

Anti-Gay Bias Homicide, 1976-2000: An analysis of the record of investigation by the New South Wales Police Force *Strike Force Parrabell*

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{EXECUTIVE SUMMARY TO BE INSERTED HERE}

PREFACE

Each and every death accounted for in this report – be they the result of misadventure, suicide crime or a reason that still alludes authorities – left in its wake great sadness, suffering and torment for the family, friends and work colleagues of the individual victims. Those who died were, variously: fathers; brothers; sons; husbands; friends and work mates and their deaths left many family members, friends and the wider community bereft and grief stricken.

Reviews of this nature can appear clinical and detached in the way that they literally ‘account’ for these individual cases. The production of categories, statistics, tables and graphs – and indeed repeated references to lists – can exacerbate an impression that these individual victims – in their totality – are denuded of their distinctiveness. As authors of this report, we wish to recognise that criminological writing can appear unconcerned with the unique humanity that victims possess in life. To the extent that individual cases are juxtaposed with other cases to produce categories, statistics and “findings” this process is done with a view to determine objective facts. This may go some way to making better sense of these deaths. In doing so, a future might emerge in which gay-bias related crime is better *identified, understood and mitigated*.

Many of the cases examined by Strike Force Parrabell (SFP) and the academic review team were ultimately classified as Insufficient Information. That is, despite an exhaustive exploration of the archived material, it was ultimately impossible for the detectives to make definitive determinations about many of the deaths under review, and based on available information, the academic reviewers concur. In addition, a quarter of the cases remain unsolved. For about one third of the total cases at least this report may not offer a form of closure that families of victims and those in the GLBTIQ and wider community might have hoped for in contemplating this review.

A. ANTI-GAY BIAS AS AN EMERGENT ISSUE: CONTEXT AND BACKGROUND

i. Overview of Parrabell review: some background information

In 2005 Strike Force Taradale re-investigated a number of deaths that occurred in the Bondi area during the 1985 and 1990 where it was alleged that gay men were being specifically targeted, assaulted and forced off the cliffs by ‘gangs’ of youths. Some of these cases were solved; several remained unsolved (Co-coordinating Instructions page 2). That review, Strike Force Taradale, was prompted by allegations that at the time of these crimes the NSWPF did

¹ Dr Tyson contributed to the evaluation of the cases and the revision of this Report.

not properly consider motives of bias in their investigations and therefore did not investigate these deaths adequately.

In 2002, the then NSW Police Gay and Lesbian consultant, Ms. Sue Thompson, identified 88 cases between 1976 and 2000 that potentially involved anti-gay bias. The death of Scott Johnson and 5 others in to the Strike Force Taradale investigation were included in this list of 88 cases. More recently, there has been significant media coverage of a so-called ‘gay hate crime wave’ of the 1980s and 1990s in Sydney. A TV documentary and a fictional drama focussed on the phenomenon of gay bashings and murders have fuelled public interest in the prevalence of gay-bias related homicidal violence. For example, a review of the SBS television drama ‘*Deep Waters*’ was published in 2016 under the heading: ‘A licence to bash gays’: 1980s crime wave revisited in new TV series’ (Medhora, 2016). Another article entitled ‘Gay hate: the shameful crime wave’ was published in the Sydney Morning Herald in 2013 (Sheehan 2013). Such articles have referred to cases identified by Thompson and others and have suggested that an anti-gay bias played a significant role in the deaths.

The NSWPF have not been unresponsive to this criticism. The Force recognises that the community has valid concerns, that, as they put it, the Force has not always been proactive with respect to investigating anti-gay bias crime and that therefore “the community’s concerns may be addressed through a comprehensive review of the relevant cases from a bias crime perspective” (Co-coordinating Instructions page 2). In 2015, Strike Force Parrabell (hereafter SFP) was established to review deaths of persons 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 (Co-coordinating Instructions pages 2-3).

The NSWPF then sought tenders and appointed an academic team to provide independent advice on SFP’s review of these investigations. The principal task of the academic team was to comment on the efficacy and quality of the SFP’s review and to comment on the extent of agreement with the SFP outcomes/determinations. Additionally, the academic team was to provide recommendations for future policing, community engagement, training and development of a bias crime indicators/processes. The academic review commenced in October 2016 and concluded its investigations in August 2017.²

In terms of the work conducted by the academic team, 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. Professor de Lint developed a concept matrix and definition to analyse the cases. Dr Tyson assisted Professor de Lint and Associate Professor Dalton to analyse the cases bases on her expertise in relation

² In addition to this report, it is anticipated that a co-authored research article based on the SFP analyses will be published.

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to homicide data and case analysis. Dr Tyson also participated in deliberations about how the cases should be classified where disagreement was encountered.

Both consultation and deliberation were productive. Meetings were held in Sydney, where clarifications were sought by both parties as the process unfolded. Consultation permitted the probing of classificatory decisions by SFP and deliberation enabled the academic team to explore the classification system and moot disagreements in a manner that ultimately produced a more nuanced understanding of the most complex cases [both in their own right and in the context of their totality]. The academic team worked collaboratively with the NSWPF as findings were being finalised and experienced a strong spirit of cooperation in its interactions. This might strike some observers as irregular (in terms of the logic that a review must be conducted from a perspective of pure objectivity), but the academic team believed it was prudent to engage in open and productive discussions as the work of the SFP drew to a close, rather than face the possibility of working on misapprehensions or misinterpretations of processes and methods.

Deliberation was a vitally important aspect of the process. In looking for and determining the existence of bias crime, differences in opinion emerged and had to be reconciled. Much in the same way that the SFP detectives sought to rigorously review their findings, the academic team engaged in carefully measured debates about each individual case in the interests of being thorough, consistent and precise.³ This was a vitally important because it allowed the academics to develop a more nuanced understanding of the logic that underpinned the categorization decisions of the SFP. 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 and the academic team members were able to clarify some distinct assumptions on the basis of which those categorisations were made. From this point on the academic team could formally evaluate the operations and 'findings' of SFP.⁴

This report should be understood as a product of a process that was collaborative and consultative. The academic team also contacted Ms. Sue Thompson and wrote to ACON and received valuable documents and information that informed this review process [See Appendix A].

The NSWPF readily acknowledge that they could have done better in mitigating the personal and social impact of homophobic bias in the period under review. In the meantime, this report cannot make claims about how effectively or objectively the NSWPF conducted homicide investigations where anti-gay bias may have been a motivating cause of death. It can only offer a review of the findings of the SFP that, to the extent that the summary evidence is capable of indicating, there were cases in which there was anti-gay bias, and these may not have been fully investigated *as bias crimes*. The reason that the report cannot generalise beyond these cases will be discussed below, but it is important that the reader is aware at the

³ This was important given the voluminous nature of the case file data. The two large case folders provided to each academic team member contained approximately 1700 pages. Reading the case files was an onerous process that was exacerbated by the traumatic nature of the case material.

⁴ A caveat has to be declared here. The late release of three cases from Unsolved Homicides necessitated that the NSWPF subject these 3 cases to the same process of evaluation as the completed cases. The police then provided these final three cases to the academics who then subjected them to scrutiny and adjusted their findings accordingly. To have excluded these 3 cases so close to the end of the review period did not make any sound methodological sense.

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.⁵

ii. Historical backdrop against which this review proceeds: situating anti-homosexual bias in the Australian context.

Bashings and murders of gay men occur across changing social, legal, cultural and institutional settings and relationships.⁶ Not too long ago the view that homosexuality is abnormal and uncommon was ubiquitous and commonplace, but today it is viewed as normal and common. Consequently, in sociological terms the formation of animosity towards men perceived to be homosexual is nuanced and dynamic; historically it is not only individuals, but organisations and institutions that have been hostile to men and women who have fallen outside a strict heterosexual norm. Prior to the latter part of the 20th century, consensual homosexual sex was a crime in all states and territories of Australia with many men being prosecuted and imprisoned for crimes including ‘gross indecency’ or ‘sodomy’ (Carbery 2010; Dalton 2011). Same-sex attracted men lived furtive, secret lives with the threat of exposure and criminal prosecution hanging over their heads. During the Cold War period (Wotherspoon 1989; Willett 1987) the popular tabloid newspaper *The Truth* regularly published stories that exposed gay men as sexual deviants, ruining their lives and careers (French 1986; Murdoch 1998). Such was the fear of job loss and family rejection that many men lived closeted lives prior to the era of increased tolerance that followed the *Stonewall* inspired gay rights movement heralded in during the 1970s and 1980s (Wotherspoon 1991; Willett 2000).

Institutional authorities play a significant role in guiding the cultural preferences of groups and individuals. Together with significant others, educational and religious and community organisations perform functionally to shape behaviour; police, courts and correctional facilities may offer reinforcement of moral codes in legal norms, where they are up to the task. Not only do social and cultural expectations change over time, institutional guidance is not always current or free from corruption. The police have played a major role in suppressing homosexuality prior to the decriminalisation era. Sting operations would be conducted whereby young policemen would loiter in public toilets and either wait for a man to importune a sex act with them or encourage such an act to take place by pretending to be there for that purpose (Dalton 2007). Whilst such entrapment practices were not specific to Australia (Moran 1996; Maynard 1994) the NSW police were particularly keen to target homosexual men because the [then] acting Police Commissioner Delaney prioritised policing the “scourge of homosexuality” (Wotherspoon 1993), ensuring that Vice Squad detectives devoted considerable time and resources to it. Indeed, the reminiscences of a famous Sydney detective named Sergeant Joe Chuck published in 1956 devote two chapters to his personal

⁵ An AIC study (Mouzos and Thompson 2000) that was conducted along these lines is unfortunately flawed in its dependence on the Thompson list as for the experimental group.

⁶ We are reporting on historical relations, and we are confident that anti-gay bias is no longer tolerated in most places (and the right to marry beckons as a possible momentous social change), however, the legacy anti-homosexual sentiment is still with us.

recollections of combating homosexual ‘sex pests’ in Sydney between the two world wars (Kelly 1956).

