negative impacts of ignoring hate crime while pointing out how police acknowledgement strengthens community relationships and support:

Examples from around the world show that ignoring hate crimes can have dramatic impacts, not only on communities but also police/community relationships and society in general. Policing agencies that acknowledge hate crimes, their impact on communities and society, and respond effectively to the issue not only build stronger police/community relations but also impact other crime categories through the strengthened community support.<sup>98</sup>

**2.51** The following case study gives insight to the trauma and bitterness that victims can carry when past wrongs – whether by the police or, in this case, another public service institution – are not acknowledged, particularly in the context of 'gaslighting' where people are made to feel as though their experiences are not legitimate.

<sup>95</sup> Submission 14, Gay and Lesbian Rights Lobby, p 12.

<sup>96</sup> Submission 26, Ms Sue Thompson, p 3.

<sup>97</sup> Submission 26, Ms Sue Thompson, p 3.

<sup>98</sup> Submission 13, Australian Hate Crime Network, p 26.

**Case study – Witness A<sup>99</sup>**

Witness A is a victim of gay hate violence. In the early 1990s, he was dragged from a telephone box in front of his workplace and bashed, leaving him with facial injuries.

After escaping his attacker, Witness A went to the local police station to make a statement but was laughed at and turned away. He was dismissed because he did not know his attacker's name and was told that the description he had given was not comprehensive enough to warrant a search, despite Witness A providing details of his attacker's height, ethnic appearance, and hair and eye colour.

As a doctor, Witness A turned to his then-employer Royal Prince Alfred Hospital, however, they were equally unsupportive. They refused to take a statement and denied his request to take sick leave to recover from his injuries. Instead, Witness A was told to take leave without pay and not to come to work for fear of people asking about his injuries. In anger, Witness A went to work anyway with bruises on his face and told people exactly what had happened.

Witness A paid for his actions. He said that his workplace ignored him and threatened him, had his character, credibility and skills attacked so as to justify failing to give him support – 'After all, you aren't a worthy person to support anyway'. He was repeatedly told it was all in the past, 'so it does not really affect you now', and was belittled with statements such as 'you need to let it go' and 'why are you so worried about it?'. His career was immensely impacted, with Witness A not being made successful for senior employment and eventually having to withdraw from his specialist training program because he did not feel safe or supported in the workplace. Only did he re-enter the medical profession years later when a gay physician encouraged him to complete his training at another institution.

Witness A described his experience with his former employer as a classic example of 'gaslighting' – when there is a denial that an incident occurred, then a belittling of the victim's emotions or feelings and an undermining of their confidence in their ability to distinguish truth from falsehood such that they question the reality of their own perceptions or judgements, resulting in a complete delegitimisation of the situation.

Witness A referred to not only people being responsible for gaslighting but whole institutions – such as Health – who can be in denial. He said that when that happens – when there is no recognition that there was a mistake in the first place – it is hurtful and diminishes the pain of what happened. He urged for there to be an acknowledgment 'from the top down' – 'It cannot be just, "It happened in the past and we are not part of it now," because that is just the same thing all over again. It is just the same playbook being pulled out'.

Witness A was very traumatised by his experience, being unable to walk or drive down the road he was bashed on for many years, and suffered from post-traumatic stress disorder. He no longer trusted the police, choosing not to report a subsequent assault by a gang of youths on himself and then boyfriend – 'I had had my very negative experience. I was not going to have that repeated. I knew that nothing was going to happen'. He also no longer trusted his employer. His cumulative trauma meant that he did not feel safe – he did not feel safe going to work or walking down the street. He felt that if anything happened, he could not trust the people in his workplace or outside his workplace.

Witness A expressed he is bitter that his attack happened in 1992 but it is still being talked about in 2020.

<sup>99</sup> This case study has been drawn from Submission 30, Name suppressed, p 1, and Evidence, Witness A, 30 November 2020, pp 1-6.

### *Police acknowledgement*

- 2.52** In recognition of the challenging history between the police and the LGBTIQ community, Assistant Commissioner Gelina Talbot, Professional Standards Command, NSW Police Force, acknowledged the police inadequacies of the past and was committed to ensuring that that historical context remains recognised. She stated:

I sit here today acknowledging the victims of the past and their families. I acknowledge the past inadequacies of the NSW Police Force in responding, recording and investigating hate crimes against the LGBTIQ community. Unfortunately I cannot go back and change that. What is important is that we learn from our failings and mistakes....<sup>100</sup>

... We have to acknowledge the past to make sure that we do not do it again. We have to make sure that officers coming through—who are from a different generation.... that we are continually talking about that so that people understand the context and the reason and the drive of why we do what we do.<sup>101</sup>

- 2.53** Moreover, Assistant Commissioner Talbot spoke of the police culture and its dramatic change over time, and insisted that that culture of the past does not exist today. She acknowledged, however, that there is always room for improvement::

I do not know what the culture looked like in 1970 and 1980, but I am confident as I sit here that when I joined in 1990 it was a culture that does not exist today. We are a significantly different organisation. But there are still parts of our culture that we will continue to have to work on. We will not reach utopia: No organisation will. But we must ensure that officers abide by their oath, by the *Code of Conduct and Ethics*, by the values of the NSW Police Force and what is expected of them by the NSW Police Force.<sup>102</sup>

- 2.54** To demonstrate the extent of change in the NSW Police Force, Assistant Commissioner Talbot drew the committee's attention to two films – *Standing Together* and an episode of *Generations Apart*.

- 2.55** Assistant Commissioner Talbot explained that *Standing Together* was a collaboration between NSW Police Force and a small group of '78ers 'to raise awareness and show how much has changed since the first Mardi Gras'. She said that it was important for its own officers to understand the historical relationship with the LGBTIQ community, including 'how we got it wrong and how we need to do better':

*Standing Together* is the result of a call to action by a '78er at the NSW Police Force Commissioner's apology in 2018... This video helps raise awareness among our own officers, especially to share the historical relationship with members of the LGBTIQ communities, to assist them to better understand those community concerns. A number of police, including myself and Mr Crandell, were on that video talking about how we

<sup>100</sup> Evidence, Assistant Commissioner Gelina Talbot, Professional Standards Command, NSW Police Force, 13 November 2020, p 13.

<sup>101</sup> Evidence, Assistant Commissioner Gelina Talbot, Professional Standards Command, NSW Police Force, 13 November 2020, p 17.

<sup>102</sup> Evidence, Assistant Commissioner Gelina Talbot, Professional Standards Command, NSW Police Force, 13 November 2020, p 13.

got it wrong and how we need to do it better. Importantly, it does show wonderful young officers who are coming through our organisation who are open and proud to be out in our organisation as LGBTIQ and to work with that community.<sup>103</sup>

- 2.56** The *Generations Apart* episode, on the other hand, sought to illustrate just how much progress had been made by gay-identifying police officers within the Force. It featured a recently retired gay officer who joined the NSW Police Force in 1980 and a young officer who has always been 'out and proud as gay' within the organisation. Assistant Commissioner Talbot stated that together 'they give a good story about how we have changed over time and will continue to do so'.<sup>104</sup>
- 2.57** Notwithstanding these efforts, numerous inquiry participants maintained that an admission of past wrongs across the several decades of violence and crime targeted at the LGBTIQ community was necessary and should include an apology to victims and their families for the failure to protect and deliver justice.<sup>105</sup>
- 2.58** As called for by inquiry participants in the initial inquiry, a public apology from the NSW Police Force and from the NSW Parliament was also sought by participants in the current inquiry. For example, one gay hate crime victim said:

Many gay men died and some were left with lifeline injuries and mental trauma like me. We deserve justice ... [T]he formal recognition by parliament that we were badly let down by our law enforcement agencies at the time would be a start. I believe that one of the reasons that so many gay bashings occurred was the attacker held little fear they would be brought to justice.

I think the NSW Police should give some sort of historic apology. Gay bashings and murders were simply not given the importance of investigation that they should have been given.<sup>106</sup>

- 2.59** Similarly, Mr South, another victim, stated: 'I believe we should be given an apology from the Police for their lack of care and understanding and for the lack of enquiries into the death by violence of so many of our brothers and sisters'.<sup>107</sup>
- 2.60** The Gay and Lesbian Rights Lobby again called for an apology to victims and families stating that it 'remains overdue'.<sup>108</sup> Likewise, ACON reiterated their recommendation that victims and survivors be acknowledged with an apology for the failure to provide justice, proposing:

<sup>103</sup> Evidence, Assistant Commissioner Gelina Talbot, Professional Standards Command, NSW Police Force, 13 November 2020, pp 17-18.

<sup>104</sup> Evidence, Assistant Commissioner Gelina Talbot, Professional Standards Command, NSW Police Force, 13 November 2020, p 18.

<sup>105</sup> For example, Submission 17a, Name suppressed, p 2; Submission 24, Mr Craig Hollands, p 2.

<sup>106</sup> Submission 21, Name suppressed, p 4.

<sup>107</sup> Submission 31, Mr Stewart South, p 3.

<sup>108</sup> Submission 14, Gay and Lesbian Rights Lobby, p 5.

...[t]hat NSW Parliament and NSW Police use public opportunities ... 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.<sup>109</sup>

- 2.61** Moreover, in reflecting on the past and the entrenched mistrust of the police by the LGBTIQ community, some inquiry participants called for greater transparency and accountability moving forward. For example, the NSW Beat Project asserted:

There can be no doubt that NSW Police and the criminal justice system has failed the LGBTIQ community... yet to dispel the perception that police are involved in a cover up and/or hindering investigations - that their behaviour has enabled a vicarious responsibility for the beatings and deaths we have witnessed in those decades, it would be really useful to embrace transparency and a more concerted effort to engage with the community with respect and sincerity.<sup>110</sup>

- 2.62** In referring to the 'inadequate' government response discussed in chapter 1, ACON likewise argued that 'more needs to be done to ensure that the NSW Police engage with the Inquiry and respond to community needs in a more transparent and engaged manner'. ACON asserted that '[t]his is essential for the process of healing and justice to begin'.<sup>111</sup>

- 2.63** Indeed, as the Australian Hate Crime Network stated: 'Police transparency and accountability is paramount in maintaining public trust'.<sup>112</sup>

### **Committee comment**

- 2.64** At the heart of this inquiry is the desire to understand and examine the LGBTIQ experience of hate crime between 1970 and 2010, with a focus on the impediments that impacted on the protection of and delivery of justice to the LGBTIQ community. The committee welcomes the opportunity that a re-established inquiry has given to inform this understanding.

- 2.65** Noting that this inquiry has evolved since its initial establishment, the committee considered the terms of reference where the evidence allowed. For the most part, personal stories were shared with the committee, and for this we are grateful. The committee is also mindful and respectful of the many stories that were not shared, noting, as ACON described in their submission, 'the enormity of personal sacrifice that sharing such personal trauma requires'.

- 2.66** In light of this, the committee acknowledges the profound impact gay and transgender hate crime and violence has had on individuals and the wider LGBTIQ community. In particular, the committee recognises that many have been deeply hurt – physically, mentally and emotionally – from their experiences, and continue to carry this enduring trauma.

<sup>109</sup> Submission 12, ACON, p 17.

<sup>110</sup> Submission 32, NSW Beat Project, p 6.

<sup>111</sup> Submission 12, ACON, p 15.

<sup>112</sup> Submission 13, Australian Hate Crime Network, p 29.



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- 2.67 With this, the committee finds that victims of gay and transgender hate crime often carry enduring physical, mental and emotional trauma as a result of their experiences.
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**Finding 1**

That victims of gay and transgender hate crime often carry enduring physical, mental and emotional trauma as a result of their experiences.

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- 2.68 The committee also recognises the role of the NSW Police Force in these stories, and acknowledges the many views of inquiry participants on the culture of the police during the period being inquired.
- 2.69 The committee notes the NSW Police Force's own acknowledgement in Strike Force Parrabell's final report that it played a role in the marginalisation of the LGBTIQ community, with its acceptance of the brutal violence directed at gay men and LGBTIQ people more broadly. Considering all of the evidence presented to the committee across both inquiries, it is without question that this impacted on the delivery of justice to victims of gay and transgender hate crimes and their families.
- 2.70 Moreover, the committee accepts that the indifference and disinterest demonstrated by the police and characterised by a failure to properly investigate gay hate crimes, particularly in the in 1970s, 1980s and 1990s, led to a deep distrust of the police by the LGBTIQ community.
- 2.71 The committee also acknowledges, however, the progress made by the NSW Police Force to shift its culture and improve its practices over time – indeed, the committee appreciates the commitment expressed by Assistant Commissioner Gelina Talbot, NSW Police Force, to learn from past failures.
- 2.72 Nevertheless, the committee shares the views of some inquiry participants that there may still be 'pockets of resistance' within the NSW Police Force today, a legacy of the culture of old. If not, then why was there a reluctance to support the Scott Johnson case as a murder? Why are the police today not pursuing cases such as that of Alan Rosendale/Paul Simes? Why was there a resistance to cooperate with or assist those seeking to report on and publicise this tragic period in history?
- 2.73 On balance, the committee therefore finds that historically the NSW Police Force failed in its responsibility to properly investigate cases of historical gay and transgender hate crime and this has undermined the confidence of LGTBIQ communities in the NSW Police Force and the criminal justice system more broadly.
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**Finding 2**

That historically the NSW Police Force failed in its responsibility to properly investigate cases of historical gay and transgender hate crime and this has undermined the confidence of lesbian, gay, bisexual, transgender, intersex and queer (LGTBIQ) communities in the NSW Police Force and the criminal justice system more broadly.

