

Joint statement by Professor de Lint, and Associate Professor Derek Dalton as requested by the Commissioner of the inquiry into NSW Hate Crimes

1. Educational and professional qualifications and experience

Answer from Professor de Lint:

Over the course of twenty-five years of academic work, I have produced 150 scholarly outputs, consisting of books (9), book chapters (18), refereed journal articles (43), conference and workshop presentations (60), and other publications (20). By invitation, I have made scholarly contributions to new areas of research theory and to research applications at international specialist workshops in policing (Brisbane, Melbourne, Ottawa, Brussels, Hong Kong), security (Ottawa, Windsor, Toronto), military studies (Gatineau, Quebec) and cultural studies (Melbourne, Sydney).

Publications in prestigious scholarly initiatives include the Oxford Handbook Online series, the Oxford Handbook of Police and Policing, the Routledge Handbook of Criminology and Human Rights, Praeger's PSI Handbook of Global Security and Intelligence and Elsevier's Sociology of Crime, Law and Deviance. I have co-authored books for Palgrave (2018) and the University of Toronto Press and also have a sole authored book for Springer (2021) and Edwin Elgar (in progress). I have published two edited books with Routledge. In the meantime, I have published in a wide range of top journals including the British Journal of Criminology, Theoretical Criminology, Policing and Society, Social and Legal Studies, the Journal of Law and Society and Globalizations. I am active on several journal editorial boards and have been cited by top academics in criminology, sociology and international relations, particularly in policing and security and intelligence studies.

I reached the highest rank (Level E, Professor) 13 years after obtaining my first tenure-track position upon completion of my Phd. I have been visiting professor at the University of Tampere, Finland, University of Windsor and at Carleton University, Ottawa, Canada. I have been asked to be part of two Centre of Excellence proposals here in Australia. One of which was a \$20 million policing research bid that made it to the final round. I have been asked to provide advice or consultancies for police services. I have a record of success at Category 1 research awards, having obtained 4 of them.

My research is concerned with social justice. Currently, I am engaged in research that crosses disciplinary boundaries, including criminology, cultural studies, military studies, political sociology and the sub-disciplines policing, public order and surveillance studies, and security and intelligence studies (inclusive of critical military and strategic studies and terrorism).

Answer from Associate Professor Derek Dalton:

I have three degrees from The University of Melbourne: a *Doctor of Philosophy in Criminology* (2002); a *Master of Criminology* (1997); and a *Bachelor of Education* (1992).

My doctoral research – funded by an Australian Postgraduate award – is entitled '*Homocriminality: the legal and cultural imagination of gay male subjectivity*'. It inaugurated a lifelong professional interest in the complex and nuanced ways that homosexuality has been

imagined and constructed as deviant and perverse through an array of interconnected social, legal, religious and cultural discourses. Additionally, the research examined how despite being released from the purview of the criminal law (through decriminalisation), the past status of deviance is never fully relinquished by the gay male subject. Notable cases studies in the doctorate included:

- the policing of ‘beats’ (public toilets) through entrapment operations by plain clothed police
- the ways that the popular press derided gay men in the 1930s - 1970s in newspapers like *The Truth* [which shored up hatred and hostility to gay men and underwrote continual legal animosity]
- the ways that the discipline of Criminology aided the law in Australia in pathologising gay male desire as a form of sexual pollution that required stamping out
- an exploration of the sophisticated ways that gay men resisted legal scrutiny to survive in the pre-decriminalisation era when homosexual acts were illegal

It should be stressed that in the ensuing 20 odd years since this research was conducted, much cultural and social change has seen gay male subjectivity attain more respect and tolerance in society. This has led to a concomitant improvement in terms of perceptions and treatment by the law.

Over the course of twenty years, I have published a range of quality peer-reviewed articles and book chapters that have explored the ways that gay men have been policed and dealt with by the law and the discipline of Criminology in Australia. This expertise saw me approached by a leading scholar in the UK, Professor Paul Jonson, to work with him on a monograph devoted to the regulation of sexuality. *Policing Sex* was published by Routledge in 2012.