Where the police would combat homosexuality by prosecuting homosexual men, the popular tabloid media, in turn, would disseminate stories of their spectacular social downfall in salacious detail that in naming and shaming them (as individuals) functioned as a warning that the cost of the behaviour is public or social ruination. In tandem, medical discourse played a role in admonishing homosexuality. Prior to its removal from the DSM in 1973, homosexuality was understood in psychiatry in Australia as a disorder that could be treated. In Sydney and Melbourne the lower courts [termed ‘Local’ in NSW and ‘Magistrates’ in Victoria] sometimes sent a procession of convicted offenders for aversions treatment to ‘cure’ them of their homosexuality. For individual offenders, agreeing to undertake such treatment could mitigate against a potential prison sentence. Such treatments typically involved subjecting the men to electric shocks or nausea inducing drugs whilst being exposed to homoerotic stimuli (Dalton 2002).⁷ Lastly, the role of the various Churches in Australia during this period should not be overlooked. They propagated the notion that homosexuality was an abominable crime and that men who participated in homosexual sex were indulging in the gravest of sins: unnatural sex (Henderson 1996). Tomsen sums up the historical situation: ‘male homosexuals were regarded as fully deviant and heavily criminalised’ (2009: 44).

In 1975 South Australia made legal history by being the first State to decriminalise male homosexuality, followed by the ACT in 1976 and Victoria in 1980. NSW and the Northern Territory followed suit in 1984 and Western Australia in 1989 (Bull, Pinto and Wilson 1991). Decriminalisation of homosexuality or of acts of homosexual sex is connected to civil rights campaigns and the liberalisation of civil society. But while much of society was being liberalised culturally and this culminated in legislative recognition or “victory”, there was still, in the 1980s a significant segment of Australian society that harboured unsympathetic views toward homosexuality. The paradox at play here, as Tomsen (2009) notes, is that the emergence of a normative gay masculinity (with many gay men out and about in public) created a newly *visible* target for marginalised youth. It is not only in NSW that a violent pushback against a gay “coming out” has been noted. Anti-gay hate violence, investigative journalism by Whittaker (2016)⁸ contends, was also common in South Australia, where gay bashers operated with impunity in Adelaide in the 1980s and 1990s.

The cumulative and collective reputational damage to homosexuality that its outlaw status had fostered over more than two centuries has been undone in increments. The homosexual man may well have been freed from the criminal law, but the pejorative language of ‘faggot’, ‘poofter’, ‘pillow biter’ and ‘queer’ (before the GLBTIQ community could reappropriate this term) endured as terms of derision for gay men well into the 1990s. Indeed, some of these terms appear in the SFP case archives; a reminder that the legacy of anti-homosexual ideas has its origins in the historic period when the law, church, popular media and psychiatry

⁷ The advent of HIV/AIDS did much to pathologise gay men as dirty and diseased. Repudiated as a class of people addicted to causal sex and in doing so ‘spreading AIDS’, public health responses – including the infamous Grim Reaper with a bowling ball television advertisement (Lupton 1993; Donovan 1995) – contributed to a climate of fear where gay men were understood as sexual subjects synonymous with death and suffering.

⁸ The article contains first-hand testimony from victims savagely beaten by gay bashers during this era. It may be reasonable to infer that other states also have histories of abuse similar to NSW and SA. Whittaker contends that South Australian police were implicated in gay-hate violence and murder, but this needs further substantiation.

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conjoined to speak of homosexuals as – variously – deviant, sinful, perverse and mentally ill. Indeed, Tomsen (2009: 41) has asserted that ‘the views of perpetrators have been linked to wider ideologies of prejudice and bolstered by the past and recent actions of state and criminal justice agencies’.

Currently, especially in large multicultural cities like Sydney, there is a widespread acceptance of homosexuality. TV shows like “*Queer Eye for the Straight Guy*” and the visibility of gay men (e.g. the Olympic swimming champion Ian Thorpe and Rugby League player Ian Roberts) have bolstered community acceptance and tolerance of homosexuality.

This context is worth keeping in mind. This Report concerns historical attitudes in society at large that have, at times, reached into smouldering pockets of the NSW. The crimes comprise the cases reported on SFP, and pre-date the current era of greater acceptance. Indeed, anti-homophobic violence campaigns in Australia evolved long after most of the deaths subject to the SFP review.

B. DIMENSIONS OF THE ISSUE

Knowledge of the policing of anti-gay bias is dependent on reported and recorded information including police records and reports, coronial investigations and other sources of data including victim surveys, self-reports, hospital and other first responder records and court transcripts, to name the most reliable. The most widely used of these is police records. However, as previously stated, it is acknowledged that police all over the Anglo-American world have had a chequered record with respect to the attribution, investigation - and therefore the consistent and accurate record-keeping of bias crime. Tomsen highlights the problem of the *lacuna* in homicide data:

A conventional wisdom among crime researchers is that records for homicides are the most thorough among all categories of violent crime, but homicide research and the official figures rarely mention the sexuality of a perpetrator or victim and in most places the number of these killings remain unknown.

Argument that the NSWPF have been remiss in this space in the period under review may be found in several scholarly books (Cunneen, Fraser and Tomsen 1997; Mason and Tomsen 1997), an analysis by the AIC (Mouzos and Thompson 2000) and a host of popular media products. For example, the GLBTIQ community newspaper ‘Star Observer’ ran stories criticising NSWPF responses to gay bashings in the 1980s and 1990s; as did the gay male-interest magazine ‘Outrage’. *Evidence* that the NSWPF has under-enforced anti-gay bias crime has been harder to come by. The most cited is the list of cases (or more accurately *series of lists*) that can be traced to the work of individuals concerned with gay hate related homicidal violence in NSW. The specific cases that SFP reviewed derive from this list. As we will make clear, this list cannot carry the weight of an evaluation of NSWPF record regarding anti-gay bias.

i. Unpacking the List

The following section will account for the manner in which the list of cases that forms the *context* and the substantive content of the SFP review developed out of the extraordinary efforts of a few individuals.

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For the ten year period, 1989-1999, using the indicators used by the police service at the time, NSW Police Force employee Sue Thompson maintained a list of “possible gay hate murders”. Initially this list “was conceived to monitor actual deaths” (rather than gay homicide frequency) on the assumption that maintaining such records would assist in alerting authorities to devote adequate resources in their mitigation (Thompson 2017b). Thompson was aided by Detective Sgt McCann who had first-hand knowledge of what was described as a “massive and invisible problem of unreported bashings” (Thompson 2017a). Thompson stated that they were “shocked and alarmed” and “so it began” (Thompson 2017a).

As is the case with most social problems, the question of scale and extent is often dependent on the capacity of measurement, and the interplay between expectations and discoveries of extensiveness. As Thompson stated in her correspondence to the Parrabell academic review team:

I was not even initially aware that it would become about monitoring frequency until much later when we realised there was indeed a terrible pattern of frequency that needed monitoring and a police and ultimately government response (Thompson 2017a).

Thompson’s first list contained 46 identified deaths and another 4 identified by Det. Sgt. McCann (2017b). The data was secured in a registered police file and ring folder that had contained gay hate homicide materials. As the list grew in number over time, various versions of the formal Police “Possible Anti-Gay/Gay Hate Murders List” found their way to various folders at different times (2017b).

Thompson stated that a list of 88 specific cases did not come from her or her work. The number of alleged murders was, she said, “publicly stated and reported as up to 80” (2017b). She has stated that various versions of the list were created in the cross-fertilisation of police Working Parties, Conference documents, official submissions and other internal initiatives linked to understanding and combatting gay hate violence.

Over time, people including Professor Stephen Tomsen, other academics, gay rights campaigners, gay and lesbian historians and other interested parties sought to use versions of the “list” to explore the incidence and character of gay hate violence and homicide during the period of 1980 to 2000 (Tomsen 2002; Tomsen 2009). To complicate the issue, in 2013 “a group of individuals with historical knowledge on the [alleged] murders quickly gathered and recompiled a list at the request of the *Sydney Morning Herald* and a Member of Parliament” (2017a). Professor Tomsen’s list of the initials of 74 murder victims’ names (with date of murder) was used for this commission. In this version of the list, some 74 cases (from 1980 to 1999) were identified. (2017a). When the *Sydney Morning Herald* published an article devoted to this commissioned research, the newspaper used the phrase ‘up to 80’ murders (2017a). From 2013 to 2015, further reviews were conducted by the community and academic parties. This group determined that there were 71 possible gay homicides from 1970 to June 1999, with a further 10 needing additional research (2017a).

In her document explaining the work she did to bring the problem of hate crime to the attention of both the police and the public, Thompson says the efforts of those gay community representatives and interested academics and gay historians was designed to “indicate the tenor of the times and crimes” (2017a). This is an apt phrase. It reminds us that

the work of advocates who contributed to the compiling of lists had an honourable motivation. These interested parties wanted to bring a perceived social problem to light. Their principal goal was to alert the public to a measurement of extent of the problem of homicidal violence in Sydney during approximately 20 years. They sought to capture an elusive truth. Their efforts should be understood as motivated by a concern to find justice for victims of homicide.

88 is a large number. It has captured the attention of the public and focused needed attention on this issue. Whatever its true dimensions, the figure represents much sadness, frustration and alarm. Whatever the number, this re-investigation supports the view that anti-gay bias is no longer forgotten, neglected and sequestered to a remote corner of public and police concern.

ii. Taking on a life of its own: the problem of the media, mythology and folklore in relation to the 'lists' of murders

The existence and fact of a list of potential gay-hated related homicide cases has seeped into public consciousness in NSW. Its facticity has been aided and abetted by: radio, televisual and newspaper media attention (including the *gay press*). Reporting on the basis of this list has been prolific, with successive media reports depending not only on the list, but also anecdotal accounts from some of the most jolting of its cases. Altogether, this has thrust the issue of gay homicides into sharp focus. That this list has come to support the case that there was in NSW *extraordinary* anti-gay bias and *questionable* anti-bias policing is indicated by it receiving a prominent story in the NY Times. *The New York Times* published an article entitled 'When Gangs Killed Gay Men for Sport: Australia Reviews 88 Deaths' (Innis 2017). The popular media features we are aware of include: an SBS mini-series 'Deep Water' (Seet 2016); a documentary entitled 'Deep Water: the true story' (Blue 2016); a *true-crime* genre book entitled 'Getting Away with Murder: up to 80 men murdered 30 unsolved deaths' (McNab, 2017).