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- 2.74** Given the deep and enduring trauma carried by victims of LGBTIQ hate crime and the acknowledged role of the police in the marginalisation of the LGBTIQ community, the committee recognises the evidence of inquiry participants seeking an acknowledgement of past wrongs from those who failed to protect and deliver justice for LGBTIQ people. The committee is aware that for many victims and their families, such an acknowledgement is necessary for their journey towards healing. Moreover, the committee notes that, as part of this acknowledgement, there is a call by inquiry participants for a formal apology for the injustices experienced by victims.
- 2.75** The committee recognises and is encouraged by the evidence of Assistant Commissioner Talbot in which she unreservedly acknowledges the past inadequacies of the NSW Police Force in responding, recording and investigating historical gay hate crimes.
- 2.76** Notwithstanding this, the committee finds that for many victims of LGBTIQ hate crime and their families, the acknowledgement of past wrongs by those who failed to protect and deliver justice for LGBTIQ people is a necessary and significant step towards healing.

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### **Finding 3**

That for many victims of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) hate crime and their families, the acknowledgement of past wrongs by those who failed to protect and deliver justice for LGBTIQ people is a necessary and significant step towards healing.

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## **The need for further investigation of historical gay hate crimes**

- 2.77** As outlined in the interim report, the final report of the NSW Police Strike Force Parrabell (*Parrabell* report) considered the suspected deaths of 88 men potentially motivated by gay hate bias, 23 of which remain unsolved. During the initial inquiry, the committee received evidence that these unsolved cases had been referred to the Unsolved Homicide Unit.
- 2.78** In the current inquiry, further consideration was given to these cases as part of the call made by inquiry participants for historical gay hate crimes to be further investigated. The context and nature of this call will be examined in the following sections.
- 2.79** Assistant Commissioner Talbot, NSW Police Force, advised the committee that the unsolved cases of suspected death are reviewed on a regular basis by the State Crime Command and Unsolved Homicide Unit. She explained that some cases may be 'undetermined' as to the cause of death or are inactive, but are reactivated once there is new and compelling evidence:
- Some matters have been reviewed and are listed as undetermined as to the cause of manner of death at this time, or are inactive due to there being no new identified suspects, witnesses or forensic evidence, and no new lines of inquiry available. But they will be reactivated if new and compelling evidence becomes available. With all homicide investigations, there is a team-based task force approach that is undertaken.
- 2.80** Assistant Commissioner Talbot expressed confidence in the 'robust system' in place to consider and review the cases, and stated:

I am confident that in every investigation that the commander of State Crime Command and others look at, they go back and review them on a regular basis, and if there is new and compelling evidence, the investigations are reopened and investigated.<sup>113</sup>

### Lessons learned from the Scott Johnson case

**2.81** As noted in chapter 1, an arrest was finally made in connection with the case of Scott Johnson, 32 years after Scott's death. Journalist Mr Feneley described it as a 'fantastic breakthrough',<sup>114</sup> while Mr Parkhill, ACON, remarked that 'it was incredibly hopeful'.<sup>115</sup>

**2.82** Some inquiry participants commented on the progression of the case, noting considerations and potential lessons learned. For example, according to former NSW Police detective Mr McNab, the police took a different approach to this investigation, assigning it to a detective in the child abuse squad rather than treating it as a straightforward homicide investigation. Mr McNab explained the difference between the two, asserting that the varied approach was valuable for a more complex case like that of Scott Johnson's:

Homicide investigations are reasonably straightforward. You have a template you run from. It is methodical: get information, do something with it, get rid of it or whatever. Child abuse investigations are more complicated because you have got so much in them—so many variables, so many oddities, so many sensitivities. They are most complex. Commissioner Fuller gave the Johnson investigation to a bloke who ran the child abuse unit, and he approached it differently ... I think it is a variation on an approach that worked and got the result.<sup>116</sup>

**2.83** While much can be learnt from this, some inquiry participants made note of the fact that it was the confluence of a number of factors that helped arrive at the outcome. For example, as Mr Parkhill observed, '...three coronial inquests, attention and focus and resourcing' is what eventually led justice to being served in the case of Scott Johnson. In particular, he believed 'the point of difference' in this case was Scott's brother, Steve Johnson, who 'was incredibly well resourced and motivated to bring about justice'.<sup>117</sup>

**2.84** For Ms Thompson, former NSW Police Gay/Lesbian Consultant, the case was one of 'haphazard justice' – the kind that 'can only be called miraculous, a cause for great thanks... but ... not something to rely on for the way forward'.<sup>118</sup> She explained:

Justice in the Scott Johnson case has only come about by an absolutely haphazard form of justice that brought together a really unique combination of people—a wealthy family, a wealthy brother who had the emotional stamina as well to keep something going and a lot of people in the right place at the right time...<sup>119</sup>

<sup>113</sup> Evidence, Assistant Commissioner Gelina Talbot, Professional Standards Command, NSW Police Force, 13 November 2020, p 16.

<sup>114</sup> Evidence, Mr Rick Feneley, Journalist, 30 November 2020, p 11.

<sup>115</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 13 November 2020, p 8.

<sup>116</sup> Evidence, Mr Duncan McNab, former NSW Police Force detective, 13 November 2020, p 29.

<sup>117</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 13 November 2020, p 8.

<sup>118</sup> Tabled document, *Haphazard justice*, Ms Sue Thompson, 30 November 2020, p 1.

<sup>119</sup> Evidence, Ms Sue Thompson, former Gay/Lesbian Consultant, NSW Police Force, 30 November 2020, p 10.

- 2.85 Nevertheless, inquiry participants recognised that what the Scott Johnson case ultimately demonstrated was that historical gay hate crimes could be solved. As Mr McNab stated, it was a 'beacon case' demonstrating 'the power of police to actually do a cold-case inquiry and get a result'.<sup>120</sup>
- 2.86 As for Mr Parkhill, it gave cause for 'solemn optimism that the effects of continued pressure in this space have been fruitful'.<sup>121</sup>

### The reinvestigation of unsolved cases

- 2.87 A number of participants from the current inquiry echoed the calls made in the previous inquiry to reinvestigate all unsolved cases of suspected deaths related to gay hate crime. For the most part, these were made within the context of seeking a judicial inquiry, which will be discussed in the next section.<sup>122</sup>
- 2.88 However, one inquiry participant drew attention to certain considerations he believed should be made when approaching the reinvestigation of the outstanding cases, particularly in light of the developments in the Scott Johnson case.
- 2.89 For example, in recognition of the controversy surrounding the number of cases considered in the *Parrabell* report, Mr Feneley urged for there to be perhaps less focus on the numbers and a greater focus on a more targeted approach to a particular few that have been clearly acknowledged as gay hate crime. He asserted:

I think we have got to be really careful around plucking the numbers... I do think now that all this police work has been done that if we all become so bogged down in numbers rather than looking at, "Let's go and look", I think there are at least half a dozen or five or six particular cases out of the ones that the police acknowledge that almost certainly unsolved gay hate crimes. It would probably be a good start to at least start with those as a focus ... [I]here is nothing wrong with the police going and looking at interesting other cases but, with limited resources, which cases are we going to put our focus into?<sup>123</sup>

- 2.90 Mr Feneley continued: 'The enormous focus on the Scott Johnson case has finally shown what sort of result you can get. I just do not think you are going to get that result if you have a scattergun approach to every crime that has happened in the past'.<sup>124</sup>
- 2.91 In narrowing the focus, Mr Feneley believed such investigations were more likely to yield a result. He stated: 'I do think that there are some cases that are much more likely to get prosecution than others'.<sup>125</sup> Mr Feneley cited the case of Bill Rooney as an example, whose death was initially deemed accidental despite the investigating officer suspecting foul play. Some believe Bill was murdered by a man who had been separately convicted of numerous gay

<sup>120</sup> Evidence, Mr Duncan McNab, former NSW Police Force detective, 13 November 2020, p 25.

<sup>121</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 13 November 2020, p 2.

<sup>122</sup> For example, Submission 12, ACON, p 16; Submission 33, Support After Murder Inc, p 2.

<sup>123</sup> Evidence, Mr Rick Feneley, Journalist, 30 November 2020, pp 11-12.

<sup>124</sup> Evidence, Mr Rick Feneley, Journalist, 30 November 2020, p 12.

<sup>125</sup> Evidence, Mr Rick Feneley, Journalist, 30 November 2020, p 16.

bashings but whose cases were never linked because the investigating officer was told not to pursue the case from the very beginning.<sup>126</sup> Mr Feneley argued:

We obviously need to go through the normal procedures of evidence but in this case what you actually had was the police at the top buried the suspicions of their own cops at the time. Perhaps that is one area where a fresh set of eyes on that case alone might yield something.<sup>127</sup>

### The call for a judicial inquiry

- 2.92** Over the course of the two inquiries there have been mounting calls for a judicial inquiry to be established as the means by which unsolved cases of suspected gay hate crime, including those resulting in death, are reinvestigated. According to Mr Parkhill, ACON, it is 'what is required to take the pathway for truth and justice forward'.<sup>128</sup>
- 2.93** In recommending a reinvestigation of all outstanding cases, Mr Parkhill asserted that to do so through a judicial inquiry is a position shared 'not just by ACON, but by a whole set of LGBTQI community organisations and, indeed, individuals'.<sup>129</sup>
- 2.94** In fact, Mr McNab told the committee that his belief in the need for a judicial inquiry – '[one] that has investigative... and compellability powers' – is stronger now than ever before. When asked why, he stated: 'Because of the Scott Johnson case. It proves precisely what can be done'. He explained:

Quite often it is, "Oh, it's an old case, we'll get to it; it's difficult, it's hard". The Scott Johnson case was probably one of the hardest to prove because it started out as a suicide. It received very little support from the NSW Police Force through a number of coronial inquests and a review of the case that was conducted that came to the view that it was a suicide... Since I last gave evidence there has been a finding that it was a murder by the Coroner—a huge change, a massive change...

...[W]e have gone for this remarkable turnaround and we finally have someone about to face trial for it. That is something I did not expect to see at all, but I am so delighted it is. I think the case for a commission of inquiry is now stronger than ever.<sup>130</sup>

- 2.95** Likewise, Mr Craig Hollands expressed strong support for a judicial inquiry, asserting that the evidence for one is 'overwhelming'.<sup>131</sup> Dr Asquith, Australian Hate Crime Network, likewise gave a judicial inquiry in-principle support, acknowledging that 'there is still space needed to address those cases that have not seen a court or a legal proceeding at all'.<sup>132</sup> Ms Thompson

<sup>126</sup> For a more detailed account of the case of Bill Rooney, please refer to Standing Committee on Social Issues, NSW Legislative Council, *Gay and Transgender hate crimes between 1970 and 2010 – Interim report* (2019), p 27.

<sup>127</sup> Evidence, Mr Rick Feneley, Journalist, 30 November 2020, p 13.

<sup>128</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 13 November 2020, p 3.

<sup>129</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 13 November 2020, p 3.

<sup>130</sup> Evidence, Mr Duncan McNab, former NSW Police Force detective, 13 November 2020, p 29.

<sup>131</sup> Submission 24, Mr Craig Hollands, p 1.

<sup>132</sup> Evidence, Dr Nicole Asquith, Secretary, Australian Hate Crime Network, 13 November 2020, p 40.

shared her support by highlighting the judicial inquiry as an important opportunity to fix the past:

I understand the thing about there is budget, money, juggling, all that sort of thing nowadays, but I do understand the importance of saying, 'Hang on, this is a really serious issue. There are a lot of unsolved cases and let us actually fix some of this rather than jumping over them and heading off to the future without having fixed our past.'<sup>133</sup>

- 2.96** Others also commented on the significant impact a judicial inquiry would have. For example, Mr McNab drew attention to the fact that a judicial inquiry would 'generate an enormous amount of public interest. It will get a lot of media, which is incredibly important'. He asserted that it is 'public who make the breaks':

...[T]he way to solve these crimes is partnership between the police and the public. The public make the breaks. I suspect and I cannot confirm that one of the breaks on the Johnson case—he dies in 1998; in 2020 someone is finally arrested. One of the motivators for that is in fact the public.<sup>134</sup>

- 2.97** Mr McNab added that those responsible for crimes in the past or involved with gangs that may have been will have grown older and may choose to come forward and 'decide that maybe it is time they told the truth'. Mr McNab stated: 'These commissions of inquiry bring focus on that. Not only have you got the stick of compelling evidence but we have the way to promote it to the public and let them know that these cases are still solvable'.<sup>135</sup>

- 2.98** Some spoke of the weight of a judicial inquiry. For example, noting that the Scott Johnson case was aided by the motivation and resources of family members, Mr Parkhill considered a judicial inquiry a means to 'elevate' other cases to 'a more rigorous form of justice'. He explained:

Many of the other families in these stories do not have the resources that the Johnson family have been able to bring about in applying and keeping this issue going. Some sort of special commission of inquiry would elevate those men's stories to a more rigorous form of justice.<sup>136</sup>

- 2.99** Similarly, Mr Ure acknowledged that a judicial inquiry would indeed bring 'enormous gravitas'. However, he noted that the inquiry would still have to be informed by the investigations of the police, in which case he believed a judicial inquiry may not be necessary if the police were to be given the appropriate direction, resources and time. He explained:

The skills and commitment are there within the investigators in the NSW Police Force. What is needed is the direction...<sup>137</sup>

... A judicial inquiry would have the gravitas to really add weight but that would need to be informed by probably the same core group of police who, if properly directed, would do the same job anyway. So I do not have a view [on the judicial inquiry] either way. As I said, It would bring enormous gravitas and perhaps that is what is needed...