I wish to stress that the hallmark of my investigations into gay men and the law has been an abiding interest in better understanding the social and cultural ways that gay men have been variously repudiated, castigated and punished by the law. My research is unique in that it was Australian focused, whilst being mindful of the wider international context of cultural hostility towards gay men the world over. Whilst my research has been grounded in the discipline of criminology, it is also interdisciplinary in nature; informed by cultural studies, sociology, geography, queer theory, semiotics, and socio-legal studies.

I have other significant research interests including dark tourism which culminated in the publication of the Routledge monograph *Dark Tourism and Crime* (2014). My interest in the criminal legacies of the Holocaust saw me publish *Encountering Nazi Tourism sites* in 2019. I am contracted by Routledge to publish a book devoted to Holocaust films in the future.

I attained the status of Associate Professor approximately 10 year ago and am a triple award winning teacher {including a \$10,000 Commonwealth government *Australian Learning and Teaching Council Citation*}. I was visiting Professor at the University of Cork in 2016 and served as the *Director of Studies* at Flinders University for a tenure of seven years.

2. The procedures by which Flinders University personnel came to be selected and engaged to carry out the academic analysis of the work of Strike Force Parrabell, including the financial and other terms of that engagement

Note: Question Two is answered solely by Associate Professor Dalton as Professor de Lint was not involved in negotiating the tender.

Answer:

We were required by the university to destroy our university confidential documents upon leaving Flinders University in December 2021. I therefore can't provide precise dates. Nevertheless, I have a clear recollection of the circumstances of the manner in which the tender took place.

At the time that the police aspect of Strike Force Parrabell was being concluded, I recall a police officer from NSW police named Jacqueline Braw approached me by telephone and then subsequently by email and further phone calls. She explained that my reputation as a suitable academic preceded me {or words to that effect} and that I had been identified as a person who should be made aware of the Strike Force Parrabell tender process. She briefly explained the work that the detectives had performed and that the task of the chosen party would be:

- a) to **review the NSW police findings** about the determinations of these crimes as hate/bias crimes
- b) to employ expertise to **robustly challenge said findings in any way that our team deemed fit**. It was conveyed to me that this was not a 'rubber stamping' process, but one where full and frank scrutiny was encouraged. I was given to understand that regardless of the police findings, if we found significant differences, we were free to state these differences without fear or favour.

I was impressed with her professionalism and the fact that – on the face of it – this was a genuine process to discover facts, and so I decided to put in a tender document. Jacqueline explained that the budget was approximately \$50,000.

I marshalled a team of three based on their expertise:

- Professor de Lint {based on his expertise in homicide cases and trend analysis}
- Associate Professor Danielle Tyson from Monash University {who had experience in analysing homicide cases and data}

In preparing the tender I wish to stress that our team possessed the advantage of objectivity. I presented this as a reason to select our team. There had been a lot of well documented acrimony between the NSW police and those people promulgating the list of '88' homicides. I perceived that there was mistrust and disrespect on both sides, as is usually the case with these sorts of contentious issues where the facts of harm, injury and death are contested. Fittingly, I emphasised in the tender document that as an Adelaide-based team, we possessed an objectivity that would be vitally important to approaching the review. One could argue that people are never *wholly* objective. I certainly had been critical of Australian police forces in the past, but I saw this review as being profoundly important. We approached this review with the heavy weight of death looming over the entire process. I have never taken a task more seriously in my entire life.

We were awarded the tender. I recall Assistant Commissioner Crandell praising the professionalism evident in the formal tender document I submitted when I first met him. As

to the reasons why we were chosen, I cannot attest to those deliberations as I was obviously not involved.

3. The terms of reference for the academic team, as referred to on page 58 of the Parrabell Report;

In 2015, *Strike Force Parrabell* was established to review deaths between 1976 and 2000 to determine if a sexuality or gender bias was a contributing factor in the list of deaths that have been cited. The mandate:

1. Conduct a review of the NSWPF holdings in relation to potential gay hate crimes resulting in death;
2. Determine if any anti-gay bias was involved in any of the deaths.

The brief of the academic team was to review the NSWPF findings concerning the determination of these crimes as involving or not involving hate/bias. It was to provide independent advice on SFP's review of these investigations. It was also, where data supports it, to comment on the efficacy and quality of SFP's review and to comment on the extent of agreement with the SFP outcomes and determinations. Additionally, the academic team was to provide recommendations for future policing, community engagement, training and development of bias crime indicators and processes. The academic review commenced in October 2016 and concluded its investigations in September 2017.