The emotive character of popular cultural work is conveyed, for instance, in an interactive website entitled 'The Gay Hate Decades: 30 unsolved deaths' which supplemented the SBS *Deep Water* documentary (<http://www.sbs.com.au/gayhatedecades/>). Based on journalist Rick Feneley's research, the website invites the visitor to vicariously inhabit the role of the detective to explore cases presented as "unsolved" homicides. The website opens with a panoramic view of Bondi (complete with churning surf) that zooms from a close up to a more distant perspective of this most famous bluff. Capturing some of the most infamous Mark's Park and cliff-side cases, this panorama situates the visitor at the 'scene of the crime' synonymous with some of the most infamous cases.

The totality of this material circulating in society through media is an amalgam of facts, conjecture and suspicion. This can get overlooked when packaged as stories that circulate under a common moniker that stems from what appears as an underlying empirical fact with fixed properties: the list. As already alluded to, the vehicle of a "list" (irrespective of its precise number) is marshalled as an indicator of the truth of a social problem. So to the extent that wider community of NSW citizens knows about the "problem" of murders in NSW during this two decade period, it is because the trope of the list has helped shape this understanding. Discourse about gay hate murders circulates in the wider culture and has been (and continues to be) the subject of speculation both in the GLBTIQ community and the wider community of other citizens of NSW. People talk about the murders at work, at social

functions, in pubs, clubs, cafes and restaurants. That speculation about murder occurs is not surprising. Real people died during this period; people with families and friends who grieved and continue to grieve for them. The fear of potential murder strikes at the heart of any person; and all of us ought to be concerned about whether justice falls disproportionately against those who experience or have experienced the targeted animus of an individual, group or whole society.

iii. Strike Force Parrabell: mandate and method

The NSWPF struck Strike Force Parrabell (SFP) under ‘Co-coordinating Instructions,’ a document that sets out the impetus, parameters and instructional guidelines for detectives to follow. These contain two not necessarily compatible mandates. The first, which has been amply noted here and by the NSWPF itself, is by way of acknowledgement “community’s concerns” that the Force has historically been insufficiently proactive in deterring against anti-gay bias. The second is to conduct “a comprehensive review of the relevant cases from a bias crime perspective” (Co-coordinating Instructions page 2).

The document notes that in 2002 “the then NSW Police Gay and Lesbian consultant, Ms. Sue Thompson, identified a potential 88 cases between 1976 and 1999 that potentially involved anti-gay bias” (Co-coordinating Instructions page 2). The SFP, accordingly, was tasked to conduct a review of the NSWPF holdings in relation to police investigations, conducted in this period, of gay bias crimes resulting in death. However, the mandate was explicitly not an investigation of all homicides in that period to determine which may have been anti-gay bias. It was narrower. It was restricted to a systematic review and determination of the incidence of anti-gay bias in 88 cases: those that were proffered in the list of deaths tabled over this period by Sue Thompson, Professor Stephen Tomsen (and other parties that contributed). The review sought to assess each individual case holding, the totality of police holdings for each case were re-examined to determine if bias was evident. It was struck to “review matters that have *already been investigated* by the NSWPF (Co-coordinating Instructions page 3, original emphasis). It was not the intention of the SFP to re-investigate matters that have already been investigated by the NSWPF:

The proposed bias crime review is different from a homicide investigation as its primary focus will be in determining whether any of the identified deaths were in fact motivated by anti-gay bias, rather than identifying and prosecuting offenders. If during the course of a review, viable suspects or lines of enquiry are identified, that information will be passed on to the Unsolved Homicide Team, Homicide Squad, for further investigation (Co-coordinating Instructions page 3).

Holdings consist of the standard brief items that are collected in a criminal investigation, such as:

- Witness statements
- Crime scene evidence (as recorded in notes)
- Crime Scene photographs
- Records of interviews
- Contemporaneous police notes (hand written and typed)
- Coronial documents
- Other documents determined to be relevant to the case and thus collected by the original investigating detectives.

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Many of these items were stored in standard NSW cardboard State archive boxes which were conveyed to Surry Hills so that the detectives could unpack them and begin the painstaking task of examining (in the case of photographs) and reading (in the case of written material) their contents. The time this took varied considerably depending on the number of archive boxes assigned to each case (in some cases 1 or 2 boxes, and in one case approximately 90 boxes). In the course of the review approximately 400 archive boxes were examined.

Investigators created a 'Bias Crime Indicators Review Form' (BCIRF) that was used to systematically review each relevant case file item [see Appendix B].

As the review of each case was evidence based, detectives reading a relevant holding would familiarise themselves with the TEN Bias indicators:

- 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

Indicators 1 -9 are derived from a document entitled "Responding to hate Crime – A Multidisciplinary Curriculum for Law Enforcement & Victim Assistance Professionals". This document was published by the National Centre for Hate Crime Prevention, United States Department of Justice Office for Victims of Crime (2000). It should be stressed that this is *not* a Federal Bureau of Investigation (FBI) instrument, as has been widely but erroneously reported in the media (e.g. Benny-Morrison 2016). Falsely attributing the Instrument to the FBI leaves the impression that it is sufficiently robust to be adopted by Federal US law enforcement. This misrepresentation needs to be corrected. Indicator 10 'Level of Violence' was developed by the New South Wales Police Force Bias Crime Unit based on research and cases.⁹

The detectives read and reviewed their holdings with a view to identifying any information that would allow them to tick a particular indicator:

If the offender is recorded in police files as associating with persons known to have assaulted young gay men, then the investigator may mark Bias crime Indicator 4 (Organised Hate Group) as being relevant (Co-coordinating Instructions page 3)

In such instance, this fact would be recorded on the Bias Crime Identification Form (in the form of a tick in a box) along with the source of the evidence and a description of how the

⁹ The descriptive meaning and nuances of these ten Indicators will be critiqued in a subsequent section of the report, suffice to say that it is important to briefly note here the categories that the detectives were working with.

evidence relates to the indicator. The source of evidence was termed a “product” and a rigorous cross-referencing system meant that that “product” was captured and numbered should it needed to be retrieved. For each indicator, the following four findings were available:

Evidence of Bias Crime – sufficient evidence/information exists to prove beyond a reasonable doubt that the incident was either wholly or partially motivated by bias towards one of the protected categories and constitutes a criminal offence.

Suspected Bias Crime – evidence/information exists that the incident may have been motivated by bias but the incident cannot be proven beyond a reasonable doubt that it was either wholly or partially motivated by bias and constitutes a criminal offence.

No Evidence of Bias Crime – the incident has been determined as either not being motivated by bias towards a protected group or although bias motivation is in evidence it does not relate to a protected group

Insufficient Information – insufficient information has been recorded to make a determination in regards to bias motivation. This may be due to a lack of detail recorded by police or a lack of information supplied by victim’s and/or witnesses.

iv. Scoring the cases

A team of approximately six detectives (three women and three men) worked on each case. The time this took varied greatly depending on the amount of archived material that had to be read, interpreted and coded for “products”. A reviewing detective shared findings with the head detective. The reviewing detective reviewed the case, sought clarification where needed and questioned any issues that seemed pertinent to the review. The head detective finalised the review in light of this feedback process. Approximately once a month, a team of three senior detectives convened a committee to read and review all the accumulated cases. At that meeting, the detectives read and discussed the cases and sought to reach consensus about any classification issues that were proving to be challenging.

The detectives scored each case using the indicators on the Bias Crime Indicator Review Form (BCIRF) (a qualitative instrument with four variations in each numbered category). However, their ultimate determination was not determined by counting the number of ‘yes’ or ‘no’ indicators of Bias and referencing that number to some sort of table that accorded Bias status to a particular *threshold* number [e.g. seven out of ten indicators]. Rather, the process was much more intuitive and relied on qualitative data in the form of contextual information derived from analysing each case. That is, having taken notice of the requisite Indicators of bias, the detectives would also take into account the “Summary of Findings” section (which itself was an amalgam of the “general comments” section that corresponded to all ten indicators). Thus the indicators were weighed against the context of the summary narrative. This narrative was often rich in detail and – when viewed in concert with the relative indicators – allowed a view of whether bias was involved to emerge.

When the process of review was concluded, the detectives provided the academic team with their findings on the 83 cases. Five cases were not reviewed:

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Case 19 Mattaini (under review as this written)
 Case 34 Warren (under review as this written)
 Case 69 Brennan (is under active investigation with the Unsolved Homicide Team.)
 Case 29 Johnson (because the matter is currently before Coroner for 3rd Inquest.)
 Case 53 Travers (Brian Travers was murdered by Daniel Roetz in Latrobe, Tasmania on the 01 March, 1992, therefore the jurisdiction is not relevant to NSW.)¹⁰

To avoid any confusion, it should be noted that one case involved a double homicide [Creighton and Mokdad]; these two cases were given separate case numbers (87 and 88 respectively). It should also be stressed that for case 35 (Paynter) the files could not be located¹¹, however based on a previous review by Det. Inspector John Lehmann (Homicide Unit) who deemed it “not bias related”, SFP reviewed his report and classified the case as Insufficient Information. The academic team were supplied this report and they too classified the case as Insufficient Information.

v. The academic review of the cases

We determined that the list of cases developed by Thompson and Tomsen did not have a known relationship with the actual number of gay bias homicides during the period in which the cases were collected. Possible errors related to the list includes under-recording and uneven or inconsistent application of inclusion criteria, where cases come to attention of investigators by a variety of means. The cases may well represent most of the possible gay-related deaths during this time period, but in our view it was not informed by any one means consistently and this is surmised to result in an uneven and somewhat unpredictable under- and over-recording. Even where the Australian Institute of Criminology report (Mouzos and Thompson 2000) attempted to place the list against a total of relevant homicides, the selection criteria for the list makes it impossible to draw a firm conclusion that the investigation of gay bias homicides and non-gay bias homicides is informed by police bias.

