

<p><b>Submission No 14</b></p>
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**INQUIRY INTO GAY AND TRANSGENDER HATE CRIMES  
BETWEEN 1970 AND 2010**

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A leading historian of many aspects of Sydney life, his books include *Sydney's Transport: Studies in Urban History*; *Being Different: nine gay men remember*; *The Sydney Mechanics' School of Arts: A History* [shortlisted for the NSW Premier's History Awards]; and *Gay Sydney: A History* [shortlisted for the Queensland Literary Awards].

With Clive Faro, he wrote *Street Seen: A History of Oxford Street*, and with the Historian of the City of Sydney, Dr Shirley Fitzgerald, he co-edited *Minorities: cultural diversity in Sydney*.

His academic work has been published in Australia, Britain, France, Germany, and the USA, and he was awarded Australia's *Centenary of Federation* medal in 2001, for his work as an academic, researcher, and human rights activist.

# **A SUBMISSION**

**to**

**The Standing Committee on Social Issues of the  
Legislative Council of the Parliament of NSW**

**on**

**The response to Gay and Transgender hate crimes  
between 1970 and 2010**

**Garry Wotherspoon**

## A DARK STAIN ON A SOCIETY'S PAST

All societies have dark stains in their pasts. Some of these occurred when the values that are currently believed in, and acted upon, were not then prevalent or upheld across the wider society. New South Wales is no exception, and there have been several times when a minority, often misunderstood - and usually therefore despised - would bear the brunt of society's opprobrium, or, even worse, experience hate and violence. This has happened in the past;<sup>1</sup> all it needs is the right set of circumstances.

But making it far worse for people with a dissident sexuality was its illegality here, ever since the foundation of the colony of NSW. What existed was in effect state-sanctioned homophobia, as has been implicitly acknowledged by the very fact of the recent apologies by State Parliament, by the police, and by the *Sydney Morning Herald*. While this might sound a harsh judgement, it is the reality borne out by the evidence, and it largely explains the causes of, and responses to, gay and transgender hate crimes in NSW, that peaked between 1970 and c2000.

The origins of this homophobia go back many centuries. The laws of NSW originated directly from English law, and from 1788 existing English law became the new colony's law. As one expert on Australia's constitutional law has more poetically put it, as soon as *'the original settlers had reached the colony, their invisible and inescapable cargo of English law fell from their shoulders and attached itself to the soil on which they stood'*.<sup>2</sup>

The law, then, provided the legal framework within which male homosexuals lived out their 'illegal' lives here in NSW. Despite the separation of church and state here from 1856, these legal constraints on homosexual acts were originally taken from ecclesiastical law, and it reflected the Roman Catholic Church's attitude to 'morality' issues. Despite Henry VIII of England having broken with the authority of the Church in 1538, much of the existing law continued on. And for the Church, 'unnatural carnal sins' included sodomy, and so those who might commit sodomy were committing a mortal sin.

By today's standards, much of what the Church regarded as 'mortal sin' hardly

deserved criminal status: sex before marriage, 'marrying out', divorce, or masturbation, for example, are surely matters of private behaviour.

And the consequences of this situation, of homosexuality being both illegal and a mortal sin - and the homophobia it permitted - came home to roost, with a vengeance, in the latter decades of the 20<sup>th</sup> century in our state, and especially in Sydney.

It is now known that from the 1970s and through the 1990s, hundreds of members of Sydney's LGBTIQ communities experienced extremely violent assaults. Some of the attacks ended in hospitalization, and there were also 'disappearances' and deaths for gay men or men who were perceived to be gay, and for trans\* women. For some, the difference between assault and murder was often slender – good or bad luck. Many of these assaults occurred in and around Oxford Street or in the nearby suburbs, although some even happened in the person's home. As well, many of these assaults on men were at suburban beats, places where men go to have consensual, non-commercial, casual sex with other men.

Given prevailing social attitudes to dissident sexualities at the time – and even after male homosexual acts were decriminalized in early 1984 - many of these crimes were inadequately dealt with by police, often being classified, after what were desultory investigations, as suicides, misadventure or accidents.<sup>3</sup>

How could it be that such horrendous crimes could occur, without apparent justice being done? The answer lies in the social attitudes that prevailed at the time, attitudes reinforced by what several major social institutions – the law, the churches, and the media – saw as 'unacceptable' behaviour.