With respect to the question of whether the investigation of the cases flagged for Parrabell could support a finding that the NSWPF did not investigate suspected or confirmed bias crime with the same diligence as they investigated non-gay-bias homicides, we observed that we could not:

‘... it is important that the reader is aware at the outset that the terms of reference for the academic investigators are narrow and preclude our being able to comment on that most important question. Addressing that larger question would require a comparison of the investigatory procedures or efficacy of all homicides in the period against those motivated by anti-gay bias. This would be underpinned by a rigorous, empirical methodology that would begin with a selection of the cases where there is the strongest evidence that the crime was an anti-gay bias crime against a strong control group that possessed like factors excepting that one.’

4. The methodology, protocols and arrangements pursuant to which:

The key steps of the methodology, as set out in on pages 55-57 of the Strike Force Parrabell report, were as follows:

- Associate Professor Derek Dalton led a three-person project team consisting of himself, Professor Willem de Lint and Dr. Danielle Tyson.
- Dr. Dalton oversaw liaison between the NSWPF and the academic team, conducted negotiations regarding the terms of the review, and undertook an initial two-day exploratory trip to Sydney to meet with the SFP team.

- Dr. Dalton and Professor de Lint attended a subsequent trip to Sydney for further discussions and drafted the report.
- All three academic investigators reviewed the cases (the case summaries) and independently tried to score them, as they fulfilled the criteria of bias crime according to the Bias Crime Indicators Review Form (BCIRF). This instrument is comprised of ten bias indicators as follows:
 1. Differences
 2. Comments, Written Statements, Gestures
 3. Drawings, Markings, Symbols, tattoos, Graffiti
 4. Organised hate Groups (OHG)
 5. Previous Existence of Bias Crime Incidents
 6. Victim/witness Perception
 7. Motive of Offender/s
 8. Location of Incident
 9. Lack of Motive
 10. Level of violence

We inquired as to how this tool was being used by the Parrabell investigators and were informed that the factors were used as ‘prompts’ and were used to find ‘indications’ and that there was no necessary correlation between the weighting of any of the factors and a determination of bias. In attempting to use the tool ourselves, we found it too ambiguous. For example, as per the Report,

‘there is often much surmising in relation to the concept of ‘gangs,’ without getting behind the key factors that makes the term ‘gang’ relevant, those key terms being communication and association on a relation of bias. Here and on other factors of the BCIRF, it is the underlying connection with bias that is important. In sum, we were uncertain of the relation between a quantitative scoring of the 10 indicators and the summary conclusions, particularly, we felt that the scoring should be driven from the key elements of bias definition.’

Consequently, we researched the tool to the extent that time permitted and then proceeded to develop a short list of necessary, research-informed factors directly from a definition of bias crime that could then be drawn down to mostly binary categorisations. The key concepts: the degree or value of animus (as proactive or reactive); its target (anti-gay or other); and the communication of the bias in association with others (Y/N). We conceived a Type A Bias Crime as denoting an occurrence which possesses two features. First, offenders proactively seek out opportunities in which to brutally express their animus. Second, they communicate and associate with others to effect this animus; a Type B Bias Crime as an occurrence in which offenders proactively seek out opportunities to brutally express their animus, but do so furtively or in isolation from others, and act individually against victims; Type C Bias Crime in which an offender is reacting with criminal violence on the basis of the victim’s perceived identity in an included category, usually as an over-reaction to a perceived slight against his identity.

- Professor de Lint developed a concept matrix and definition to analyse the cases.

Type	Motivation	Indicators
A	Associative and proactive The offender has gone out of his way to place himself in a situation in which he can subordinate a person on the basis of his/her perceived identity AND	<ul style="list-style-type: none"> • Witness statements, comments • Formalised hate associations • Previous existence of hate crime incidents • Location of incident [proximity to a 'beat' may be significant]
	The offender has engaged in bias communications in the course of carrying out a harmful act or activity against a person identified by that bias, (eg. anti-gay) and/or the offender associates with others on the basis of a shared bias	
B	Proactive, non-associative A non-associative offender has gone out of his way to place himself in a situation in which he can subordinate a person on the basis of his/her perceived identity	
C	Reactive An offender has reacted to a situation in a manner that suggests that an animus towards a vulnerable group contributed to the motivation for the crime	

- Dr Tyson assisted Professor de Lint and Associate Professor Dalton analysed the cases based on her expertise in relation to homicide data and case analysis.
- We did a concordance exercise following our independent scoring of the results. We discussed the cases where we had differing results and came to a consensus agreement on each case. We note that in cases that we determined had insufficient information there is always a possibility that a bias crime is not being reported or recorded.