Our assessment began with a query concerning the authorities cited by the police to support the use of the BCIRF instrument. We were informed, as per the description above, that the factors are used as prompts and that there is no necessary correlation between or weighting of any of the factors and a determination of bias. Indeed, and subsequently, we found no case in which association with organised hate groups (factor 4) was present. There was no viable reference to witness or victim perception (factor 6), and there were several factors that we preferred to interpret as rightly falling under motive. We also determined that the BCIRF may have produced a lack of distinction between categories of bias, such as evidence of the character of motivation, that are germane to this investigation. This was the finding upon attempting to use the BCIRF in categorising the cases. This led to the querying of the values or factors and to the definition of bias used by police and by those who developed the original and subsequent lists.

In sum, as below, we determined that we needed to get behind the BCIRG instrument and re-interpret the summary evidence that was given. As we scanned the summaries, we became aware that we needed to distinguish the direction of the animus, because it appeared that there

¹⁰ It is not entirely how this case came to be included in the list of potential gay homicides circulating in NSW given this death occurred in Tasmania.

¹¹ These files were either never returned to the archive or were returned and have subsequently been lost.

were many cases in which there was a potential to over-categorise anti-gay bias. We determined that a proper evaluation of the cases required more than a reproduction of the methodology used by the NSWPF and its BCIRF, comprising of an “indicative” list of ten factors. In our re-assessment, we found it necessary 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.

C: THE CONCEPT OF BIAS

i. A brief overview of gay-bias/hate literature

All societies depend upon distinctions. Attributes and conduct that are recognised and rewarded are those that are deemed both moral and useful for the purposes of social, cultural and economic reproduction. Cultures or societies, including resident institutions, develop schemata by which to distinguish preferences that are deemed counter-productive to means and values. In this regard, it would be short-sighted to understand the development of cultural or social bias without a view of the wider trends along which cultural or social distinctions are made. That is to say, as Australian society has been cosmopolitanised so has disadvantaging or acting prejudicially against people or groups based on sexual preference and/or gender identity become offensive and illegal.

To some extent all gay-bias/hate literature is concerned with accounting for the behavioural or psycho-social conditions in which individual perpetrators or associated individuals develop an animus that is strong enough to express itself in anti-social (as per the above) or criminal depredations on a vulnerable group. It may be further subdivided, although much of the literature crosses these divides. There is a large body of work that is concerned with the *extent* or *incidence* of bias crime, particularly its underreporting and under recording. This work is directed at reform, and has helped to raise the profile of a social problem.

Victimisation studies conducted in the United States between the years 1977-1989 showed violence to be widespread and are a useful tool with which to discover the frequency of anti-gay bias.

The frequency of anti-gay bias is reported in victimisation studies (NCVS; Miller and Humphreys 1980), police reports (Nolan & Akiyama, 1999; Perry, 2001) court records (Tomsen 2009) and by dataset comparisons of regular homicides against anti-gay homicides (AIC-Thompson 200?). It has also, to some extent, elaborated the putative empirical basis for legislative changes, law enforcement reforms practices and public awareness campaigns (Tomsen 2000; Mouzos and Thompson 2000; xxx). Hate crime laws are reforms that are aimed at engaging in a process of re-moralization (O’Malley, 1999) that seeks to challenge the norms and moral boundaries that sustain racial, religious, sexual and other hierarchies of difference (Mason 2014: 76). Historians of social movements have noted the dependency of social change on the mobilisation of incipient mores on demand groups and moral entrepreneurs, so the social value of this group of activists and researchers is well-understood.

At the same time, as with all such work, there is a danger that the empirical foundation does not support summary statements about the extent of the phenomenon. In the United States reports of the extent of anti-gay and anti-GLBTIQ violence has been criticised for being grounded on unreliable official bias crimes data that involve discrepancies in jurisdictional definitions and differences in the workings and practice of police agencies (Nolan &

Akiyama, 1999; Perry, 2001), Boyd, Berk, & Hamner, 1996; Haider-Markel, 2002; McDevitt et al., 2000; Nolan & Akiyama, 1999). The empirical foundation is also observed to mask the difficulty of forensic discovery of offender motivation, an assessment that may defy objectivity and reliability (Boyd et al., 1996; Haider-Markel, 2002; Nolan & Akiyama, 1999). Consequently, Jacobs and Henry (1996:xx) have concluded, for example, that “the socially constructed claim that hate crime has reached epidemic proportions flies in the face of history.”

It is also possible to see a second group of scholarship that is concerned with hate crime victimology (Barnes and Ephross 1994; Iganski 2008). For this scholarship, the emotive language of hate or bias is less important than that the target is vulnerable (Perry 2001; Chakraborti and Garland 2015; Stanko 2004). For example, it is argued that potentially anyone can be a victim of hate crime, with one important caveat: that this is done within what Mason (2014) calls a “politics of justice” framework, which acknowledges that the concept of hate crime is underpinned by ideas of justice, equality, and the right to live a life free from abuse and harassment. Groups whose actions do not sit comfortably within this (and Mason cites paedophiles as one such group) should not be accorded hate crime victim group status, even if they have been targeted due to hostility against their identity (see also Chakraborti & Garland, 2012, 2015; Garland 2016: 635). As per Christie (1979), this also has issues, as there would appear to be much politicizing around which victims are accorded status and protection and which victims are not. As we shall discuss, bias crime may be complicated where non-recognised groups (paedophiles) may be targeted alongside recognised groups (gays).

Another group of researchers is concerned with problematizing or understanding the unique or distinct properties and particularly the motivators of anti-gay bias or hate crime (eg. Turpin-Petrosino 2015). This concentrates on behavioral and transactional dimensions or factors. It can also review masculinity and cultures of violence (Tomsen 2000). Regarding designating the differential properties of hate or bias crime perpetrators, research has supported that they are young males between 15 and 30, that they are more likely (in Anglo-American jurisdictions) to be Caucasian.

Perhaps the most overwhelming view is that gay-bias crimes are those which more than other crimes inflict great harm upon their victims (Iganski, 2001). The intensity of the harm, in both objective and subjective experience of extreme brutality, has been noted in these studies as being greater (Berrill 1990; Campbell 1986; Archer 1994; Dunbar, 2006; Garnets, Herek, & Levy, 1990). A study by Miller and Humphreys (1980) found that anti-gay murders are marked by “extreme brutality”, in which the victim is “more apt to be stabbed a dozen or more times, mutilated and strangled.” The crime is also more likely be carried out by multiple offenders (Martin, 1996; Tomsen, 2009; Van Der Meer, 2003; Janoff 2005).

Studies have also reported on what may be causing anti-gay violence to be more aggressive or brutal, partly because they involve weapons other than firearms (Miller & Humphreys 1980). Janoff (2005), for instance, found that 60% of sexual orientation bias homicide cases involved extraordinary or excessive violence. One of the most frequent explanations is that the perpetrator expresses an extreme overreaction to a perceived infringement against his sexual identity in a “homosexual panic” (Mullins 2006; Lewes 1995; Tomsen 2002). Tomsen (2009, p. 65) speculated that “a more hands-on approach” was needed to increase gratification for some offenders. Instances of “overkill” have also been found to be common

in anti-GLBTIQ homicides including excessive beating of victims' heads and postmortem stabbings and mutilation.

This notion of “overkill” [profoundly excessive violence] is worth dwelling on as it played out in many accused parties raising the issue in a self-serving way at trial. In many of the cases explored by the SFP, the so-called *Homosexual Advance* or *panic* defence (sometimes referred to as “HAD”) was raised as trial to mitigate liability or to have a murder charge reduced to manslaughter. Irrespective of their legal significance in particular trials as exculpatory defences, this review has proceeded with caution and skepticism in relation to the relevance of such claims of provocation. This is because the victim in homicide trials where this defence is raised is dead and not in a position to refute the claims that the accused is offering to explain their so-called retaliatory violence (Howe 1997; Tomsen 1994; Tomsen 1998; Tomsen 2009). Indeed, to frame the violence as *retaliatory* is problematic because that very logic presupposes that there was some sort of sexual assault or affront to respond to. This is partly why the defence was so controversial and has been abolished in most states. Its existence effectively permits men to tell stories of gay men soliciting sex and being met with justifiable or ‘reasonable’ violence to thwart their desires.

Another feature noted in the literature is that anti-gay bias crimes may be supported by multiple perpetrators or in a context of like-association. Where the violence is by multiple perpetrators and/or for an audience, it is explained as re-establishing male honor in a version of heterosexism. Gruenewald (2012) observes that the actual or perceived challenge to sexual orientation is a threat to masculinity that provokes aggression. As per Harry (1992) and Perry (2001: 106), where that challenge is observed by others and represents a clear moment to express commitment to masculine heterosexual gender. It has been suggested that bias violence offenders seek, in front of onlookers or peers, the “overkill:” to express their masculine superiority (Perry 2001) and “disdain” (Cotton 1992: 300) for their victims

This is related to scholarship that has reviewed the space-time of anti-gay homicide and assault. Media reports and true crime accounts (McNab 2017) of gay-hate crimes have often gone to great lengths to point out that the crime has some sort of association with a beat. In Australia, the term beat is used to refer to “spaces where men gather to seek out or arrange casual sexual encounters with other men, irrespective of the sexual identity of participants” (Dalton 2012: 67). Beat users include homosexual men, bisexual men and heterosexual men who are closeted and/or married. Moore (1995: 328) has documented that beats have existed in Australia for well over one hundred years and that they evolve in parks, secluded hinterlands, beaches, public shower-blocks and the like. However, the most common and notorious beats are those which manifest in public toilet blocks in railways stations, parks and shopping malls. These public sex environments are found in just about every suburb in every city of Australia and many country towns (Swivel 1991: 237). In the USA these spaces are commonly known as ‘tearooms’ and in the UK they are typically referred to as ‘cottages’.