Homosexuality was long seen as a 'criminal issue' by the authorities in Australia; it was classed as a crime in all Australian states until well into the latter half of the 20<sup>th</sup> century.<sup>4</sup> The churches traditionally classed homosexual acts as a mortal sin, and the medical profession, after initially classing it as a mental illness, allowed such barbarities as aversion therapy and psychosurgery to take place, even after Sigmund Freud, back in 1935, had argued that

**homosexuality is nothing to be ashamed of, no vice, no degradation; it cannot be classified as an illness: we consider it to be a variation of the sexual function...**<sup>5</sup>

Yet it was only in 1973 that the influential American Psychiatric Association declassified homosexuality as being a mental illness.

And the police, as those who were there to implement the law - and reflecting prevailing social attitudes - had little toleration for those they saw as perverts, degenerates, effeminates, and paedophiles. Apart from enforcing the law against the 'crime' of 'homosexuality, over the decades of the 20<sup>th</sup> century they had even acted as *agents provocateurs* to entrap homo-erotically inclined men in suspect situations. Even a sociologist working in England at the time, preparing reports on a range of 'social problem areas' for the British Home Office, could note *simply in passing* that the decoy system, utilising '*good-looking young C.I.D. officers is still used in Sydney, Australia*'.<sup>6</sup> Recent academic research has uncovered more details of this.<sup>7</sup>

And such behaviour would seem to have been given unofficial blessing, when the Roman Catholic Superintendent of Police in Sydney and later Police Commissioner, Colin Delaney, declared in the late 1950s that homosexuality was 'the greatest social menace facing Australia'.<sup>8</sup>

But times were changing, and gradually a push developed to remove the law that criminalized love and sex between consenting male adults, and this intensified after a similar law was passed in Britain in 1967. Increasing support for law change also now came from a wide range of experts – academics, criminologists, civil libertarians, lawyers, even growing numbers of the medical profession – all of whom argued that homosexuality no longer deserved a criminal status, and that law reform was overdue.

But the lawmakers themselves were reluctant to act, and it was only early in 1984, after prolonged pressure on politicians, that a private members Bill, introduced by the Labor Premier Neville Wran and seconded by the Leader of the Opposition, the Liberal Party's Nick Greiner, was passed on a conscience vote.

Decriminalization should have been the marker for a new period of tolerance for those with same-sex attraction, leading to gradual acceptance. However, overlapping with the final push for law reform, a new tragedy occurred, one which would turn the clock

back as far as acceptance was concerned – the appearance of HIV/AIDS here in the early 1980s.

While we now know that HIV is an infection contractible by anyone, irrespective of age, gender, ethnicity or sexuality, because it was first diagnosed here in the gay community, it was labelled GRID [Gay Related Immune Deficiency]. Here we hear disturbing echoes of the scapegoating of a minority, as had similarly occurred occasionally in Sydney's past.

It was a disaster for the gay community, and homophobia became even more rife, and was given 'legitimation' by a sensationalising media. And homophobia found its expression in more than just words; there were constant reports in both the gay press and the mainstream media about increasing discrimination against homosexuals. In fact, acts of hate grew worse; there was an increase in violence against gay men, trans\* women and lesbians. Homophobia had taken on a physical form.<sup>9</sup>

Such was the situation facing the LGBTQI communities in Sydney at the time that this manifesto appeared in one of the city's gay papers:

**'Our blood runs in the streets and in the parks and in casualty and in the morgue....**

**Our own blood, the blood of our brothers and sisters, has been spilt too often....**

**Our blood runs because in this country our political, educational, legal and religious systems actively encourage violence against us...**

**We are gay men and lesbians.**

From the **'One in Seven'** Manifesto, *Sydney Star Observer*, 5 April 1991

Would any other community, in what was nominally a multi-cultural and anti-discriminatory society, have had to endure this?

The prevalence of these hate crimes can be seen as arising out of several factors: long-held beliefs about dissident sexuality being both a crime and a sin; attitudes in several important institutions of society that were able to wield considerable influence and affect public attitudes to same-sex attraction; a largely indifferent wider public who were, in general, unaware of the magnitude of what was occurring, or why this was so; and the actions of some parts of society who saw it as permissible to act out their hate and frustrations against a minority long regarded as 'criminals'.