<sup>133</sup> Evidence, Ms Sue Thompson, 30 November 2020, p 9.

<sup>134</sup> Evidence, Mr Duncan McNab, former NSW Police Force detective, 13 November 2020, p 28.

<sup>135</sup> Evidence, Mr Duncan McNab, former NSW Police Force detective, 13 November 2020, p 29.

<sup>136</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 13 November 2020, p 8.

<sup>137</sup> Evidence, Mr John Ure, former Superintendent, NSW Police Force, 30 November 2020, p 8.

But as far as the functionality of it, the judges would need to be informed by probably the same police who, as I just said, if properly directed and resourced and given the time, could do the same thing.<sup>138</sup>

- 2.100** Mr Feneley shared a similar view in terms of the police having to do the 'gumshoe' work regardless. He stated:

...[T]hat judicial inquiry itself does not do the gumshoe work. Somebody has got to get out there and do the work. So I would have thought if you are willing to appoint a task force of police who do nothing else for the next two years or three years, then you have a judicial inquiry, maybe; but if those resources are there, well and good. In the meantime, there is nothing to stop the police ... investigating some of the more likely cases.<sup>139</sup>

- 2.101** Mr Feneley also raised some concerns about the judicial inquiry being 'nebulous', arguing that if one were to be established, it needed to be clear about what is trying to be achieved:

I am a little bit worried about the idea of establishing a judicial inquiry that has a really nebulous—that we going to go through a whole process again of truth telling, which would be great, but the problem is that is all right if we declare that is what the point of it is; it is a sort of a cathartic thing that everybody wants. But if what we really want to do is nail a few of these crimes—I suppose you have to set out what it is we are trying to achieve—... if what we want to do is arrest a few people...<sup>140</sup>

- 2.102** While acknowledging the power of truth telling, Mr Feneley asserted: '[G]etting real justice, as opposed to this sort of truth telling, which is also very powerful, we do need to go and make some arrests. That is what I believe.'<sup>141</sup>

- 2.103** When questioned about the structure of this judicial inquiry – that it potentially include a three-judge panel independently nominated – numerous inquiry participants were supportive. For example, Mr Parkhill stated: 'I think a process like that would be ideal to mitigate against the risk of perhaps having one judge who may have certain views that would go against the spirit of that commission and what it was looking to achieve'.<sup>142</sup> Likewise, Mr McNab said: 'I would be happy with any—if it takes three people with compellability powers to bring witnesses in and say, "You have got to answer the questions", I would be delighted'.<sup>143</sup>

- 2.104** The NSW Police were also asked to comment on a judicial inquiry, in particular, whether it would give 'muscle' to drive justice. In response, Assistant Commissioner Talbot, NSW Police Force, asserted the inquiry would give '[n]ot so much muscle but exposure'. Assistant Commissioner Talbot added that 'it is important that people get to tell their story in an environment where they feel safe and supported', and said: 'If that is through that process, then that is through that process'.<sup>144</sup>

<sup>138</sup> Evidence, Mr John Ure, former Superintendent, NSW Police Force, 30 November 2020, p 9.

<sup>139</sup> Evidence, Mr Rick Feneley, Journalist, 30 November 2020, p 16.

<sup>140</sup> Evidence, Mr Rick Feneley, Journalist, 30 November 2020, p 13.

<sup>141</sup> Evidence, Mr Rick Feneley, Journalist, 30 November 2020, p 16.

<sup>142</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 13 November 2020, p 8.

<sup>143</sup> Evidence, Mr Duncan McNab, former NSW Police Force detective, 13 November 2020, p 29.

<sup>144</sup> Evidence, Assistant Commissioner Gelina Talbot, Professional Standards Command, NSW Police Force, 13 November 2020, p 16.

- 2.105** Assistant Commissioner Talbot noted that it would be difficult for her provide feedback on an independent mechanism to reinvestigate historical gay and transgender hate crimes without any further detail, but stated 'we would be willing to provide any inquiry with information and assistance as required'.<sup>145</sup>

### **Committee comment**

- 2.106** The committee acknowledges the calls of inquiry participants across both inquiries seeking the reinvestigation of all unsolved cases of suspected gay and transgender hate crime, including those resulting in death. In particular, the committee shares the hope inspired by the outcome of the Scott Johnson case that a reinvestigation will prove fruitful.
- 2.107** While the committee notes the suggestion that police investigations can proceed without a judicial inquiry, the committee is of the view that a judicial inquiry is the most appropriate avenue for pursuing justice for victims of historical gay and transgender hate crimes. Particularly in light of the receding window of opportunity to obtain evidence from people who may have been involved, witnessed or have knowledge of these decades old crimes, the committee believes that the coercive powers of a judicial inquiry will assist in piecing together an accurate account of the crimes being investigated.
- 2.108** The committee therefore recommends that the NSW Government establish a judicial inquiry or other form of expert review to inquire into unsolved cases of suspected gay and transgender hate crime deaths.

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### **Recommendation 1**

That the NSW Government establish a judicial inquiry or other form of expert review to inquire into unsolved cases of suspected gay and transgender hate crime deaths.

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- 2.109** Further to this, the committee notes that the purpose of Strike Force Parrabell was to conduct an investigative review of the suspected deaths of 88 men, potentially motivated by gay hate bias. Out of the *Parrabell* report came 12 recommendations which the Minister for Police, in the NSW Government response to the interim report, indicated had been accepted by the NSW Police Force.
- 2.110** The committee notes the criticisms raised by inquiry participants that the Government response did not provide adequate detail as to the implementation of these recommendations or the progress being made. The committee agrees that, in the interests of transparency and support for the LGBTIQ community, a more fulsome, comprehensive update on the implementation of the recommendations is warranted.
- 2.111** As such, the committee recommends that the NSW Government, in its response to this report, provide a comprehensive update on the implementation of the recommendations made in the final report of Strike Force Parrabell.

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<sup>145</sup> Evidence, Assistant Commissioner Gelina Talbot, Professional Standards Command, NSW Police Force, 13 November 2020, p 16.



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## Recommendation 2

That the NSW Government, in its response to this final report on Gay and Transgender hate crimes between 1970 and 2010, provide a comprehensive update on the implementation of the recommendations made in the final report of the NSW Police Strike Force Parrabell.

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- 2.112** Moreover, the committee shares the disappointment expressed by inquiry participants about the government response more broadly, and hopes that the response to this report appropriately and sensitively acknowledges the many issues and concerns that have been raised by inquiry participants.

## Supporting and honouring the victims of historical gay hate crimes

- 2.113** As part of the ongoing pursuit of justice for victims of historical gay hate crimes, numerous inquiry participants highlighted the need to support and honour these victims. The following sections examine various issues and opportunities discussed by inquiry participants to help address the traumas of the past, including avenues for victim support, consideration of restorative justice as an alternative mechanism for achieving justice, and the planned Bondi Memorial in honour of gay hate crime victims and survivors.

### Victim support

- 2.114** Following on from earlier discussions about the profound impact of gay and transgender hate crimes on individuals and the broader LGBTIQ community, several inquiry participants, including victims themselves, spoke of the need to support those touched by historical gay and transgender hate crimes.
- 2.115** For example, one inquiry participant stated that, following an attack where he believed he was going to die, 'there was no after support at all'. He sought his own expensive therapy which, while financially draining, he was able to pay for, but noted that 'others would not have been so lucky'. Because of this experience, he called for adequate support services to be made available to victims of LGBTIQ hate crime.<sup>146</sup>
- 2.116** Some inquiry participants drew attention to other examples in the evidence from both inquiries of individuals who did not receive support following their experiences of hate crime, and who suffered for it.<sup>147</sup> For example, the Australian Hate Crime Network (AHCN) discussed the case of a man who was attacked resulting in significant physical injury but did not report it nor see a doctor or seek counselling out of shame. He had never told his story until the initial inquiry. The AHCN asserted that 'there is a large number of people in the same position as [this] victim, who would benefit from support programs if implemented today'.<sup>148</sup>
- 2.117** More broadly, the AHCN acknowledged the 'alarmingly' high rates of violence experienced by LGBTIQ people, particularly in the period being inquired, the suffering endured because of this

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<sup>146</sup> Submission 21, Name suppressed, p 4.

<sup>147</sup> For example, see Submission 12, ACON, p 8.

<sup>148</sup> Submission 13, Australian Hate Crime Network, p 44.

violence, and the institutional neglect of LGBTIQ people needing protection and support. In doing so, they recommended that a funded victim support service be established for survivors of and people who have lost a loved one to historical gay and transgender hate crime.<sup>149</sup>

- 2.118** Further to this, Dr Asquith from the AHCN spoke of the need for third party victim support, which she said is important when dealing with marginalised communities. Dr Asquith noted that, particularly in the 1990s, the community sought a third party between them and the police to help manage that relationship. She explained:

... [P]articularly in the 1990s—it may not be so now—the community needed a third party between them and the police. They needed to liaise and manage that relationship so that, when they did turn up to the police station, they were treated with respect. We found that to be the most effective...

...A third-party reporting or third-party victim support is the most critical when you are dealing with marginalised communities who do not have a lot of trust in their institutions to start off with.<sup>150</sup>

- 2.119** Dr Asquith also advised that there is still a need today for the LGBTIQ community to have a third-party organisation 'as a port of call before the institution and police... whatever it is'. She spoke of the Lesbian and Gay Anti-Violence Project, an agency that provided front line support to and advocated for gay and lesbian people experiencing violence, and said that while the AHCN found over time that there was a reduced need for that service, 'we are now starting to see that there is a big gap in that space of victim support'.<sup>151</sup> Dr Asquith advised that since the 2000s the Anti-Violence Project has not existed, stating: 'No organisation does that direct client service work anymore in this State. Providing one-on-one support to victims is literally why we existed during that time'.<sup>152</sup>
- 2.120** The Gay and Lesbian Rights Lobby also spoke of the Anti-Violence Project recommending that funding support be given to it for its 'revival and expansion'. Likewise they also called for funding support for the Transgender Anti-Violence Project to ensure suitably qualified support is available to people reporting violence.<sup>153</sup>
- 2.121** ACON also gave evidence that, based on their experience, 'LGBTQ people continue to prefer peer-based services', and suggested that such services can bring 'healing, reduce social isolation and improve mental health', particularly for those living in regional communities.<sup>154</sup>

### Restorative Justice

- 2.122** During the current inquiry, the committee received evidence from the Australian Hate Crime Network (AHCN) on restorative justice as another means of addressing hate crime, acknowledging past wrongs and supporting victims. Dr Jane Bolitho, Chair of the Restorative

<sup>149</sup> Submission 13, Australian Hate Crime Network, p 40.

<sup>150</sup> Evidence, Dr Nicole Asquith, Secretary, Australian Hate Crime Network, 13 November 2020, p 37.

<sup>151</sup> Evidence, Dr Nicole Asquith, Secretary, Australian Hate Crime Network, 13 November 2020, p 37.

<sup>152</sup> Evidence, Dr Nicole Asquith, Secretary, Australian Hate Crime Network, 13 November 2020, p 36.

<sup>153</sup> Submission 14, Gay and Lesbian Right Lobby, p 10.

<sup>154</sup> Submission 12, ACON, p 8.

Justice Working Group, AHCN, explained that restorative justice is 'an alternative mechanism for achieving justice' that is different to the legal system but can be used inside of it or alongside it at different points.