Beat spaces have a long history of attracting the attention and animosity of police (Dalton 2012). In Australia, some of the earliest arrests and criminal prosecutions for conduct at beats date back to the 1910s (Wotherspoon 1991:66). Little is known about these matters as scant offence details were preserved in court archives. Various historians of homosexual subculture note that the police were often aware of sexual conduct at beats and this period marks the start of police vigilance to the phenomenon of beats (French 1986; Wotherspoon 1991; Murdoch 2000; Carbery 1992). During the period covered by the Parrabell review, many men assaulted at beats would often not report such crimes to police for fear of being ‘outed’

or being construed as engaging in illegal ‘public’ sexual conduct (and risking prosecution). As Tomsen points out, such men were often perceived by their assailants to be ‘soft targets’ who would not resist or report attacks (2009: 42). That gay men were soft targets that often saw them subjected to robbery is evident in many of the Parrabell case files.

Beat spaces are very complex and have spatial and temporal attributes. They are often ephemeral spaces and only become sites of sexual activity when like-minded men meet. Some beats are popular during the day, whilst others mainly attract men at night. Many of the cases reviewed by SFP make explicit references to beats, and certainly there are innumerable cases where perpetrator(s) have targeted men at beats for bashings that have sometimes proved fatal. Many notorious beats featured in the Parrabell review including Alexandria Park, Moore Park, Marks Park¹² and Centennial Park.

Despite the long and well documented history of bashers targeting gay men [and men perceived to be gay] at beats, the relevance of beats to this review of bias-related violence was complex and nuanced. Whilst beats often featured as a geographical site where extreme violence was perpetrated, or where bashers were drawn to their vicinity to seek out victims, sometimes the existence of a beat did not figure as a significant explanatory feature in relation to interpreting the role of violence in a particular case. For example, in one particular case a man was determined to have died in a public toilet as a result of a drug overdose. In another case, a man was stabbed to death in a park in a violent frenzy by a drug addicted assailant. The victim was sitting on a bench near a public toilet that operated as a beat but robbery appears to have been the principal motive for the crime.

So whilst beats were often notorious and profoundly dangerous places during the period of review that Parrabell covered, it would be simplistic to immediately equate the presence of a beat in a case file as being indicative of gay-hate motivated violence. Indeed, given that almost all public toilet beat spaces are architecturally fixed spaces, there is also the attendant problem of misplaced emphasis of their significance in some cases. A public toilet beat exists as a constant presence in the landscape – and may well lure gay men and bashers alike to its location – but its presence does not dictate that a beat must always figure in an offender’s core motivations or reasoning in relation to the commission of a crime.

Tomsen (2009: 124) has challenged the “simple view” that gay bashers may be sexually repressed homosexuals, but acknowledges that a “heightened anxiety about sexuality” attends those who visit gay beats. In our discussions with police and in our own evaluation, we noted that many of the cases involved offenders who were possibly reacting against their perceived vulnerability to a sexual identity challenge or acting on a bias toward their own incipient identity. Bias may be perceived on a continuum that involves more or less reflexivity and supporting gestures (like the involvement of others in the reactive (criminal) action).

ii Antigay bias violence and police response

The investigation of crime is ideally free of bias; the rule of law admits of neither fear nor prejudice. In practice, societal fear and prejudice informs the enforcement of the law. Societal groups demand of police that they respond to disorder and transgression with discretion, that

¹² For a discussion of criticisms of the Marks Park murder investigations and subsequent coronial disapprobation from Deputy State Coroner Milledge see Brown (2009) and the *true crime genre* account provided by Callaghan (2007).

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they apply the rule of law with sensitivity to community norms, a requisite that compels police to tend to reproduce the conservative bias in societal norms. Whilst it is true that police organisations reflect both progressive and reactionary views, in general police officers tend to identify with more traditional and social conservative ideas about the good society, such that for many police the protection of an ideal of Australian values will tend to tilt slightly more toward the status quo ante. There is no daylight between most police officers and the blind pursuit of justice, but it is an unfortunate fact that there have been many police individually, in pockets and sometimes in barrels that have permitted bias or prejudice to blind them from justice. There is an enormous literature that has explored how a variety of law enforcement agencies and agents have failed to adequately or equally pursue crimes against visible minorities, the poor, intellectually challenged, people with a criminal history and the GLBTIQ community.

With the decriminalisation of homosexuality and the recognition that minority groups including gays experience a disproportionate incidence of violence and bullying, governments have passed legislation that has provided additional penalties to persons who have committed crimes in which a motivating factor is a prejudice or bias against a minority group. A proactive response to bias crime is in accord with the development of several police reforms over the past several decades, including community-based policing, intelligence-led policing and predictive policing. It also features in the focus on trust-building that generated the push for the re-embedding of policing in the community and a more responsive, integrated, multicultural, plural and victim-centered approach that has characterised reform agendas since the 1980s. The victim-centered approach has informed anti-bias policing in the UK, where the definition of bias is based on the subjective interpretation of the victim where, as Hall states ‘anyone can be a victim of hate crime if they believe themselves to be so’.

Since the period of homicides under review in relation to SFP has passed, there have been monumental changes in the area of bias crime policing. In 2007 NSWPF created a dedicated the Bias Crimes Unit which has overseen the following initiatives

- The creation and implementation of Bias Crimes Standing Operating Procedures
- In-house education & training regarding bias motivated crimes, including identification
- Local Area Command & Specialist Command support with investigation and response available
- Monitoring & review of Bias- related-incidents
- Community engagement to raise consciousness about bias crime and solicit community help in both preventing and responding to bias-related incidents
- Analysis and predictive intelligence regarding incidents and events
- Monitoring of hate groups
- A continual focus is on improving the capacity & capability of the NSWPF around bias crimes
- Liaising with other law enforcement agencies [State, Federal and International] to combat bias crime In Australia and abroad.

It bears emphasising that the social landscape in which bias crime policing occurs has radically changed in the past 20 odd years. Whereas homophobic sentiment dominated the 1980s and 1990s in relation to ‘bias’, the recent rise of the importance of violent extremism – in the context of terrorism – has seen radical hate speech and take prominence in relation to ‘bias’. Whilst anti-gay bias has not been wholly eradicated from society, cases (or suspected

cases) of gay-bias related homicide appear to have sharply abated in comparison to the era subject to review in SFP.

iii Over-categorising Bias

This review is concerned directly with measures of anti-gay bias crime. On one hand, there is an argument that the list presented provides evidence that police have been negligent in their prosecution of anti-gay bias in crimes of homicide specifically. On the other hand, there is an argument that whilst this may be true generically of police historically, the commentary on the evidence presented (the list) has exaggerated or even grossly exaggerated the scope of the underlying phenomenon.

As social scientists, we believe that the evidence does matter. Crimes may be both under and over-categorised, and sound public policy is not well-served where there is either an under or an over recording of bias. Where there is an under-recording of bias crime, there may be systemic or institutional bias against a social group that is not being adequately redressed by public resources or that may, as has been suggested, indicate a malfeasance by those public institutions. Where there is an over-recording of bias crime, the opposite distortion may occur. There will be over-criminalisation and the potential for public or moral panic that will have impact on freedoms. There will also be mis-categorisation, meaning also that other dimensions of an event are not properly recorded and addressed.

Both teams coded a large number of cases as ‘Insufficient Information’. This coding does not discount that gay bias *may* have been a factor in a particular death. Many of the deaths under review are due to motives or causes that are uncertain or unknown. They may always be subject to conjecture (unless confessions or arrests are made in the coming years). In the 1980s and 1990s the police did not always ask the sorts of questions that might have better discovered the presence of gay bias in a case from witnesses and suspects alike. At its inception, SFP undertook a thorough and meticulous review of archival holding linked to individual cases. However, it bears emphasising (and this is no direct criticism of NSW police practices at the time deaths were investigated) that an archive can only yield something that was captured in the first instance (e.g. a witness recalling that they heard someone yell ‘bash the poofter’ in a park late at night). Secondly, homophobic sentiment/reasoning is not always recoverable retrospectively. A cognitive state – animosity towards homosexuality – does not always leave a physical trace. This is all the more pertinent in cases where no suspect was identified. And, of course, in cases involving cliff-fall deaths, the trio of questions: ‘*Was he pushed?* [Murder]; *Did he jump?* [Suicide] or *Did he slip/fall?* [Accident] may never be able to be definitively answered. The very fact that the death of Scott Johnson is subject to a third coronial inquest demonstrates how legal closure around such deaths is often elusive. Many deaths may well be attributable to a fatal assault (e.g. a ‘gay bashing’) but in the absence of evidence or a confession, the detectives and academics had little option but to classify such cases as “Insufficient Information”

iv Defining Bias

Bias crime laws are concerned with acts where hostility, bias, prejudice or hatred (we may say animus) is directed at a presumed attribute of the victim, and is an integral or key element of the offender’s behavior, upon which the victim is selected. The NSWPF use the following definition of bias crime:

Objective facts, circumstances, or patterns attending a criminal act or acts which, standing alone or in conjunction with other facts or circumstances, suggest that the offender's actions were motivated, in whole, or in part, by any form of bias" (Massachusetts Model - Protocol for Bias Crime Investigation) (Co-coordinating Instructions page 2).

The academic reviewers largely agree with the Massachusetts definition above; however, in order to develop an understanding of the dimensions of the phenomenon, we have undertaken a refinement of the concept based on a review of the literature as follows.