We developed an Excel spreadsheet so that we could each plot key dimensions of the cases including the case file names, year of death, the police finding (NBC = no bias crime, SBC = suspected bias crime, BC = bias crime, II = insufficient information). The spreadsheet also included a brief distillation of the most relevant description of case facts and our own score or coding, and justification for the designation. The last task was to denote (in columns in the spreadsheet) Y/N agreement with SFP scoring and to record the concordance result.

Dr Tyson participated in deliberations about how the cases should be scored. She also participated in the concordance protocol (consensus discussion). Concordance refers to the degree to which evaluators agree on the ordering or ranking of a set of items. As per the literature, a consensus discussion over the reasons for different results may result in fresh

insight into the operation and application of the rules which then permits scorers to maximize consensus results.

Through multiple concordance meetings we developed a better understanding of the underlying values that were key in stipulating the scoring. We did not reach consensus in 4 cases, and this necessitated further discussions to arrive at a consensus score. We found that the iterative process of communication over what prompted initial differences was enlightening and contributed to our confidence in the final scoring.

- We met again with the NSWPF in Sydney, where both parties could discuss the key available information related to the cases.

‘At the second Sydney meeting, a large police delegation discussed differences in opinion with regard to the cases under review. The police finalised their position on the cases and declared a cessation to their deliberations. At this point the academic team members were able to clarify various assumptions and move forward on the basis of these deliberations. From this point on the academic team could formally evaluate the operations and ‘findings’ of SFP.’

- The academic team also contacted Ms. Sue Thompson and wrote to ACON and received valuable documents and information that informed this review process.

Other relevant issues that the Special Commission will need to address

Issues of scope and measurement:

The terms of reference of the Special Commission of Inquiry is, in a nutshell, the review of unsolved cases relating to deaths where the victim was a member of LGBTIQ community and the death occurred in NSW between 1970 and 2010. It draws these cases from the list of 88 referenced as well in Strike Force Parrabell as well as from ‘all unsolved suspected hate crime deaths.’

To the extent that the Special Commission is piggybacking on the methods of discovery of this list of 88 it will inherit the shortcomings of the methodology used in the development of that list. That includes the inconsistent application of inclusion means or methods.

2. The attribution of motive as if the discovery of this element is not dependent on changing cultural and institutional factors (over a period of half a century).

The intention of actors (legal/illegal; criminal/non-criminal) is meaningful in fluid social and political contexts. It is problematic to treat a variable (bias crime) as if it is a fixed property when it is being considered over several decades of changeable social mores. It has proven the case that particularly in the area of sexual preferences and sexuality, social mores are fluid; stigmatisation and even criminalisation has been a loose representation of the measure of these social mores. Whilst the sexual preferences of the victim ought not to colour the forthrightness of prosecution, it may well impact on the contemporaneous understanding of motivation.

Concerning the problem of the retrospective fixing of the concept, the attribution of criminal motivation that extends beyond the temporality of the law is problematic. The scope of the legal concept (bias crime) exceeds the scope of the concept's enactment in law (including when it was enforceable by police).

3. The changing nomenclature or characteristics of the dependent variables (the victim and offender designation) over a period of half a century.

In addition to the problem of the construction of the bias crime construct across decades of experience, the designation of victim and offender is also subject to errors of interpretation. In particular, it is possible to be too objectivist and positivist when, in this area of law and policy, designations by authorities and by the principals themselves (victims and offenders) may be quite fluid across space and time. 'Membership' in an 'LGBTIQ community' would not have been meaningful as a construct in 1975 and designating that membership retrospectively is a fallacy; it applies a measure of subjective understanding of identity as well as a social category of group recognition as if these were timeless and universal constructs as opposed to dynamic properties located in a contemporaneous psycho-social milieu.

Willem de Lint

October 28, 2022



Derek Dalton

October 28, 2022