**2.123** Dr Bolitho informed that restorative justice involves a voluntary process where 'the victim and offender come face to face in conversation, participating actively in the resolution of matters arising from a crime, generally with the help of a facilitator'. She explained: 'It is a structured conversation that follows a very particular pattern. It explores for each party what happened, with what impact, and the way forward. So there are three time lenses there: what was, what is, what could be'.<sup>155</sup>

**2.124** The committee heard that as they are not fact-finding encounters, there must be an admission of harm. It offers a way to justice for those whom the legal pathway is not available, or for whom the legal process has not provided the support or sense of justice they were seeking. As Dr Bolitho explained:

It can be done to address a fact that for many harms they are not detected, they are not reported, they are not recorded. Where they are prosecuted, they do not end in convictions. Even when someone does have a legal pathway, their justice needs, in a way, are not always met through the legal system.<sup>156</sup>

... [T]here might be this other thing as well ... which is about voice, about venting, about talking about what happened and explaining the impact. A lot of the survivors want it not to happen again and to really get that personal sense that the police or whoever was involved will not do it again. They need to hear from those people that it is not going to happen again. The judicial process might not give that answer.<sup>157</sup>

**2.125** Moreover, Dr Bolitho advised that the conversation is not limited to the victim and the direct offender. The process can involve a perpetrator and a victim's family member, or one who was harmed or impacted but not from the actual criminal event.<sup>158</sup> It can also involve institutional players, including the police, which Dr Asquith explained is an opportunity that is not generally made available. She stated:

Particularly for the families of these 23 homicides, they would most probably want a space to be able to say, 'New South Wales police, this is what you did and this is what harm it caused us.' There is not normally space for that in courts, so it solves a few issues in relation to responding to hate crime. It moves it upstream. It increases those who are eligible to repair the harm and it also brings those institutional players to the table to have an honest conversation about what actually did or did not happen.<sup>159</sup>

<sup>155</sup> Evidence, Dr Jane Bolitho, Chair of the Restorative Justice Working Group, Australian Hate Crime Network, 13 November 2020, p 33.

<sup>156</sup> Evidence, Dr Jane Bolitho, Chair of the Restorative Justice Working Group, Australian Hate Crime Network, 13 November 2020, p 33.

<sup>157</sup> Evidence, Dr Jane Bolitho, Chair of the Restorative Justice Working Group, Australian Hate Crime Network, 13 November 2020, p 35.

<sup>158</sup> Evidence, Dr Jane Bolitho, Chair of the Restorative Justice Working Group, Australian Hate Crime Network, 13 November 2020, pp 34-35.

<sup>159</sup> Evidence, Dr Nicole Asquith, Secretary, Australian Hate Crime Network, 13 November 2020, p 35.

- 2.126** In terms of recognising the desire for some to seek a legal outcome for serious hate crimes, such as murder, Dr Bolitho acknowledged in these cases there is 'public accountability piece and then there is a private accountability piece', and maintained that 'having restorative justice on the table does not negate the need for a legal response'.<sup>160</sup>

### **The Bondi Memorial Project**

- 2.127** On 30 November 2020, the committee inspected the site of the proposed Bondi Memorial Project.
- 2.128** Since 2016, ACON and Waverley Council have worked together to establish the memorial in Marks Park, Bondi, to honour the victims and survivors of historical gay and transgender hate crimes and to 'act as a symbol of healing, justice, hope and inclusion'.<sup>161</sup> Indeed, one inquiry participant described the memorial as 'a large step towards healing'.<sup>162</sup>
- 2.129** Urban Art Projects was commissioned to create the Bondi Memorial, with the design 'Rise' by artist John Nicholson.<sup>163</sup>
- 2.130** Described as a 'respectful, engaging and moving memorial to many who had lost their lives due to hate',<sup>164</sup> the permanent public artwork will feature six terraces with the strata ascending towards the ocean horizon and a series of brass plaques inset to the planes and at its base. Figure 1 provides an illustration of the memorial and a description of the design.
- 2.131** Council and ACON advised that funding of the memorial is accounted for as follows:
- \$100,000 – Waverley Council Capital Works Public Art Program
  - \$66,000 – private donations from two community members
  - \$40,000 – Waverley Council asset management for the overall site design, including the pathways and additional paving around the memorial and installation.<sup>165</sup>
- 2.132** According to Mr Parkhill, ACON, construction on the monument is expected to begin in March 2021.<sup>166</sup>

<sup>160</sup> Evidence, Dr Jane Bolitho, Chair of the Restorative Justice Working Group, Australian Hate Crime Network, 13 November 2020, pp 34-35.

<sup>161</sup> Bondi Memorial Project, <https://www.bondimemorial.com.au/>.

<sup>162</sup> Evidence, Witness A, 30 November 2020, p 5.

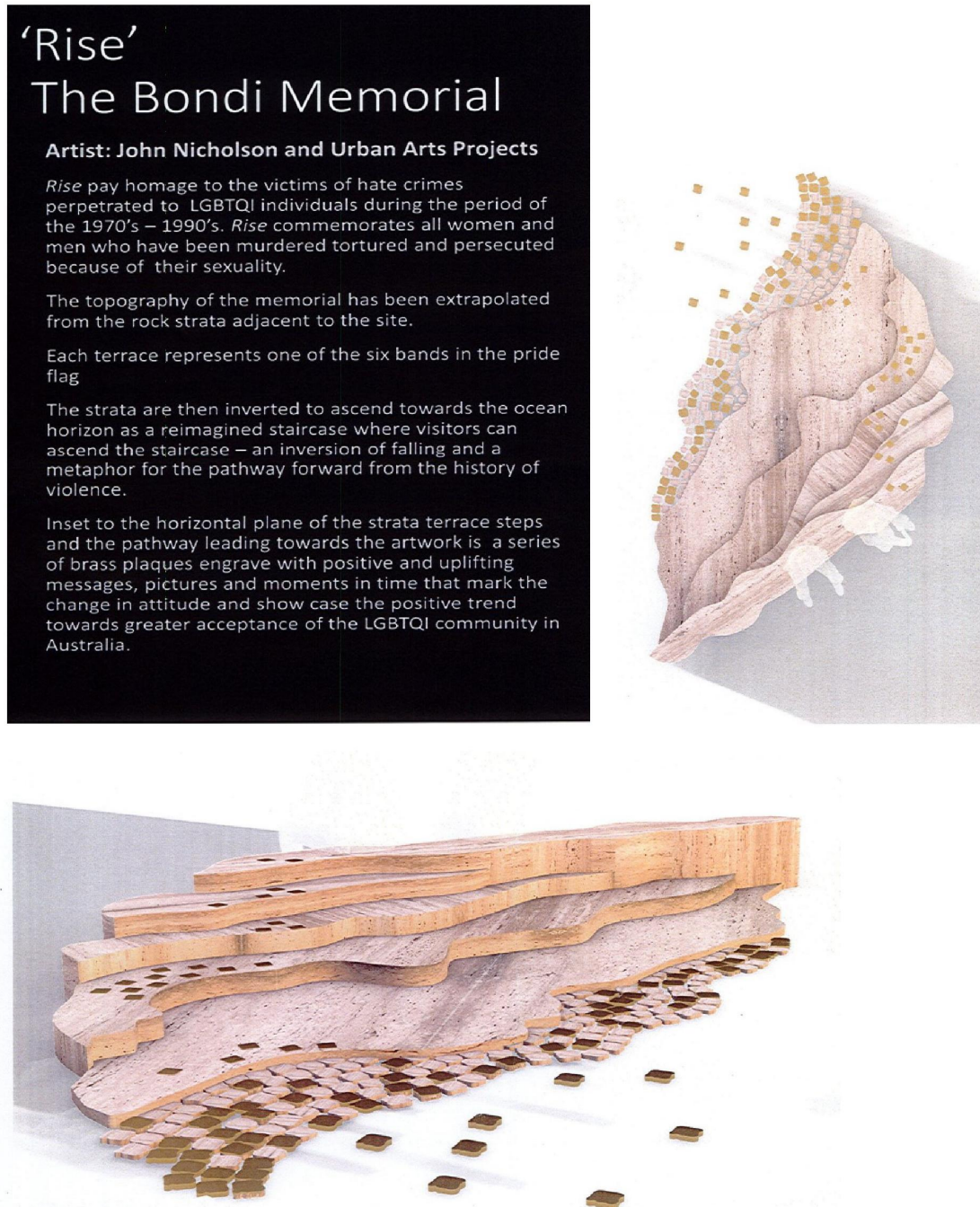
<sup>163</sup> Bondi Memorial Project, <https://www.bondimemorial.com.au/>; Tabled document, Waverley Council, *The Bondi Memorial – A collaborative project between Waverley Council and ACON*, pp 4-5.

<sup>164</sup> Bondi Memorial Project, <https://www.bondimemorial.com.au/> [accessed 10 February 2021]

<sup>165</sup> Tabled document, Waverley Council, *The Bondi Memorial – A collaborative project between Waverley Council and ACON*, p 6; Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 13 November 2020, p 2.

<sup>166</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 13 November 2020, p 2.

Figure 1 The Bondi Memorial – 'Rise'<sup>167</sup>



<sup>167</sup> Tabled document, Waverley Council, *The Bondi Memorial – A collaborative project between Waverley Council and ACON*, pp 4-5.

**Committee comment**

- 2.133** The committee appreciates and recognises the evidence received about supporting and honouring victims of historical gay and transgender hate crimes.
- 2.134** The committee considers it vitally important that individuals touched by historical hate crimes have access to support, particularly now if they never received it in the first place, noting that many victims chose not to report but to hide their trauma out of shame or fear. The committee thus accepts the call for support services to be established for survivors of and people who have lost a loved one to historical gay and transgender hate crimes.
- 2.135** Meanwhile, the committee is troubled by the evidence that there is currently a gap in direct client services to provide third party victim support, given the importance of a supportive environment to encourage the reporting of incidents.
- 2.136** To this end, the committee recommends that the NSW Government ensure that adequate victim support services are made available and widely promoted to survivors of and people who have lost a loved one to historical gay and transgender hate crimes, including providing funding and resources to third party organisations engaged in direct client services.
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**Recommendation 3**

That the NSW Government ensure that adequate victim support services are made available and widely promoted to survivors of and people who have lost a loved one to historical gay and transgender hate crimes, including providing funding and resources to third party organisations engaged in direct client services.

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- 2.137** The committee acknowledges the evidence presented with respect to restorative justice as an alternative mechanism for achieving justice. The committee notes in particular the opportunity for individuals to pursue a sense of justice outside of the legal system with institutional players, such as the police. The committee recognises that this may be an avenue for acknowledging past wrongs and healing.
- 2.138** The committee considers the Bondi Memorial in Marks Park, Bondi, a fitting tribute to honour the victims and survivors of LGBTIQ hate crime. The committee is particularly pleased with the design of the memorial and the meaning behind all elements. The committee commends Waverley Council and ACON for supporting the establishment of the memorial, particularly through funding.
- 2.139** The committee recommends providing further funding and/or support to ensure completion of the memorial.
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**Recommendation 4**

That the NSW Government provide further funding and/or support to ensure the completion of the Bondi Memorial in Marks Park, Bondi, in honour of the victims and survivors of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) hate crime.

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## Chapter 3 Contemporary issues

This chapter examines a number of contemporary issues raised by inquiry participants, including the role and response of the NSW Police Force moving forward, current trends in violence, harassment and underreporting, engagement with rural and regional communities, and the need for law reform.

### The role and response of the NSW Police Force moving forward

- 3.1 Upon reflecting on the culture and attitudes of police towards the gay and transgender community over time, inquiry participants discussed a range of issues and considerations for the NSW Police Force as they continue to build upon their relationship with the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) community moving forward.

#### Police training

- 3.2 In acknowledging the relevant recommendations of Strike Force Parrabell's final report (*Parrabell* report), numerous inquiry participants emphasised the importance of police training to ensure that every officer of the NSW Police Force understands and can respond to the challenges and needs of the LGBTIQ community with respect and sensitivity. As the Gay and Lesbian Rights Lobby argued:

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. LGBTIQ people require ongoing reassurance that every officer they come into contact with has the skills and sensitives needed to interact with our community.<sup>168</sup>

- 3.3 Indeed, the Gay and Lesbian Rights Lobby reiterated previous calls for the ongoing training of all police officers, arguing 'it is no longer good enough' to have a limited number of specialist Gay and Lesbian Liaison Officers (GLLO) to support the LGBTIQ community:

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...

...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.<sup>169</sup>

- 3.4 Likewise, ACON shared a similar view, asserting that not only should training be delivered to incoming officers and officers at all levels of the NSW Police Force, but that more advanced training should be given to officers as they progress through the ranks to more senior roles. ACON also recommended that training be delivered periodically and include content from the LGBTIQ community sharing their lived experience.

<sup>168</sup> Submission 14, Gay and Lesbian Rights Lobby, pp 9-10.

<sup>169</sup> Submission 14, Gay and Lesbian Rights Lobby, p 6.