It has been suggested that most, but not all, of these hate crimes were carried out by young men and boys from socially disadvantaged backgrounds.<sup>10</sup> But why would some young males in our society be more prone to express their resentments in such acts of extreme violence?

Some possible reasons have been put forward. The movement of openly gay men into areas such as Surry Hills, Redfern, Waterloo and Alexandria – suburbs with cultures less than empathetic to these newcomers – might have played a role, although other perpetrators came from respectable middle-class suburbs. Some, but not all, were from cultures that were more vehemently opposed to homosexuality. And some of the perpetrators had serious psychological problems;<sup>11</sup> in this latter case, it could include those who did not wish to acknowledge their own same-sex attraction, and responded by violence against those who were open about it.<sup>12</sup> But underlying it all were those attitudes that had prevailed in society for so long.

And the scale of what was occurring was unprecedented. While it is impossible to know the exact number of murders that might have occurred in this period from the late 1970s through the 1990s, reputable sources – including the *Sydney Morning Herald*, a newspaper of record - suggest that over eighty men died or disappeared in NSW during an epidemic of gay hate crimes

And here we also come to one of the more deplorable – although explicable, but never condonable – aspects of these hate crimes: the role of many in the police force.

The police and homosexuals in NSW have never had an easy relationship. Decades of criminality for homosexual men had not endeared them to police - or vice versa. The battles of the first Mardi Gras in 1978, through to the more recent incident at the 2013 Mardi Gras,<sup>13</sup> are all examples of what generated, over time, a ‘lack of trust’ between the gay community and the state’s police.

Perhaps indicative of what furthered such concerns was a growing perception of apparent police indifference to the violence against gay men, lesbians and trans\* women, that was increasingly becoming evident.<sup>14</sup>

And it was probably true that the response of police to such concerns was somewhat of a lottery; it might well very much depend on the individual officer, and while Surry



Hills station was probably eventually the most supportive, others, like those suburban ones in whose areas the beats were, seemed not to care that much at all.

As to why the police should be seen as homophobic, one answer is that they simply reflected community attitudes – but that was then, and the rest of the world had moved on. So a further legitimate question to ask is “was it homophobia that existed in the police responses to anti-gay violence, to those deaths on the beats, or was it a general pattern of official disinterest, or just incompetence?” One view on this came in 2005, when Deputy State Coroner Jacqueline Milledge condemned police for their “lacklustre” and “shameful” investigations into missing television newsreader Ross Warren and barman John Russell, who both died on the Bondi-Tamarama cliffs in 1989.<sup>15</sup> Police had originally dismissed their deaths as accidental falls, but Milledge – armed with Operation Taradale, a three-year investigation into possible gay-hate crimes led by then homicide detective Steve Page – found they were murdered amid a spate of attacks on homosexual men.

While the LGBTQI+ communities had legitimate concerns about how the law was being upheld as it related to them, some parts of the police force did respond to the escalating epidemic of violence that was occurring; a Police-Gay Liaison Group was set up in 1985, and a Police Gay Liaison Officer was appointed in 1988. In the early 1990s, in the face of the still escalating violence and the resulting public outcry, the police set up a special taskforce to address violence occurring in the Oxford and Flinders Street areas. But this seemed to have little effect on the levels of violence, and this in turn generated more distrust on the part of both the LGBTQI+ communities, but also in those parts of a wider society for whom ‘justice for all’ was a legitimate aim.

And HIV/AIDS should not be seen as the ‘permitting’ factor for these hate crimes; these crimes had been going on long before 1983; it was prevailing social attitudes that gave ‘legitimacy’ – however false that was - to those perpetrators. HIV/AIDS merely added another ‘excuse’ for this behaviour.

Even the changes to the law in 1984, which decriminalized male homosexuality, gave little benefit; all those people who had been brought up before then would still have the prevailing mentalité towards homosexuality. It would take a generation or so for

the new views to become commonplace, as was shown by the support for same sex marriage equality by 2017 – a lapse of over thirty years.

So part of the reason why these crimes occurred was because of a wider society's attitudes to same-sex attraction at the time; then later, part might well have been due to the impact of HIV/Aids and the stigmatizing and scapegoating of the LGBTIQ+ communities. Part, however, was certainly due to the seemingly indifferent response from the police, however they may have justified it.