According to Boeckmann and Turpin-Petrosino (2002: 2008), "there is no consensus among social scientists or lawmakers on definitional elements that would constitute a global description of hate crime". Chakraborti and Garland (2015: 3) concur, commenting that it is difficult to overcome the "subjectivity associated with the notion of hate". Hall notes that definitions are generally "far too broad and complex to be of much value in practical terms to criminal justice practitioners and legislators" (2005: 4).¹³ The Association of Chief Police Officers (ACPO) in the U.K. defines hate crime as "any incident perceived *by the victim* to be motivated by hate or prejudice" (ACPO, 2005, emphasis added). However, victims are often in no better position to determine the motivation for behaviour than is the perpetrator or the bystander. England and Wales have enormous numbers of bias crimes, no doubt due to the over-inclusive definition used to discover the phenomenon. As per Hall (2004:11), the concept loses meaning where it permits subjective over-inclusion. Altogether, providing an answer to the question '*what is a hate crime*' may seem straightforward; it is – in fact – 'fraught with difficulties' (Hall 2005: xvi). According to Perry, there is little consensus over a global definition of hate crime (Boeckman and Turpin-Petrosino 2002: 208).

Many researchers make the point that the *perceived affiliation* of the victim is important (Chakraborti and Garland 2015: 3; Mason 2014: 78; Gerstenfeld 2004: 9; Gerstenfeld 2013: 11), which to others may be somewhat synonymous with the concept of *vulnerability*, or vulnerable populations (Chakraborti and Garland 2012; Wolfe and Copeland 1994: 201). Gerstenfeld defines hate crime as "illegal acts motivated, at least in part, by the group affiliation of the victim" (Gerstenfeld, 2004). Perry (2001: 29) says that it is the generic *subordinate identity* of the victim rather than any individual characteristics that must be viewed as key. She (Perry 2001:10) defines hate crime as involving the reassertion of the dominance of the perpetrator's group over the victim. Important to a conceptualisation of bias is reference to the *relative powerlessness* of vulnerable peoples vis-à-vis a dominant, privileged class of people.

Taking selectively from this, our definition of bias is as follows. Bias crime:

- a. expresses a categorical animus (directed at a person or group on the basis of his/her perceived identification with a *vulnerable* group)
- b. produces an act that *intentionally*, by way of criminal predation on the basis of that categorical animus, causes harm to that person or group

¹³ Tomsen (2009: 38) – drawing on the work of Levin (2007) – notes that "the term 'hate crime (or bias crime) evolved in the 1980s and 1990s to refer to victimisation from assaults, abuse, harassment and attacks on property on the basis of a particular minority group identity".

- c. is mitigated or aggravated by an offender's contemporaneous associations that are linked by a commitment of *denunciatory non-identification* with the vulnerable person or group

In this definition, we are concerned that to categorise an act as a bias crime, practitioners must be able to perceive a minimum of discrete factors that relate with one another and directly to the phenomenon in question. The first requirement is that the act *expresses* an animus, and does so by way of some form of *communication* directed at the target and, sometimes, the wider population. This expression might be in the degree of violence or in the utterances, statements, gestures or other communications. As noted in the literature, these acts are meant to communicate an expressive message of *non-identification* or negation. This expression is *directed* at a person or persons on the basis of the perceived identification of that person or persons with a vulnerable group, and as a means of distinguishing the identity of the perpetrator against that group. Indeed, Perry (2001: 10) describes such hate crimes as *message crimes* that send a symbolic message to an entire group: that they are 'different' and they 'don't belong'. There is an insidious aspect to 'message crimes;' they 'extend the impact of hate crimes beyond the actual victim, transmitting a sense of apprehension and vulnerability to other members of that particular community' (Chakraborti and Garland 2015: 13).

The second factor permits a review of the intentionality of harm. Criminal acts require some degree of intentionality, and some acts are planned and calculated to do harm against a specific target whilst others are more reactive, defensive, and opportunistic or can claim some provocation. This matters when assessing anti-gay bias. A person who seeks out a gay person against whom to do harm because of a perceived vulnerability is arguably more of a threat to the community than a person who reacts violently against an unanticipated gesture or sexual advance. In addition, if the victim is chosen exclusively to express an animus toward an identity group this is the kind of intention that is more solidly a bias crime. Where the victim is chosen for another crime (robbery, for example), because he is an easy target, the *strength of the prejudice motivation* in the causal link, as Hall (2004: 12) notes, between the prejudice and the offending behavior, may be relatively weak.

Lastly, the definition makes reference to the *associations* of the perpetrator. We are more likely to be confident in a designation of bias where there is some evidence that the perpetrator has had an association with others who share the offender's presumed antipathy to a vulnerable group. It is those who associate with others *on the basis of a common bias* or prejudice against a vulnerable group and who then take an action either individually or collectively intended to cause harm to that target group that are justifiably the most concerning to public policy.

v. Anti-gay versus anti-paedophile bias

This investigation is concerned explicitly with *anti-gay* bias. However, in our preliminary assessment of the cases we found that there were many instances where it was at least unclear whether the bias was anti-gay as opposed to anti-gay paedophile. Many of the cases (N= 9) involved young men of between 15-25 who killed older men between the ages of 45-65. In many of these cases, the perpetrator's sexual identity was unclear and the victim was accused of having committed sex crimes against under-age men. Some of the perpetrators themselves had had liaisons with older men, and it appears that a few of them may have been trading sex for drugs or other goods. It seemed apparent or at least more than plausible that the animus

that was present was directed at men who were accused or perceived to have been sexually exploiting boys, whatever the facts. In some cases it also appeared as though a strong animus against homosexual paedophiles may have developed from historical sexual abuse. It is not clear to us that the bias expressed in these cases was motivated against homosexuality per se as against homosexual men that were assumed to be paedophiles.

It is important that readers of this report do not misinterpret what we mean when we deploy the term anti-paedophile bias. We are not purporting that paedophilia is in any way synonymous with gay male sexuality. Rather, we are merely pointing that anti-paedophile animus is evident where men are subjected to violence by other men on the basis of *perceived* or *interpreted* interested in boys or under-age males. We deploy this term to refer to a (greater than usual or vigilante) anti-paedophile animus toward *homosexually* attracted paedophiles.¹⁴ It helps if one thinks of anti-paedophile animus as sitting on a continuum of gay hate bias.

For many perpetrators, anti-paedophile bias is conflated with a pre-existing anti-gay bias. One animates the other and disentanglement is not straightforward. For these perpetrators, the pejorative terms ‘poofter’ and ‘rock spider’¹⁵ were interchangeable; in their minds they were one-in-the-same sexual identity category.

Nevertheless, it is helpful to distinguish anti-gay and anti-paedophile as distinct types of animus despite the way they sometimes get conflated in the minds of perpetrators. Of course, it also bears emphasising that collective social animosity to paedophilia is arguably more potent than the relative level of anti-homosexual animosity. So anti-paedophile sentiment coalesces with anti-gay sentiment to produce a particularly potent form of animus.

A perpetrator animated by anti-paedophile animus may well believe he has some tacit social approval in subjecting a man he perceives to be a paedophile to a violent assault. To the extent that Tomsen (2009; 54) has documented what he terms ‘a wider “respectable” hostility towards homosexuality’ that prevailed in the 1980s and 1990s, one needs to appreciate that every respectable citizen during this era was presumed, without question, to despise paedophilia. Therefore it is not hard to imagine that this collective social disavowal helped underwrite the *symbolic* and *actual* violence occasioned when a perpetrator would seek to punish a man he perceived to embody paedophilic desire.

We reasoned is that it is not sound public policy to conflate an animus towards homosexual paedophilia and an animus towards homosexuals. There are not too many social analysts who would want to support the historical slander that gays and paedophiles can be understood under a common moniker. Failing to distinguish the direction of animus and as a consequence over-including anti-paedophile animus under a straightforward anti-gay animus would be to lend inadvertent support to this historical slander. Mason (2013) argues that paedophiles should not be accorded hate crime victim group status even if they have been targeted due to hostility against their identity (see also Chakraborti & Garland, 2012, 2015; Garland 2016: 635). Mason defends her position in the following terms:

¹⁴ In only one of the cases we examined (Green 59), was animus was expressed toward heterosexually attracted paedophiles (e.g. men sexually attracted to underage girls). This was further complicated by the incestuous nature of this alleged desire.

¹⁵ In Australia the term ‘rock spider’ is prison slang for a paedophile/child molester. The term has been adopted more widely than prison such that most people are familiar with it.

Adults who sexually assault children are the targets of vigilantism, violence and social demonization. While a legal response is necessary, hate crime statutes are not the appropriate mechanism to do this (2013: 175).

Whatever the normative argument, it is clear that whilst sound public policy aims to support gays as a vulnerable minority group, public policy does not afford the same protective support to paedophiles, and nor would it be sensible, just or proper to conflate them. In short, we opted to distinguish these cases because we believe as a matter of public policy it is important to distinguish the primary animus from what may be a secondary animus that sets up a different public policy response. So whilst most statutes (in the UK, Australia and the USA) *do not* account for paedophiles as legitimate victims of hate crime, we never-the-less have sought to distinguish the material fact that anti-paedophile animus initiated many of the crimes we examined in the Parrabell case files. Exclusion from statutory protection aside, we could not dismiss the prevalence and relevance of anti-paedophile bias as it played out in the case narratives.

vi. Incipient or conflicted identity bias

A second issue we encountered, which can be related, is that we found that many if not the majority of the cases involved offenders who had a bias toward their own *incipient identity*. These offenders may have been reacting violently against a perceived vulnerability to a sexual identity challenge. The challenge may have aroused a version of male honour, often leading to provocation being argued in court (for a discussion of this phenomenon see Tomsen 2003; and Tomsen and Crofts 2012).