- 3.5** Mr Nicolas Parkhill, Chief Executive Officer, ACON, argued that the historical context of the relationship between the police and the LGBTIQ community should be an important focus of police training to aid the shift in practice, noting '[i]t is a very unique relationship'. Mr Parkhill explained:

I think the training that needs to occur with the police ... needs to ... focus on the historical context of what has occurred and why policing with our communities needs to look different and work from that historical base to shift what that practice looks like. ...So they understand that there are historical and cultural tensions. It is really important that that is understood—by new recruits all the way through to the commissioner—and why practice needs look different in our community and how to go about it. That needs to be a central component of that training.<sup>170</sup>

- 3.6** Mr Parkhill also argued that police training needs to acknowledge and consider the diversity of experiences within the LGBTIQ community and remarked that '[t]he experiences of a 65-year-old gay man living in Lismore are going to be very different to a transgender girl who is 18 and living in Marrickville. Those are vastly different experiences'. Mr Parkhill maintained: '...[P]eople think of us as one, homogenous community, but we are very different and diverse'.<sup>171</sup>

- 3.7** In its submission, ACON added that a 'framework of equity' is needed to address the issues with policing more broadly, such that a 'one response fits all' model cannot be applied. ACON therefore highlighted the importance of training as an important step towards more inclusive police practices.<sup>172</sup>

- 3.8** Assistant Commissioner Gelina Talbot, Professional Standards Command, spoke extensively about police training, stating:

We are committed to being a learning organisation that continues to take significant steps to learn from the past and make sure that appropriate change is undertaken, to ensure that the organisation is responsive to the needs of all of the communities that it serves.<sup>173</sup>

- 3.9** In this regard, Assistant Commissioner Talbot spoke of the range and scope of relevant training available to police officers, advising that LGBTIQ awareness training is delivered not only as a standalone module but is embedded in other training programs, including domestic violence and custody. She informed: 'There is a volume of training and education packages along with policies and guidance already implemented within the NSW Police Force around LGBTIQ issues, awareness, expectation, bias and hate crime. More are being developed'.<sup>174</sup>

- 3.10** Notwithstanding this, Assistant Commissioner Talbot also drew attention to the context within which this training was delivered: 'The NSW Police Force continues to deliver mandatory and self-sought training on a wide range of issues every year. This is about prioritisation and our

<sup>170</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 13 November 2020, p 5.

<sup>171</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 13 November 2020, p 5.

<sup>172</sup> Submission 12, ACON, p 11.

<sup>173</sup> Evidence, Assistant Commissioner Gelina Talbot, Professional Standards Command, NSW Police Force, 13 November 2020, p 13.

<sup>174</sup> Evidence, Assistant Commissioner Gelina Talbot, Professional Standards Command, NSW Police Force, 13 November 2020, p 12.



capability given the volume of information that we are required to put out to police'. Indeed, Assistant Commissioner Talbot was mindful that '[t]his can easily turn into white noise if not well considered, and I think that is something that should be avoided at all costs'.<sup>175</sup> As such, Assistant Commissioner maintained:

The answer is not training alone. Yes, there should be ongoing awareness programs and all levels of our organisation must understand the history and the issues facing our communities. This is about the application of that training that we deliver.<sup>176</sup>

- 3.11** With regard to the online mandatory LGBTIQ Awareness and Inclusion training module, Assistant Commissioner Talbot advised that the program was developed and delivered in the 2019/20 financial year, with 22,456 employees having completed that training.<sup>177</sup>
- 3.12** The committee received evidence that the module takes on average 20-30 minutes to complete and covers a range of topics including the importance of LGBTIQ awareness and inclusion, the historical context of LGBTIQ issues, the diversity of the LGBTIQ community, and engaging with LGBTIQ communities respectfully.<sup>178</sup>
- 3.13** NSW Police advised that the module will now form the first part of a proposed broader LGBTIQ training program, with a proposal for a 2-3 yearly recompletion requirement. As part of the development of additional modules to support GLLO training, the current mandatory module will also be reviewed and updated accordingly.<sup>179</sup>
- 3.14** Indeed, of the GLLO program, Assistant Commissioner Talbot advised that its aim is to '...build the overall capacity and skills of the commands to better meet the needs of their local LGBTIQ communities'. She informed that there are currently 230 GLLOs across the state.<sup>180</sup> With respect to the GLLO training available, NSW Police advised that GLLO online training modules are currently under development, which will include the mandatory Awareness and Inclusion training module and face-to-face training.<sup>181</sup>
- 3.15** Further to this, when asked about training to address the needs of LGBTIQ people across different communities, Assistant Commissioner Talbot advised that each operational command is responsible for ensuring that its officers understand the issues that are unique to that community through its induction. She explained:

<sup>175</sup> Evidence, Assistant Commissioner Gelina Talbot, Professional Standards Command, NSW Police Force, 13 November 2020, p 12.

<sup>176</sup> Evidence, Assistant Commissioner Gelina Talbot, Professional Standards Command, NSW Police Force, 13 November 2020, p 12.

<sup>177</sup> Evidence, Assistant Commissioner Gelina Talbot, Professional Standards Command, NSW Police Force, 13 November 2020, p 12.

<sup>178</sup> Answers to questions on notice, NSW Police Force, 23 December 2020, p 3 and 'Annexure One, *LGBTIQ Awareness and Inclusion*'.

<sup>179</sup> Answers to questions on notice, NSW Police Force, 23 December 2020, p 2.

<sup>180</sup> Evidence, Assistant Commissioner Gelina Talbot, Professional Standards Command, NSW Police Force, 13 November 2020, p 21.

<sup>181</sup> Answers to questions on notice, NSW Police Force, 23 December 2020, p 5.

Each community is different, and it is the responsibility of commands to have an induction package that enables those new officers—whether they are recruits or people transferring into the command—have an understanding of the services that are in that community.

It is the responsibility of each command to be able to tailor it to their own communities. It is important for me to state that I have seven regional corporate sponsors that work with me. Their responsibility in those regional and metropolitan areas is to work with commanders to make sure that they are being responsive to the needs of those communities with regard to LGBTIQ.<sup>182</sup>

- 3.16** In terms of training provided to police officers as they progress through the ranks, Assistant Commissioner Talbot advised that a new promotion process has been recently introduced, which includes a number of training components and discusses the expectations of leaders across the organisation.<sup>183</sup> No further detail about this process was provided.

#### **Police conduct**

- 3.17** In recognising the conduct of police in the past, Assistant Commissioner Talbot spoke of the expectations regarding the conduct of the NSW Police Force now:

We are, and should be, held to a higher account given our role to protect and serve. Everyone should be confident, when they can report a matter to the police, that it will be recorded and investigated where appropriate. I accept that we have not met that standard at times in the past. We now treat failures to investigate as misconduct matters, which are monitored by my command.

... Every police officer must be able to deal with any member of the community with dignity, respect and care—it is just fundamental human right—and must be able to assist and investigate matters reported to them.<sup>184</sup>

- 3.18** Assistant Commissioner Talbot highlighted the importance of not only having systems in place to monitor and investigate misconduct but to ensure that officers are held to account when people are not treated equally and with respect. She explained:

It is important that we ensure that we have robust systems, processes and governance in place that identify inappropriate behaviour and inadequate recording and investigations quickly so that corrective behaviour and action can be undertaken. It is equally important that our officers are held to account and perform their duties professionally.<sup>185</sup>

<sup>182</sup> Evidence, Assistant Commissioner Gelina Talbot, Professional Standards Command, NSW Police Force, 13 November 2020, p 16.

<sup>183</sup> Evidence, Assistant Commissioner Gelina Talbot, Professional Standards Command, NSW Police Force, 13 November 2020, p 14.

<sup>184</sup> Evidence, Assistant Commissioner Gelina Talbot, Professional Standards Command, NSW Police Force, 13 November 2020, p 13.

<sup>185</sup> Evidence, Assistant Commissioner Gelina Talbot, Professional Standards Command, NSW Police Force, 13 November 2020, p 13.

- 3.19** Reflecting on these expectations and the training officers receive to ensure they meet standards, Assistant Commissioner Talbot acknowledged that it was difficult to monitor and measure the application of this training. She asserted, however, that in her command, complaints around customer service or the conduct of investigations could be considered an indicator.<sup>186</sup> In this regard, she advised the committee that in 2019, they received 16 misconduct matters where LGBTIQ issues were identified, and in 2020 they received 20. Assistant Commissioner Talbot explained that these included both internal and external complaints that were lodged with the police, some of which are the subject of current investigations.<sup>187</sup>
- 3.20** NSW Police further advised that they have made sustained findings for 8 LGBTIQ related complaints/incidents over the last five years. An additional five complaints were received in 2020 and are still under investigation. In relation to the 8 sustained findings, NSW Police stated 'zero related to an allegation of fail to investigate', and that 'there were no instances of repeated behavior once the sustained finding was made and appropriate management action was taken'. This action included apologies to victims, formal counselling and trainings. Other subject officers resigned prior to the complaints being finalised.<sup>188</sup>
- 3.21** When asked about what happens when police officers do not meet the standards that are expected of them, Assistant Commissioner Talbot advised that a number of management actions take place. She informed:
- ... [I]f any officer comes before us in the sense that they have not met the standards that are expected of a NSW Police Force officer—if it is in LGBTIQI, any customer service or failure to investigate—there are a number of management actions and reviewable and non-reviewable action that can be taken against an officer. Some of that is education and training. It can be a performance enhancement plan. It can be a conduct management plan, and they are monitored and have specific strategies to address behaviour. What they do is enable an officer to reflect on their behaviour and change, and if they do not then there is other management action that can occur.<sup>189</sup>
- 3.22** With respect to determining the effectiveness of these plans and ensuring there is no repeat behaviour Assistant Commissioner Talbot stated: 'I guess the measure for me for success is that someone does not come back before me'.<sup>190</sup>

### **Hate crime recording**

- 3.23** Inquiry participants also discussed the capture and recording of hate crime by the NSW Police Force in its computerised operational policing system (COPS), calling for greater clarity and guidance for police officers as to what a hate crime is so as to assist effective recording.

<sup>186</sup> Evidence, Assistant Commissioner Gelina Talbot, Professional Standards Command, NSW Police Force, 13 November 2020, p 18.

<sup>187</sup> Evidence, Assistant Commissioner Gelina Talbot, Professional Standards Command, NSW Police Force, 13 November 2020, p 19.

<sup>188</sup> Answers to questions on notice, NSW Police Force, 23 December 2020, p 5.

<sup>189</sup> Evidence, Assistant Commissioner Gelina Talbot, Professional Standards Command, NSW Police Force, 13 November 2020, pp 18-19.

<sup>190</sup> Evidence, Assistant Commissioner Gelina Talbot, Professional Standards Command, NSW Police Force, 13 November 2020, p 19.

- 3.24** According to the Australian Hate Crime Network (AHCN), 'effective reporting and recording systems are critical if we are to get a better sense of hate crime, its prevalence and impacts'.<sup>191</sup> However, the AHCN argued that current systems in place do not assist in police officers to accurately identify hate crimes.
- 3.25** Professor Nicole Asquith, Secretary, AHCN, told the committee that the COPS database has always included a question about hate crime, however, it was hidden in subfields and not easily accessible. She advised that this question has now become mandatory so officers entering a matter into COPS must now answer the question 'Is this a hate crime?'. However, Professor Asquith raised the concern that 'unless you know what a hate crime is you are not going to tick that box'.<sup>192</sup>
- 3.26** Professor Asquith spoke of the approach of other jurisdictions such as the United Kingdom which sees matters for which that box is ticked get referred to expert investigators. She also drew attention to one jurisdiction in the United States which, rather than asking 'Is this a hate crime?', goes through an audit of questions such as 'Have you considered...?', 'Did this include...?' or 'Was the speech of this type...?'.<sup>193</sup>
- 3.27** As such, the AHCN recommended that the COPS database be reformed to enable compulsory or prompted reporting fields for nominating an incident as a hate crime so as to bring clarity about whether it was motivated by hate or prejudice.<sup>194</sup>
- 3.28** ACON shared a similar view regarding the current recording of hate crime and stated that 'the systems to identify and record bias motivated crime are cumbersome and not always understood by operational officers'. ACON urged for greater clarity on the definition of hate crimes, and the police systems implemented which track information on bias motivated crime.<sup>195</sup>

### **The hate crimes portfolio**

- 3.29** The issue of where the hate crimes portfolio sits within the NSW Police Force as an organisation was also raised during the inquiry.
- 3.30** Assistant Commissioner Talbot, NSW Police Force, informed the committee that the hate crimes portfolio is currently overseen by the Engagement and Hate Crimes Unit which is located within the Counter Terrorism and Special Tactics Command. She stated that the unit has 12 officers with three additional resources to come, noting that previously the Bias Crime Unit had only four officers. The unit is led by an experienced Chief Inspector and includes a Senior Intelligence Analyst.<sup>196</sup>

<sup>191</sup> Submission 13, Australian Hate Crime Network, p 36.

<sup>192</sup> Evidence, Professor Nicole Asquith, Secretary, Australian Hate Crime Network, 13 November 2020, p 39.

<sup>193</sup> Evidence, Professor Nicole Asquith, Secretary, Australian Hate Crime Network, 13 November 2020, p 39.

<sup>194</sup> Submission 13, Australian Hate Crime Network, p 37.

<sup>195</sup> Submission 12, ACON, p 11.

<sup>196</sup> Evidence, Assistant Commissioner Gelina Talbot, Professional Standards Command, NSW Police Force, 13 November 2020, p 20.