Many of these hate crimes remain unsolved to this day, although several recent inquests have led to some cases being reopened. As for why there was a perceived need for these cases to be reopened and reinvestigated, it was because, as one Coroner so clearly put it,<sup>16</sup> such cases had not been handled with appropriate 'due diligence' by the police.

## **In conclusion**

We are all the products of our upbringings, but we should never be its prisoners. All societies deserve the chance to recognise and rectify the mistakes of their past. The NSW Parliament made an apology back in 2017 for state-sanctioned persecution of those with same-sex attraction; even the *Sydney Morning Herald*, whose reportage of the first Mardi Gras, in 1978, named those arrested and gave their addresses, an action that led to sackings and persecutions, has followed suit; so has the NSW Police Commissioner, more recently.

There is now a chance to address all this, and to enable the facts to be made available to the wider public. It is hoped that this Inquiry, by a Committee of the oldest Legislative body in Australia, will allow the truth about a past that, by today's standards, would be regarded as both abhorrent and unworthy of any civilized society, to be made known, and recorded. If this occurs, then new ways to move forward can be discussed, and embraced.

And, in that way, justice can be seen to have been done, for all involved.

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<sup>1</sup> Even though it spread across all ethnicities globally, the flu pandemic that swept the world in 1890-91 was labelled 'the Asiatic flu' here in Sydney, and anti-Chinese feeling grew to dangerous proportions, resulting in much violence. See P Curzon, *Times of Crisis: Epidemics in Sydney 1788-1900*, Sydney University Press, Sydney, 1986, pp104-5, 107, 113.

<sup>2</sup> R.T.E. Latham, 'The Law and the Commonwealth', Survey of British Commonwealth Affairs, 1(1937). See V. Windeyer, 'A Birthright and Inheritance: The Establishment of the Rule of Law in Australia', *Tasmanian University Law Review*, Vol. 1, pt. 5 (1962), pp635-69.

<sup>3</sup> See for example, the *Report* by Deputy State Coroner Jacqueline Milledge In 2005, into the deaths of Ross Warren and John Russell; she described the police investigation into the former as 'grossly inadequate and shameful', and the investigation into the latter as 'inadequate and naïve'.

<sup>4</sup> Material on gay life in Sydney and its development over time is from G Wotherspoon, *Gay Sydney: A History*, NewSouth Publishing, Sydney, 2016.

<sup>5</sup> S. Freud, 'Letters to an American Mother', *Collected Papers*, Hogarth Press, 1956-7. See also R.V. Storer, *Sex in Modern Life*, James Little & Son, Sydney, 1933; and the article 'Sex and Immortality', *The Australian Worker*, 27 January 1926, p13.

<sup>6</sup> R. Hauser, *The Homosexual Society*, The Bodley Head, London, 1962, p48.

<sup>7</sup> A detailed study of this aspect appears in L Watson, 'The Anti-Gay Laws, Irrationality and Public Policy Making', *Seminar on Victimless Crime*, N.S.W. Department of Attorney General and Justice, Sydney, 1977.

<sup>8</sup> See G Wotherspoon, "'The Greatest Menace Facing Australia": homosexuality and the State in NSW during the Cold War', *Labour History*, No 56 (May 1989), pp15-28.

<sup>9</sup> This was similar to what was occurring in the USA, where AIDS often seemed to be a contributing factor.

<sup>10</sup> Martyn Goddard, 'bashing back', *OutRage*, January 1991, p18

<sup>11</sup> For a detailed study of this, see Stephen Tomsen, *Hatred, Murder and Male Honour: Anti-homosexual Homicides in New South Wales, 1980-2000*, Australian Institute of Criminology, Canberra, 2002.

<sup>12</sup> *In Pursuit of Truth and Justice: Documenting gay and transgender prejudice killings in NSW in the late 20<sup>th</sup> century*. ACON, Sydney, 2018.

<sup>13</sup> A handcuffed 18-year-old was thrown to the ground by a policeman, and held there.

<sup>14</sup> Martyn Goddard, 'bashing back?' *OutRage*, January 1991, p17

<sup>15</sup> See <https://www.sbs.com.au/news/the-feed/article/2016/08/31/police-admit-blunders-in-gay-hate-murder-hunt>.

<sup>16</sup> See Deputy State Coroner Milledge's *Report*, referred to previously.