- 3.31** Assistant Commissioner Talbot advised that the unit 'conducts monitoring and analysis of hate-motivated incidents that occur in New South Wales and it provides support and advises the NSW Police Force on hate-motivated crime'.<sup>197</sup>
- 3.32** While the AHCN acknowledged that the NSW Police Force is an important role model to other jurisdictions, noting that it is the only one in Australia with a dedicated hate crime unit,<sup>198</sup> they argued that its attachment to the Counter Terrorism and Special Tactics Command is 'not the best organisational fit'.<sup>199</sup> As such, the AHCN recommended that the Engagement and Hate Crimes Unit be a standalone unit within the NSW Police.<sup>200</sup>
- 3.33** Mr Mahmud Hawila, Chair of the Law Reform Working Group, Australian Hate Crimes Network, recognised the advantages of the hate crimes unit being within the counter terrorism command, noting timely access to security agencies and the strength of counter terrorism investigators among them. However, Mr Hawila argued that the vast majority of hate crimes are volume crimes – crimes of the lower offence category such as assaults, property damage and stalking and intimidating. He asserted that 'these are all things which, on counter terrorism's radar, are very low on the calendar of criminal offences'.<sup>201</sup>
- 3.34** Indeed, in its submission, the AHCN stated that '...the organisational and cultural focus of hate crimes is on incidents perpetrated by extremists, which is simply not the reality of most anti-LGBTIQ+ bias crimes, nor the vulnerabilities faced by other minority groups'.<sup>202</sup>
- 3.35** Mr Hawila contended that if the hate crimes unit were to be a standalone unit, the benefit would be that all offences of varying degrees would be given the same consideration as a hate crime. He explained:

The benefit that would be had if it were in a standalone unit is that these lower-range offences, the medium-range and high-range offences would all be dealt with, with the same attention to whether it is a hate-motivated offence. There would be experts specifically and solely in hate crime and they would not be distracted by any counterterrorism operations, particularly if the investigators within the CT unit are shared investigators within the hate crime unit.<sup>203</sup>

<sup>197</sup> Evidence, Assistant Commissioner Gelina Talbot, Professional Standards Command, NSW Police Force, 13 November 2020, p 20.

<sup>198</sup> Evidence, Professor Nicole Asquith, Secretary, Australian Hate Crime Network, 13 November 2020, p 32.

<sup>199</sup> Submission 14, Australian Hate Crime Network, p 27.

<sup>200</sup> Submission 14, Australian Hate Crime Network, p 27.

<sup>201</sup> Evidence, Mr Mahmud Hawila, Chair of the Law Reform Working Group, Australian Hate Crimes Network, 13 November 2020, p 39.

<sup>202</sup> Submission, Australian Hate Crime Network, p 27.

<sup>203</sup> Evidence, Mr Mahmud Hawila, Chair of the Law Reform Working Group, Australian Hate Crime Network, 13 November 2020, pp 39-40.

**Committee comment**

- 3.36** The committee acknowledges the discussion around the role and response of the NSW Police Force moving forward, in light of the unique and challenging history of their relationship with the LGBTIQ community.
- 3.37** The committee understands the emphasis placed by inquiry participants on police training to ensure that LGBTIQ people can approach any officer with the confidence that they will be treated with respect and professionalism. The committee is encouraged by the efforts of the NSW Police to ensure that all officers across the organisation not only participate in the mandatory Awareness and Inclusion training, but are exposed to concepts through material embedded in other training programs.
- 3.38** The committee notes that various proposals are being considered with respect to training. The committee strongly supports the proposal for a recompletion requirement of the Awareness and Inclusion training module, so as to ensure officers remain cognisant of the issues and challenges faced by LGBTIQ people. In addition, the committee notes the evidence that a new promotions process has recently been introduced. The committee strongly urges that the process includes progressively more advanced training as officers are promoted up the ranks.
- 3.39** The committee also recognises the evidence regarding hate crime recording, in particular, concerns that current data capturing systems do not adequately track hate crimes. The committee notes that this can be attributed to a lack of clarity around what a hate crime is defined to be and how this is reflected in data capturing systems.
- 3.40** The committee therefore recommends that the NSW Police Force ensure that its COPS database adequately captures and records LGBTIQ hate crimes.

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**Recommendation 5**

That the NSW Police Force ensure that its computerised operational policing system (COPS) adequately captures and records lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) hate crimes.

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**Current trends in LGBTIQ violence, harassment and underreporting**

- 3.41** While considering historical gay and transgender hate crimes, a number of inquiry participants drew the committee's attention to current trends in LGBTIQ violence, harassment and underreporting.
- 3.42** According to Assistant Commissioner Talbot, NSW Police Force, over the past 12 months 79 incidents of hate crime reported for LGBTIQ community members had been logged in their records. She informed that this accounts for 16 per cent of all recorded hate crime involvements, events and information reports received by police. Assistant Commissioner Talbot advised that, compared with previous years, this did not appear to indicate an increase:

I would say it is about the same, if I am being honest. For the period 2018 to 2020 there were 211 reported incidents so that is accounting for about 13 per cent of all recorded hate crimes. So we are not seeing what is suggested is that increase in spike.<sup>204</sup>

- 3.43** However, the committee received evidence regarding a recent study by La Trobe University into the health and wellbeing of LGBTIQ people in Australia. The study, 'Private Lives 3', is the third iteration of the 'Private Lives' surveys, with the first conducted in 2005 and the second in 2011. Over 6,800 participants completed the survey.<sup>205</sup>
- 3.44** Mr Parkhill, ACON, advised that the study found that participants reported high levels of violence and harassment, with more than one-third reporting verbal abuse, one-quarter reporting harassment and one in ten reporting sexual assault in the past 12 months due to their sexual orientation or gender identity.<sup>206</sup>
- 3.45** Moreover, Mr Brent Mackie, Associate Director, Policy, Strategy and Research, ACON, commented that these results demonstrate a 'quite disturbing' increase in violence and harassment since the survey was undertaken in 2011, informing for example that the rate of participants reporting verbal abuse increased from 25.5 per cent of participants in 2011 to 34.6 per cent today. Similarly, the rate of physical violence or attack has jumped from 1.8 per cent to 3.9 per cent which Mr Mackie noted was a 'considerable increase'.<sup>207</sup>
- 3.46** When asked whether he thought the results indicate an increase in reporting or whether there is a genuine increase in levels of violence and harassment, Mr Parkhill believed that it is 'probably a bit of both'. He argued that people are likely to be more comfortable reporting, however, he acknowledged the different 'environmental backdrop' today, noting that the marriage equality debate resulted in elevated expressions of violence towards the LGBTIQ community.

Those public debates impact on the way our communities can be positioned. I think for people who perhaps have a predilection towards homophobia and transphobia those sorts of environments and debates give them the leverage to act it out, unfortunately.<sup>208</sup>

- 3.47** Mr Parkhill spoke of poorer health outcomes, in addition to the social impacts, as a result of experiences of discrimination and violence. He advised that in the Private Lives study, 57.2 per cent of participants were experiencing high or very high levels of psychological distress and 41.9 per cent reported thoughts of suicide over the past 12 months. He asserted that 'many researchers posit that the ongoing impact of discrimination, violence and systemic homophobia and transphobia may contribute to these health outcomes'.<sup>209</sup>

<sup>204</sup> Evidence, Assistant Commissioner Gelina Talbot, Professional Standards Command, NSW Police Force, 13 November 2020, p 15.

<sup>205</sup> Answers to questions on notice, ACON, 8 December 2020, p 1.

<sup>206</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 13 November 2020, p 2.

<sup>207</sup> Evidence, Mr Brent Mackie, Associate Director, Policy, Strategy and Research, ACON, 13 November 2020, p 10.

<sup>208</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 13 November 2020, p 10.

<sup>209</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 13 November 2020, p 2.

- 3.48** Indeed, the Mental Health Commission of NSW presented similar evidence, advising that, '[a]s reported widely in literature, people of diverse sexualities and genders experience mental health issues ... at a significantly higher rate than the general population'. The Commission added: 'With over 40 percent of the gender and sexually diverse community experiencing a mental health issue in any given 12 months, this is more than double that experienced by the general population.'<sup>210</sup>
- 3.49** The Mental Health Commission reported that gender and sexually diverse population experiences mental health issues 'at a disproportionate rate to the general population'. According to the Commission, such populations are also widely documented as experiencing stigma and discrimination at significantly higher rates than their heterosexual counterparts. The Commission advised that, consequently, 'the experience of stigma and discrimination can be a barrier to accessing and receiving care'.<sup>211</sup>
- 3.50** The Commission told the committee that 'stigma and experiences of discrimination not only impact access to services but also result in under-reporting of incidents to police'. The Commission informed that members of minority groups, such as the gender and sexually diverse community are found to be 'more reticent about reporting crime due to negative perceptions of police interaction and fear of further victimisation'.<sup>212</sup>
- 3.51** This view was also expressed by the Mr Parkhill who asserted that 'there is still a real hesitance and resistance to people coming forward to share their stories because of the vulnerabilities that they experience'.<sup>213</sup>
- 3.52** The Australian Hate Crime Network (AHCN) shared this position, drawing the committee's attention to the 'stark' differences between the police recorded data and self-reported experiences of violence experienced by the LGBTIQ population, maintaining that 'officially recorded crime does not match the community's lived experiences of victimisation'.<sup>214</sup>
- 3.53** Moreover, the AHCN argued that part of the challenge with identifying hate crime is 'recognising the multiple vulnerabilities' of the LGBTIQ community, noting that it is a population not only vulnerable to attacks by strangers but also experiences hate crimes perpetrated by those close to them – partners, family and friends. As such, they asserted that a significant challenge in policing such hate crimes is that 'they may well be masked as family and domestic violence within police recording practices'.<sup>215</sup>
- 3.54** Some inquiry participants spoke of ways to address underreporting, with Mr Parkhill highlighting the partnerships and community development needed moving forward. For example, he suggested that specific community engagement activities and social media campaigns could be enhanced to build up trust within the community. However, Mr Parkhill noted the limitations currently imposed by resourcing and funding. He explained:

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<sup>210</sup> Submission 11, Mental Health Commission of NSW, p 4.

<sup>211</sup> Submission 11, Mental Health Commission of NSW, p 4.

<sup>212</sup> Submission 11, Mental Health Commission of NSW, p 4.

<sup>213</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 13 November 2020, p 3.

<sup>214</sup> Submission 13, Australian Hate Crime Network, p 9.

<sup>215</sup> Submission 13, Australian Hate Crime Network, p 10.



In the past but not so much recently there has been great collaboration between the NSW Police, ACON and other community groups doing community development and social marketing work that encourages our community to report to police. This sees us working together, putting on community forums to talk about particular issues and those sorts of things. That work has not been occurring as much and that is largely because of a resource issue.

... I think that is a real gap and collaboration could be enhanced with specific community engagement activities, social media campaigns that talk to our communities, that look to build up trust with them—with the police—so greater reporting can occur so our communities start to see a different face to NSW Police than perhaps what they have seen before. There is good work being done but often it is not seen at a community level. We might see it at an organisational level but certainly not at a community level.<sup>216</sup>

- 3.55** The AHCN also made recommendations to address underreporting, including an investment in third party reporting systems 'to enable hate victims to report hate crimes to a supportive organisation', which can then in turn share this information with the police. AHCN contended that third party reporting systems 'provide a vehicle through which victims can report safely and to a person/organisation that has their interests at heart'.<sup>217</sup>
- 3.56** ACON shared this position, recommending that third party reporting systems that encourage LGBTIQ people to report violent crimes be introduced, and where consent is given, have those reports provided to the police.<sup>218</sup>
- 3.57** One inquiry participant, Witness A, expressed support for such a mechanism, suggesting that the reporting requirement could even be mandatory. Witness A stated: 'If [someone] did not feel quite comfortable about going to the police, surely there should be other structures that he felt comfortable about going to, which would actually have mandatory reporting'.<sup>219</sup>

#### **Committee comment**

- 3.58** The committee notes with concern the alarming trend of increased violence and harassment experienced by LGBTIQ people, and the poorer health outcomes they experience as a result. The difference between police reported incidents and self-reported experiences of violence is particularly disturbing, and suggests a continued reluctance to report. The committee acknowledges the evidence that third party organisations may be able to assist in encouraging greater reporting, and notes that this has been addressed in Recommendation 3.

### **Engagement with rural and regional communities**

- 3.59** Engagement with LGBTIQ people in rural and regional communities was also raised by inquiry participants during the course of the inquiry, with some highlighting the concern that issues faced by LGBTIQ people are often magnified in these communities.

<sup>216</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 13 November 2020, p 6.

<sup>217</sup> Submission 13, Australian Hate Crime Network, p 38.

<sup>218</sup> Submission 12, ACON, p 17.

<sup>219</sup> Evidence, Witness A, 30 November 2020, p 4.

- 3.60** For example, Mr Parkhill, ACON, asserted that in communities in rural and regional areas often do not have access to 'community' – 'an identified, visible group of LGBTIQ people coming together'. He advised that this often prompts a range of challenges around accessing support and accessing health services and interventions that will not be impacted by the disclosure of who you are. Mr Parkhill explained:
- You might not be able to come out to your parents and you might not be able to come out to your colleagues at work. So those issues around homophobia and visibility can be more acute in regional and rural areas. So if you are a victim of violence or harassment then those issues about reporting just become magnified for those communities.<sup>220</sup>
- 3.61** Mr Parkhill acknowledged, however, that over the past decade and particularly since marriage equality, the emergence of social media has changed the LGBTIQ landscape in rural and regional communities. He said, for example, that queer festivals are now taking place all over the state. Mr Parkhill asserted that LGBTIQ communities are being built, are visible and are being sustained in rural and regional New South Wales in a way not seen before, when there was once an 'exodus of gay and lesbian people moving to the cities'.<sup>221</sup>
- 3.62** Commenting more broadly on support services for LGBTIQ people in rural and regional New South Wales, Mr Parkhill argued that 'there is always more than can be done for the whole community'. He advised that some communities do not have any specific LGBTIQ services at all, noting that there is a demand for outreach programs across the state. Mr Parkhill argued that 'absolutely there needs to be greater investment in specific LGBTI positions or programs that can extend into those rural and regional areas. They are inadequate as they are at the moment'.<sup>222</sup>
- 3.63** Mr Parkhill noted, however, that with COVID-19, there has been a shift to a greater use of technology, such as online forums and telehealth with counselling services, seeing an 'extraordinary in-reach from those communities into ... digital programs we are now providing'. Mr Mackie added that these innovative technologies have allowed engagement and activity with LGBTIQ communities across the state that had never previously occurred, citing the 'considerable success' of community forums with large numbers of people from rural settings.
- 3.64** With respect to policing issues in rural and regional communities, the Gay and Lesbian Rights Lobby argued that Gay and Lesbian Liaison Officers (GLLO) should be made available as a resource to communities across the state 'to ensure that LGBTIQ people in rural and regional communities especially are served by specialty liaison officers'.<sup>223</sup>
- 3.65** Mr Parkhill also added that police training should address issues faced by rural and regional communities and how these might be different for metropolitan LGBTIQ communities, with a focus on targeting rural and regional police in that training.<sup>224</sup>

<sup>220</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 13 November 2020, p 7.

<sup>221</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 13 November 2020, p 7.

<sup>222</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 13 November 2020, p 7.

<sup>223</sup> Submission 14, Gay and Lesbian Rights Lobby, p 9.

<sup>224</sup> Evidence, Mr Nicolas Parkhill, Chief Executive Officer, ACON, 13 November 2020, p 8.

- 3.66** Assistant Commissioner Talbot acknowledged that in rural and regional New South Wales there is a 'less anonymous LGBTIQ community' and stated that those communities are 'not so open and transparent in the sense of needing police or other services'. However, insofar as the police officers in those areas being different to those in urban areas when engaging and understanding LGBTIQ people, Assistant Commissioner Talbot did not believe this was the case. Moreover, she informed that in terms of training and engagement, there are a number of structures in place to support regional police officers. For example, she advised that there are regional sponsors who provide regional and rural leadership, as well the GLLO program which includes courses focusing on specific challenges facing regional and rural LGBTIQ communities, including First Nations LGBTIQI people, and events encouraging informal interaction and engagement between GLLOs and the local LGBTIQ communities.<sup>225</sup>
- 3.67** Assistant Commissioner Talbot also spoke of how that there have been more opportunities for online and interactive training since COVID, which has increased levels of awareness and knowledge across the entire organisation. She said this has been particularly important for officers in regional and rural areas, as the impact on a command to draw police out of their local community and bring them to one location for training is significant.<sup>226</sup>

#### **Committee comment**

- 3.68** The committee acknowledges the evidence regarding LGBTIQ people in rural and regional communities, and maintaining engagement and providing support to them. While the committee notes the concerns raised by inquiry participants, the committee recognises the opportunities for connection that have presented themselves through technology. The committee is also encouraged by the emphasis placed by the NSW Police Force on ensuring that police officers are able to meet the needs of LGBTIQ people in rural and regional New South Wales through training and support from rural leadership and individual operational commands.

#### **Law reform**

- 3.69** During the inquiry, the committee received evidence asserting that significant law reform is needed if LGBTIQ hate crimes, and hate crimes more broadly, are to be effectively addressed within the criminal justice system. As Mr Mahmud Hawila, Chair of Law Reform Working Group, Australian Hate Crime Network, argued, 'For [the police] to enforce the law, they need the right laws to enforce ... If the Government was to provide police with the laws that they need to detect and respond to hate crime appropriately, it would enable the whole criminal justice system to develop a hate crime response'.<sup>227</sup>

<sup>225</sup> Evidence, Assistant Commissioner Gelina Talbot, Professional Standards Command, NSW Police Force, 13 November 2020, p 17.

<sup>226</sup> Evidence, Assistant Commissioner Gelina Talbot, Professional Standards Command, NSW Police Force, 13 November 2020, p 17.

<sup>227</sup> Evidence, Mr Mahmud Hawila, Chair of Law Reform Working Group, Australian Hate Crime Network, 30 November 2020, p 32.

- 3.70** According to Mr Hawila, hate crime legislation in New South Wales is 'next to non-existent'. He explained that there are only two references to hate crime in New South Wales criminal law.<sup>228</sup> As such, in their submission, the Australian Hate Crime Network stated: '[W]e do not believe the hate crime problem can be addressed solely by police policy reforms. Broader legislative and institutional reforms are needed'.<sup>229</sup>
- 3.71** Drawing the committee's attention to a range of legislative models, criminal offences and penalty provisions, the AHCN highlighted the complexities in considering hate crime legislation, and thus called for a comprehensive review process to investigate the gaps in legislation and law enforcement that prevent an effective response to hate crimes.<sup>230</sup>
- 3.72** The Gay and Lesbian Rights Lobby also argued that exemptions within anti-discrimination legislation promoting the 'tacit approval of discrimination' should be removed.<sup>231</sup>

#### **Committee comment**

- 3.73** The committee notes the evidence received suggesting law reform in the area of hate crime. While the committee agrees that strong laws are needed to ensure that hate crime is detected and responded to appropriately, the inquiry received limited evidence in this regard.

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<sup>228</sup> Evidence, Mr Mahmud Hawila, Chair of Law Reform Working Group, Australian Hate Crime Network, 30 November 2020, p 32.

<sup>229</sup> Submission 13, Australian Hate Crime Network, p 11.

<sup>230</sup> Submission 13, Australian Hate Crime Network, pp 11-15.

<sup>231</sup> Submission 14, Gay and Lesbian Rights Lobby, p 8.

## Appendix 1 Submissions

<b>No.</b>	<b>Author</b>
1	Ms Sallie Colechin
2	Mrs Mohinder W Singh Batra
3	Name suppressed
4	Daniel Glick
5	Mr Connor Montgomery
6	Name suppressed
7	Mr Geoffrey Porter
8	Mr Chris Kitchener
8a	Mr Chris Kitchener
9	Professor Noah Riseman
10	Name suppressed
11	Mental Health Commission of NSW
12	ACON
13	Australian Hate Crime Network
14	NSW Gay and Lesbian Rights Lobby
15	Pride History Group
16	Confidential
17	Name suppressed
17a	Name suppressed
17b	Confidential
18	Confidential
19	Confidential
20	Name suppressed
21	Name suppressed
22	Name suppressed
23	Name suppressed
24	Mr Craig Hollands
25	Ms Megan Slinning
26	Ms Sue Thompson
27	Name suppressed
28	Mr Ian Modjo

## LEGISLATIVE COUNCIL

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Gay and Transgender hate crimes between 1970 and 2010

<b>No.</b>	<b>Author</b>
29	Pancho Mulongeni
30	Name suppressed
31	Stewart South
32	NSW Beat Project
33	Support After Murder Inc.
34	Robyn Conlan and Robert Knight
35	Confidential
36	Confidential
36a	Confidential
37	Dr Bernard Vincent Burns
38	Name suppressed
39	Mr Alastair Lawrie
40	ACON, Dowson Turco Lawyers and community partners

## Appendix 2 Witnesses at hearings

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
<b>Friday 13 November 2020</b> <b>Macquarie Room</b> <b>Parliament House, Sydney</b>	Mr Nicolas Parkhill	Chief Executive Officer, ACON
	Mr Brent Mackie	Associate Director, Policy, Strategy and Research, ACON
	Assistant Commissioner Gelina Talbot	Professional Standards Command, NSW Police Force
	Mr Duncan McNab	Author, journalist and former NSW Police Force Detective
	Professor Nicole Asquith	Secretary, Australian Hate Crimes Network
	Mr Mahmud Hawila	Chair, Law Reform Working Group, Australian Hate Crimes Network
	Dr Jane Bolitho	Chair, Restorative Justice Working Group, Australian Hate Crimes Network
<b>Monday 30 November 2020</b> <b>Jubilee Room</b> <b>Parliament House, Sydney</b>	Ms Sue Thompson	Former Gay/Lesbian Client Consultant, NSW Police Force
	Mr John Ure	Former Superintendent, NSW Police Force
	Mr Rick Feneley	Journalist
	Witness A	

## Appendix 3 Minutes

### Minutes no. 12

Wednesday 24 October 2019

Standing Committee on Social Issues

Members' Lounge, Parliament House, Sydney at 8.01 pm

#### 1. Members present

Mr Mallard, *Chair*

Mr Mookhey, *Deputy Chair*

Ms Boyd

Mr Franklin

Ms Jackson

Mr Martin

Revd Mr Nile

#### 2. Apologies

#### 3. Correspondence

The committee noted the following items of correspondence:

##### *Received*

- 2 September 2019 – Letter from Mr Nicholas Parkhill, Chief Executive Officer, ACON and Mr Nicholas Stewart, Acting Managing Partner, Dowson Turco Lawyers to the Chair requesting information as to when the committee's inquiry into Gay and Transgender hate crimes between 1970 and 2010 will be re-established.

#### 4. Inquiry into Gay and Transgender hate crimes between 1970 and 2010 – 57<sup>th</sup> Parliament

##### 4.1 Terms of reference

The committee noted the following terms of reference referred by the House on 15 October 2019:

1. That with reference to the May 2018 report of ACON *In Pursuit of Truth and Justice* and the progress made by NSW Police through Strike Force Parrabell, the Standing Committee on Social Issues inquire into and report on the response to Gay and Transgender hate crimes between 1970 and 2010 and current developments in policy and practice in relation to such crimes, and in particular:
  - (a) the violent crimes committed in New South Wales between 1970 and 2010 where the victim of that crime was a member of the LGBTIQ community and where the relevant crime was the subject of a report to the NSW Police Force, including:
    - (i) whether there existed impediments within the criminal justice system that impacted the protection of LGBTIQ people in New South Wales and the delivery of justice to victims of LGBTIQ hate crimes and their families, with reference to case studies of particular matters including but not limited to Alan Rosendale, Scott Johnson, John Russell and Ross Warren,
    - (ii) to the extent that past impediments are identified, how effectively these have been addressed by current policy and practice,
  - (b) in relation to LGBTIQ hate crimes more generally:
    - (i) what role the so-called 'gay panic' defence played in the culture of LGBTIQ hate crimes between 1970 and 2010, and
    - (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.
2. That the minutes of proceedings, evidence, all papers, documents, reports and records received by the Standing Committee on Social Issues during its inquiry into Gay and Transgender hate crimes between 1970 and 2010 in the previous parliament, be referred to the Standing Committee on Social Issues.

#### **4.2 Proposed timeline**

Resolved, on the motion of Mrs Boyd: That the committee adopt the following timeline for the administration of the inquiry:

- Submissions close: 31 January 2019
- Hearings in Far North Coast, Central West, Wollongong and South Coast, and Sydney: March/April/May 2020
- Report: August 2020.

#### **4.3 Stakeholder list**

Resolved, on the motion of Mrs Ward: That:

- (a) the secretariat email members with a list of stakeholders to be invited to make written submissions, and that members have two days from the email being circulated to nominate additional stakeholders, and
- (b) the Chair write to all submitters to the interim inquiry alerting them to the second more detailed inquiry and inviting them to make a supplementary submission if desired, noting the interim report, findings, recommendations and the government response (enclosing links).

#### **4.4 Advertising**

The committee noted that all inquiries are advertised via Twitter, Facebook, stakeholder letters and a media release distributed to all media outlets in New South Wales.

Resolved, on the motion of Mr Franklin: That the committee authorise the placement of advertisements in regional press in the lead up to regional hearings.

### **5. Other business**

#### **6. Adjournment**

The committee adjourned at 8.14 pm, until Monday 4 November 2019, 9.00 am, Macquarie Room, Parliament House (Modern Slavery Act inquiry).

Jenelle Moore  
**Committee Clerk**

**Minutes no. 22**

Friday 13 November 2020

Standing Committee on Social Issues

Macquarie Room, Sydney, at 10.02 am

**1. Members present**Mr Mallard, *Chair*

Ms Boyd

Mr Franklin

Ms Jackson

Mr Martin (until 1 pm)

Revd Mr Nile

Mr Pearson (from 10.14 am until 2.51 pm)

Mrs Ward

**2. Draft minutes**

Resolved, on the motion of Mr Franklin: That draft minutes no. 12 and no. 21 be confirmed.

**3. Correspondence**

The committee noted the following items of correspondence:

***Received:***

- 26 February 2020 – Email from Mr Paul Simes to secretariat, attaching his submission to the previous inquiry into Gay and Transgender hate crimes (56<sup>th</sup> Parliament) and offering to provide further information if required
- 28 February 2020 – Email from Mr Luke McKee to secretariat, referring to committee members and attaching material
- 28 February 2020 – Email from Mr Luke McKee to secretariat, attaching further material
- 28 February 2020 – Email from Mr Luke McKee to secretariat, clarifying the publication of his previous correspondence
- 28 February 2020 – Email from Mr Luke McKee to secretariat, further clarifying the publication of his previous correspondence and referring to the previous inquiry
- 29 February 2020 – Email from Mr Luke McKee to secretariat, referring to committee members
- 2 March 2020 – Email from Mr Luke McKee to secretariat, providing further clarification and information
- 17 March 2020 – Email from Mr Doug McIntyre to secretariat, providing further information to the inquiry
- 5 April 2020 – Email from Mr Matthew Campbell to secretariat, informing the committee that he is available to appear as a witness
- 26 April 2020 – Email from Mr Luke McKee to secretariat, attaching further material
- 27 April 2020 – Email from Mr Luke McKee to secretariat, attaching further material from correspondence to Portfolio Committee No. 5
- 15 October 2020 – Letter from Dr Peter Watts AM to Chair, regarding references to his title in the report '*State Records Act 1998 and the Policy Paper on its review*'
- 27 October 2020 – Email from Ms Renee Armstrong, Administrative Manager, Officer of the Commissioner, NSW Police Force, to secretariat, advising that Assistant Commissioner Anthony Crandell is on leave and unable to appear at the hearing on 13 November 2020, and that Assistant Commissioner Gelina Talbot will be the NSW Police Force witness
- 6 November 2020 – Mr Alastair Lawrie to secretariat, declining the invitation to appear at the hearing on 30 November 2020.

Mrs Ward declared she knows the Chair and Mr Christopher Puplick, former Australian Senator, both referred to in Mr McKee's correspondence.

Resolved, on the motion of Mr Martin: That the committee keep confidential:

- all correspondence and attachments from Mr Luke McKee, dated 28 February (four emails), 29 February, 2 March, 26 April and 27 April 2020.
- correspondence from Mr Doug McIntyre, dated 17 March 2020.

#### 4. Inquiry into Gay and Transgender hate crimes between 1970 and 2010 – 57<sup>th</sup> Parliament

##### 4.1 Participating member

Resolved, on the motion of Ms Boyd: That the Hon Mark Pearson MLC, who intends to participate for the duration of the inquiry in Gay and Transgender hate crimes between 1970 and 2010:

- be provided with copies of all inquiry related documents, including meeting papers, unpublished submissions and the Chair's draft report
- has site visit/regional hearing costs associated with his participation in the inquiry covered by the committee.

##### 4.2 Revised inquiry activity and timeline

Resolved, on the motion of Revd Nile: That the following revised timeline be adopted:

- Submissions closing date: 30 April 2020
- Rescheduled hearings: 13 and 30 November 2020
- Reporting date: End of February/March 2021.

##### 4.3 Use of offensive language in evidence

Resolved, on the motion of Ms Boyd: That, for the duration of the inquiry into Gay and Transgender hate crimes between 1970 and 2010 – 57<sup>th</sup> Parliament:

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

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

Owing to the nature of the hate crimes being considered by this inquiry, some of the evidence received in submissions and during hearings may include strong or offensive language."

##### 4.4 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1-2, 4, 5, 7, 8, 8a, 9, 11-15, 24-26, 31, 32 and 39.

##### 4.5 Partially confidential submissions

###### *Name suppressed submissions*

Resolved, on the motion of Revd Nile: That the committee authorise the publication of submission nos. 3, 6, 10, 21-22 and 30, with the exception of the author's name, which is to remain confidential, as per the request of the author.

###### *Partially confidential submissions – at the author's request*

Resolved, on the motion of Ms Jackson: That the committee authorise the publication of submission nos. 17, 17a, 20, 23 and 38, with the exception of the author's name and/or other identifying or sensitive information or potential adverse mention, which is to remain confidential, as per the request of the author.

###### *Partially confidential submissions – as identified by the secretariat*

Resolved, on the motion of Ms Jackson: That the committee authorise the publication of submission nos. 27-29, 33-34 and 37 with the exception of other identifying information or the names of third party individuals, which is to remain confidential, as per the recommendation of the secretariat.

#### **4.6 Confidential submissions**

Resolved, on the motion of Ms Jackson: That the committee keep submission nos. 17b, 18 and 19 confidential, as per the request of the author.

Resolved, on the motion of Mrs Ward: That the committee keep submission no. 16 confidential, as per the recommendation of the secretariat.

#### **4.7 Public hearing**

The committee proceeded to take evidence in public.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings, seeking support and the use of offensive language in evidence, adverse mention and other matters.

The following witnesses were sworn and examined:

- Mr Nicolas Parkhill, Chief Executive Officer, ACON
- Mr Brent Mackie, Associate Director, Policy, Strategy and Research, ACON.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Assistant Commissioner Gelina Talbot, Professional Standards Command, NSW Police Force.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Duncan McNab, Author, journalist and former NSW Police Force Detective.

The evidence concluded and the witnesses withdrew.

Mr Martin left the meeting.

The following witnesses were sworn and examined:

- Professor Nicole Asquith, Secretary, Australian Hate Crime Network
- Mr Mahmud Hawila, Chair, Law Reform Working Group, Australian Hate Crime Network
- Dr Jane Bolitho, Chair, Restorative Justice Working Group, Australian Hate Crime Network.

The evidence concluded and the witnesses withdrew.

Mr Pearson left the meeting.

The public hearing concluded at 2.53 pm.

### **5. Other business**

Resolved, on the motion of Mrs Ward: That

- a site visit be conducted to Marks Park, Bondi; that NSW Police be requested to guide the committee on the site visit; and that the media be alerted to the site visit
- contact be made with Waverly Council to ascertain the location, design and cost of the memorial to be built at Marks Park in honour of gay hate crime victims, and to extend the invitation for an officer from Council to attend the site visit.

### **6. Next meeting**

The committee adjourned at 2.56 pm until Monday, 30 November 2020 (Gay hate crimes inquiry – public hearing).

Rhia Victorino

**Clerk to the Committee**

**Minutes no. 23**

Monday 30 November 2020

Standing Committee on Social Issues

Macquarie Street, Sydney, at 10.30 am

**1. Members present**

Mr Mallard, *Chair*

Mr Mookhey, *Deputy Chair*

Ms Boyd

Mr Franklin (from 1.45 pm)

Ms Jackson

Mr Martin

Revd Mr Nile

Mr Pearson

Mrs Ward

**2. Inquiry into Gay and Transgender hate crimes between 1970 and 2010 – 57<sup>th</sup> Parliament****2.1 Site visit**

The committee visited Marks Park, Bondi, from 11.00 am until 12.30 pm.

The committee examined the location of various gay hate crimes, including murder. The committee received a briefing from:

- Mr Duncan McNab, former NSW Police Detective.

The committee inspected the site of the proposed Bondi Memorial in honour of gay hate crime victims.

The committee received a briefing from:

- Ms Elizabeth Reidy, Curator, Waverley Council
- Mr Rob Sabato, Project Manager, Waverley Council.

After the site visit, the committee reconvened in the Jubilee Room, Parliament House at 1.45 pm.

**3. Draft minutes**

Resolved, on the motion of Mrs Ward: That draft minutes no. 22 be confirmed.

**4. Correspondence**

The committee noted the following items of correspondence:

***Sent:***

- 20 November 2020 – Letter from Chair to Commissioner Michael Fuller, NSW Police Force, requesting assistance in the conduct of a site visit to Marks Park, Bondi on 30 November 2020
- 26 November 2020 – Letter from Chair to Commissioner Michael Fuller, NSW Police Force, regarding the NSW Police response to the committee's request for assistance in the conduct of the site visit.

**5. Inquiry into Gay and Transgender hate crimes between 1970 and 2010 – 57<sup>th</sup> Parliament****5.1 Confidential submissions**

Resolved, on the motion of Mrs Ward: That the committee keep submission no. 35 confidential, as per the recommendation of the secretariat, as it contains identifying and/or sensitive information.

**Submission 36 and 36a**

Resolved, on the motion of Ms Boyd: That the committee keep submission nos. 36 and 36a confidential, as per the recommendation of the secretariat, as they contain sensitive information.

**5.2 Request to appear *in camera***

Resolved, on the motion of Revd Nile: That the evidence of the author of submission no. 30 be heard in camera at the hearing on 30 November 2020.

### 5.3 Request for support persons

Resolved, on the motion of Ms Boyd: That the committee agree to the request of Ms Sue Thompson that she be accompanied by two support people when giving evidence, on the understanding that the support people cannot give evidence on Ms Thompson's behalf.

### 5.4 Public hearing

The committee proceeded to take evidence in public.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings, seeking support and the use of offensive language in evidence, adverse mention and other matters.

The following witnesses were sworn and examined:

- Mr John Ure, former Assistant Commissioner, NSW Police
- Ms Sue Thompson, former Gay/Lesbian Client Consultant, NSW Police

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Rick Feneley, Journalist

The evidence concluded and the witness withdrew.

The public hearing concluded at 3.47 pm.

The public and media withdrew.

### 5.5 *In camera* hearing

The committee previously resolved to take *in camera* evidence from the author of submission no. 30.

The committee proceeded to take evidence *in camera*.

Persons present other than the committee: Mr Stewart Smith, Ms Rhia Victorino, Ms Tina Mrozowska and Hansard reporters.

The following witness was sworn and examined:

- Witness A.

The evidence concluded and the witness withdrew.

The *in camera* hearing concluded at 4.22 pm.

Resolved, on the motion of Ms Boyd: That:

- the committee accept and publish the following documents tendered during the site visit and public hearing:
  - 'The Bondi Memorial', tendered by Ms Elizabeth Reidy, Waverley Council, with the exception of page 6, which is to remain confidential, as per the request of the author
  - 'Haphazard Justice – Scott Johnson Murder Arrest 12/5/2020', tendered by Ms Sue Thompson
- the committee accept and publish the following document tendered during the public hearing, subject to the secretariat checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration:
  - 'Timeline for Key Events in the Hate Crimes Journey 1978-2020', tendered by Ms Sue Thompson.

## 6. Next meeting

The committee adjourned at 4.26 pm until Friday, 19 March 2020 (Gay and Transgender hate crimes inquiry – report deliberative).

Rhia Victorino  
**Clerk to the Committee**

**Draft minutes no. 24**

Friday, 19 March 2021

Standing Committee on Social Issues

Macquarie Street, Sydney, at 10.05 am

**1. Members present**Mr Mallard, *Chair*Mr Mookhey, *Deputy Chair*

Ms Boyd

Mr Franklin

Ms Jackson

Mr Martin

Revd Mr Nile

Mr Pearson (from 10.07 am)

Mrs Ward

**2. Draft minutes**

Resolved, on the motion of Ms Boyd: That draft minutes no. 23 be confirmed.

**3. Inquiry into Gay and Transgender hate crimes between 1970 and 2010 – 57<sup>th</sup> Parliament****3.1 Answers to questions on notice**

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

- Answers to questions on notice from ACON, received 8 December 2020
- Additional information from ACON, received 8 and 10 December 2020
- Answers to questions on notice from NSW Police Force, received 23 December 2020.

**3.2 Publication of tabled document**

The committee noted that the document tendered by Ms Sue Thompson at the hearing on 30 November 2020 entitled 'Timeline for Key Events in the Hate Crimes Journey 1978-2020' has been published on the committee's website.

**3.3 Publication of *in camera* transcript**

Resolved, on the motion of Mr Mookhey: That the committee authorise the publication of the *in camera* transcript from the hearing on 30 November 2020, with the exception of identifying information which is to remain confidential, as per the request of the author.

**3.4 Consideration of Chair's draft report**

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

Mrs Ward moved: That Recommendation 1 be amended by omitting 'establish a judicial inquiry to reinvestigate all unsolved cases of suspected gay and transgender hate crime, including those resulting in death', and inserting instead 'consider establishing a judicial inquiry or other form of expert review to inquire into unsolved cases of suspected gay and transgender hate crime deaths'.

Mr Mookhey moved: That the motion of Mrs Ward be amended by omitting 'consider establishing' and inserting instead 'establish'.

Amendment of Mr Mookhey put and passed.

Original question of Mrs Ward, as amended, put and passed.

Resolved, on the motion of Revd Nile: That:

The draft report, as amended, be the report of the committee and that the committee present the report to the House;

The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;

Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;

Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;

The report be tabled on Wednesday, 24 March 2020.

The Chair to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

The Chair advised the secretariat and members that a press conference will be held at 1.00 pm on Wednesday, 24 March 2020.

Resolved, on the motion of Mr Mookhey: That the secretariat of both the initial and current inquiry into Gay and Transgender hate crimes between 1970 and 2010 be thanked for their work.

**4. Next meeting**

The committee adjourned at 10.20 am, *sine die*.

Rhia Victorino

**Clerk to the Committee**