To help the lay reader understand this challenging idea of an individual who has a bias towards their own incipient identity, consider the hypothetical example of a young man who thinks of himself as being heterosexual or ‘straight’ in the common vernacular (attracted to women). He may nevertheless (perhaps unconsciously) seek out the company of other men. His sexual attraction to other men may be something that is formative (still latent) and not yet fully realised or expressed by behaviour. A forensic psychiatrist or forensic psychologist might evaluate such a person as being ‘closeted’, but such a distinction is further complicated by the fact that some men have homosexual desires that are so deeply suppressed they are not even aware that they are closeted. Perhaps such a person is – in fact – bisexual or just experimenting with their sexuality. Either way, their sense of possessing a stable or fixed heterosexual identity gives way to a psychic conflict when it is threatened. This typically plays out in the following manner. Such a young man finds himself in a social situation (often in a private space like a living room or a bedroom; and often whilst intoxicated or affected by drugs) where an *alleged* sexual advance is made by another male. This could constitute a touch or a suggestion from the other man present that sex could take place. The young man in question is so affronted by this situation that he resorts to shoring up his heterosexual identity by resorting to physical violence. This masculine response (avowed by society) resolves the temporary [*in the moment*] psychic crisis by giving him something stable to cling to: a heterosexual identity. So here the paradox at play is that anti-gay bias is – in a very real sense – directed not just *at the victim* but also symbolically *at the part of the self* that the assailant finds so threatening. Of course, a further complication is that such an account may just be fabricated as an explanation to exculpate an individual when a matter goes to court. In any event, as Tomsen has astutely noted:

These various perpetrators are not closet homosexuals but are better understood as failing heterosexuals in a culture that generally collapses heterosexuality and masculinity together (2009: 125).

Whilst identity confusion and the quest to re-affirm a sense of stable masculinity (Tomsen 2009) may well be the bedrock for all bias, it may be perceived on a continuum that involves more or less reflexivity and supporting gestures (like the involvement of others in the reactive criminal action). This leads to an implication from this investigation which we will discuss later in the report.

In dividing the cohort into two types of bias, we wish to reflect our observation that there is a meaningful distinction in these types of bias, and that the latter bias (anti-homosexual paedophile) needs more examination by research for reasons of public policy referred to above.

vii. Proactive and associative bias

These are difficult concepts for the lay public to understand so we will try to illustrate them. By way of explanation, in terms of the level of predation or animus (proactive, reactive), *proactive* was taken to mean that the offender(s) actively set out to locate and assault a victim. *Reactive*, on the other hand, referred to the sort of scenario where a person did not set out to be violent *per se*, but rather responded with violence when allegedly subject to a sexually solicitous suggestion or some form of physical touch that was construed by them as unwanted. Here the violence was allegedly a reaction (sometimes presented in court as a form of self-defence). A more basic way of understanding this distinction is to ask ‘Did the offender(s) set out to locate a victim to subject him to violence?’ or ‘Did the violence originate and escalate in the moment of an encounter without any pre-meditation?’

We also scored cases on whether we could find that the bias involved an association with others. Broadly speaking, we were looking for evidence that the crime involved a communication to another perpetrator or to other potential perpetrators. We looked for evidence of *denunciatory non-identification* with the vulnerable group. Concomitantly, was there a context of offender support and/or was the event relatively organised? This is understood in legal terms as mitigating and aggravating circumstance. There were numerous cases involving multiple perpetrators, and many of these, but not all, we categorised as associative, in this sense.

Altogether, the academics subcategorized the cases into clusters in terms of the identification of the victim with a target of bias (gay, paedophile, no bias, Insufficient Information), level of predation or animus (proactive, reactive), and the offender’s denunciatory non-identifications with the vulnerable group (which provides a context of offender support as an isolated or organised event) as aggravating or mitigating. To simplify our coding, we allocated the cases according to the type of categorical animus (anti-gay, anti-gay paedophile), the predictive motivation behind the bias (proactive versus reactive) and associative denunciatory non-identification with the targeted person or persons (associative/non-associative). Accordingly, for the purpose of public policy, the most serious kind of bias is proactive and associative, and we term this a Category 1 bias crime.

- Type A Bias Crime denotes cases where offenders seek out opportunities in which to brutally express their animus. They also communicate and associate with others on

the basis of this animus. These are the bias crimes against which TFT was struck. They include the most notorious instances of anti-gay bias murder. For example, the case of Johnson (40) where 8 youths fatally assaulted the victim in a park in Alexandria. Another example is the murder of schoolteacher Wayne Tonks Tonks was suffocated after being tightly bound by adhesive tape to his ankles and knees by two youths.

- Type B Bias Crime denotes cases in which offenders look for opportunities to brutally express their animus, but do so furtively or in isolation from others, and act individually against victims. An example of this type of bias crime is presented in Dempsey (67). Stephen Dempsey was murdered at a beat by a lone assailant armed with a crossbow.
- Type C Bias Crime is reactive crime, and we deem this the least serious category, as it incorporates what formerly was the defense of provocation. It excludes the associative dimension and those offenders who proactively seek a situation against which to claim a reaction. An example of this type of bias crime is that of Marsh (60) where a 64 year old bisexual male allegedly made a sexual advance to a 17 year old youth who retaliated by bludgeoning the victim's head with a garden gnome ornament.

The academic team organised codes based on the factors depicted below in the diagram. The arrows indicate the way we disaggregated cases and the staggered organisation (and colour coding) will help the reader follow – as best as such an impoverished flow chart captures – the process of deduction we employed.

- Categorical animus (gay – gay paedophile-revenge)¹⁶
 - Level of intentionality of harm (proactive - reactive)
 - Association (denunciatory - not found)
 - a. Yes – anti-gay bias □
 - i. High - Proactive
 - 1. Yes-aggravating
 - Indicators may involve two or three offenders acting together linked by bias, likely not isolated occurrence
 - 2. No-mitigating
 - Indicators may show solitary offender, possibly isolated occurrence.
 - ii. Low - Reactive
 - 1. Yes-aggravating
 - Indicators suggestive of conflict of motives
 - 2. No-mitigating
 - Provocation is possible
 - b. Yes- anti-gay paedophile-revenge bias
 - i. High - Proactive
 - 1. Yes-aggravating

¹⁶ We use the term 'revenge' here because some of the cases where anti-paedophile sentiment was at play related to revenge for an alleged past sexual assault. For example in the case of Coulter (79), a 15 year old boy murdered Coulter with a fire arm because he claimed he was raped by the victim when he was 13 years old.

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- Indicators may involve two or three offenders acting together linked by bias, likely not isolated occurrence
2. **No-mitigating**
Indicator of PTSD likely present, other trigger
- ii. **Low - Reactive**
 1. **Yes-aggravating**
Suggest possibly stimulated by complex motives
 2. **No-mitigating**
Provocation is possible
 - c. **No = no bias**
 - d. **Insufficient information**

viii. Concordance coding

As a team, we decided that in order to maximise the reliability of an admittedly less than ideal measurement, we would independently code the cases and then review our independent scoring in an effort to reach consensus as a team. Our initial scoring led to the discussion of the nature of the bias we were coding and to a decision to clearly distinguish those that were anti-gay bias only from those that were anti-gay paedophile bias. The subsequent independent coding on the revised instrument also required a concordance consultation that resulted in the final scores. We had some initial disagreements about three or four of the cases, and further discussed these cases until we came to a consensus.

There is a distinction in coding that was identified in discussions with police concerning the understanding of the term “evidence.” Police team members of Parrabell have categorised as SBC cases where there is evidence that may support a court case that the crime was a bias crime. In contrast, we have coded as Insufficient Information [II] cases where the evidence that may support a court case is ambiguous and requires further probing (to provide further information that the file or file summary is unable to provide). The detectives noted that Intelligence officers may use a different threshold.

D. FINDINGS

In making the following findings about these cases, we wish stress the point that we cannot conclude that significant incidence anti-gay violence did not exist in the time period covered by the cases. *Strike Force Taradale* indicated possible links between several murders against homosexual males who had associations with beats in the greater Sydney region with the common link involving groups of youths targeting homosexual males at Bondi and Alexandria. The cases in SFT are represented in SFP. The subsequent coronial findings of the [then] Deputy State Coroner Jacqueline Milledge found that gang violence and threats to throw men off the cliff faces ‘was a Modus Operandi of some gay hate assailants’ [quoted directly from Case 36 John Russell].

SFP found the following in their review of the cases:

	Solved	Unsolved	Unsolved	Total
Evidence of Bias Crime	8	0%	0	8
			0%	9%

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Suspected Bias Crime	14	22%	3	13%	17	20%
Insufficient Information	11	17%	14	71%	25	30%
No Evidence of Bias Crime	29	43%	4	25%	33	38%
	62		21		83	

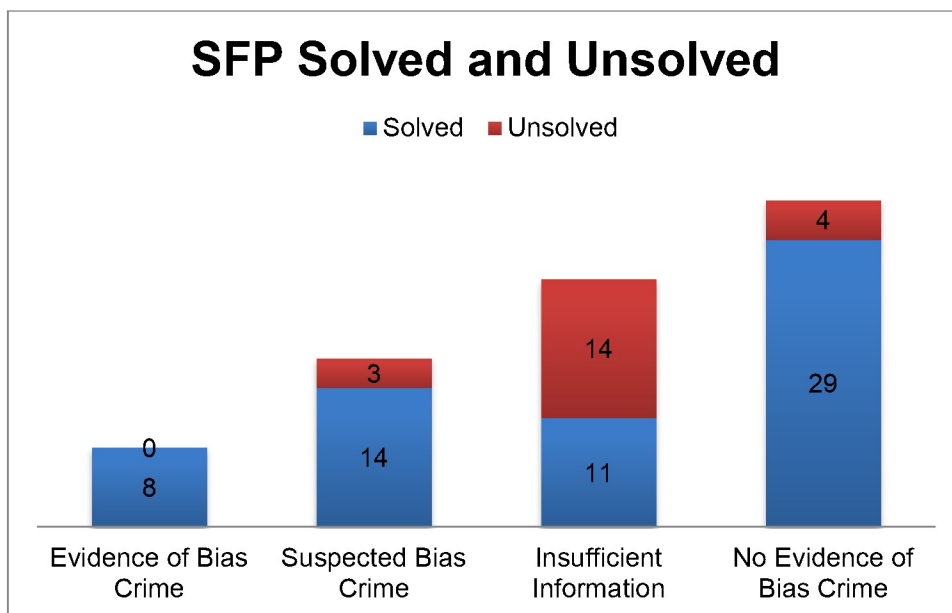


Figure: SFP Bias Review Findings

The academic team found the following:

	Solved	Unsolved	Total
Anti-gay Bias	12	1	13
Anti-paedophile Bias	18	1	19
Insufficient Information	13	17	30
No Evidence of Bias Crime	20	1	21

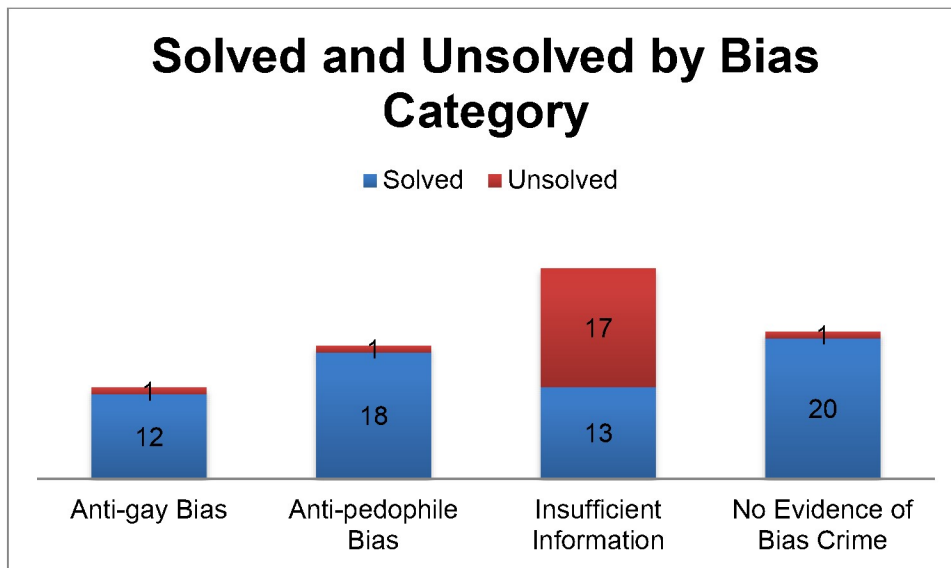


Figure 1: Review Findings by Bias Subcategory

In comparison:

- SFP recorded more anti-gay bias crime (N=25) than the academic team (N=9); however the academic team recorded less total serious (Type A, Type B) bias (N=21).
- Including its anti-paedophile category in all Types, the academic review recorded more bias crime (N= 32).
 - Taking solved cases as the denominator (62), a little over half were positively deemed to be bias crime (N=32) by the academic review team. Excluding 13 cases in which there is insufficient information, it is 65%.
- Taking the total cases as the denominator (N=83), the academic team found (N=32) as deemed to be bias crime, or 39%.
- The SFP team designated more cases as No Evidence of Bias (N=33); the academic team found only (N=21).
- A large percentage of crimes that may involve anti-gay bias remain unsolved. The academic team found (N=30) and the SFP team found (N=25) as II or insufficient information and therefore *could be bias crimes of some kind*.

Based on our definition and our review of the literature, the academic team is able to comment on the character of those cases where bias is suspected, according to three tiers of factors in two categories.

Type A Bias Crime (Proactive, associative)

Type A Bias Crime, in which there is both proactivity and association, was found by our team in 12 of the 62 solved cases (and in 14 of the cases overall). If cases for which this insufficient information are excluded, this increases to 14/49, or 29%.

Given that these are arguably the most serious of crimes and that they are the ones that best represent the kind of animus against which a robust law enforcement response must be made to represent a public rebuke of bias, it is important that the number reported neither deflates

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or inflates their significance. How significant this number is, this report cannot say. However, it is not anywhere near the multiple dozens that comprises the total cases on the list

Type B Bias Crime (Proactive, non-associative)

We found that there were 7 proactive non-associative cases. These are “lone wolf” cases in which it appears that despite the lack of communication or association, it could be found that the perpetrator was purposeful in selecting the victim on the basis of bias.

Depending on the denominator, 7/45 represents about 15% of the solved cases for which there was sufficient information. In the cases as a whole (including unsolved) the percentage decreases (11/84) to about 13 percent.

Type C Bias Crime (Reactive, non-associative)

The third category is arguably the least “serious.” These are crimes that are non-associative reactive and in the solved crime group there were nine of these (9/60). Excluding cases for which there is insufficient information, this is increased (9/45) or 20 percent. In the cases as a whole (including unsolved) the percentage decreases (11/84) to 12 percent.

About 20 percent of the cases for which there was sufficient information were coded as reactive (9/45).

We found in this category there were no associative reactive cases, because the concepts are mutually excluding. An association on the basis of a bias is going to be deemed proactive when that bias is expressed.

Type A Bias	13	20%	1	5%	14	17%
Type B Bias	7	7.5%	0	0%	7	8%
Type C Bias	10	16%	1	5%	11	13%
Insufficient Information	13	21%	18	86%	31	37%
No Evidence of Bias Crime	17	28%	4	16%	21	25%
	60		24		84	

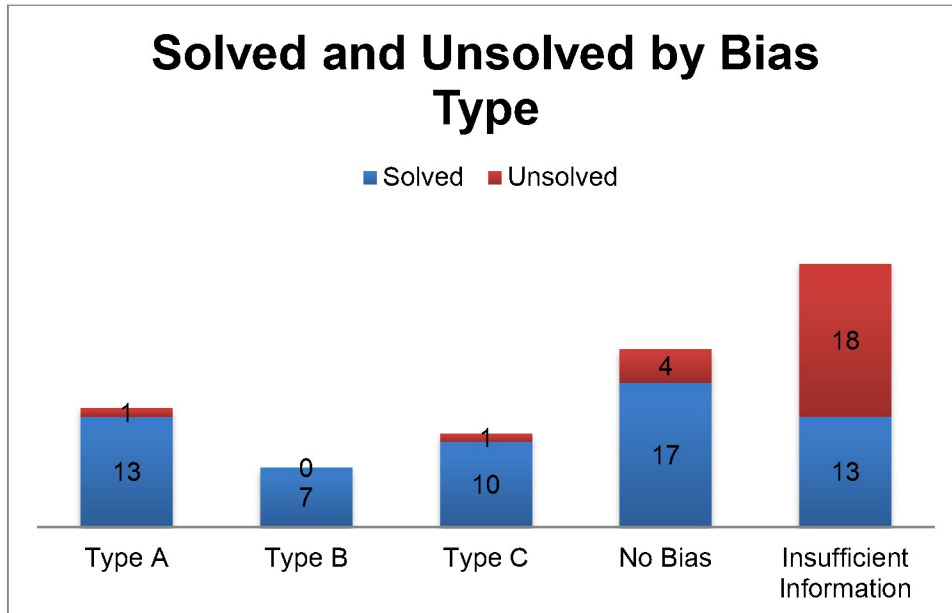


Figure 3: Review Findings by Crime Bias Type

There are a few common characteristic cases.

In the first type of cases with Type A offences, a 40ish male is killed with excessive brutality (8/12 in this category) by a male aged in his mid-twenties by 2 (all but one in this category – although two are unknown) or more others or a male in his mid-twenties is killed by youth without extra brutality by youths in or near a beat.

In the two types of cases with Type B offences, a 50+ year old male is killed by a teenage youth, out of vengeance or a male in his mid-twenties is sought out and killed upon a perceived insult.

In the case of most Type C offences, a young man with a possible sexual identity conflict lashes out with excessive violence at a slightly older man despite arguably having appeared to send off mixed signals regarding his purpose for their interaction.

Clearances

One way that police are held accountable for the efficacy of their investigations is by reference to clearance rates. Clearance rates may give an indication that certain types of investigations are subject to a prejudicial inattention to procedure. Research has found that clearance rates vary based on victim and event characteristics, with higher rates of clearance for homicides involving weapons other than firearms and lower rates for homicides involving strangers and older victims (Reidel 2008). It is also known that unsolved homicides are more likely to occur during other crimes (AIC, 2001). In a study (Wellford and Cronin 1999) comparing clearance rates across 20 of the largest U.S. cities, 37 of the 51 characteristics related to arrest clearance were associated with police practices. This includes how quickly homicide detectives are sent to secure the crime scene to begin the collection of evidence. According to research by Peterson and Hagan (1984) and Puckett and Lundman (2003) police are not willing to treat the all victims the same.

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Homicides are resolved either by deeming that no crime took place (the homicide is a suicide or accidental death) or by the charging of a suspect.¹⁷ A clearance rate is a percentage that is derived by dividing the annual number of arrests by the number of homicides and multiplying by 100. The percent of cases that are solved and cleared will vary quite dramatically between jurisdictions and over time. The number of unsolved cases is worth comparing to overall and national and international homicide clearance rates. In the United States, police may solve as few as 26 percent of a city's homicides (Chicago, 2015) or as many as 100% of a state's (New Hampshire, 2014) (Crime in the United States 2015; Murder Accountability Project, 2017). For the year 1999-2000, Australia had a national homicide clearance rate of 86 percent (ABS 2001). The AIC's National Homicide Monitoring Report (2010-2012) reported that in 2010-11 NSW solved 69/77 homicides and improved that to 67/71 in 2011-2012, or about 92%. A 2012 Auditor General Report (2012: 20) found that NSW homicides were finalised within 30 days in 2011 in 61.4% of cases (compared to national average of 68%).

In this review, 21 of 83 cases are unsolved, for a homicide clearance of 75%¹⁸. This is more or less equivalent with the analysis of Mouzos and Thompson (2000: 2), by which it is noted that in 78% of gay-hate related homicide cases, an offender was charged. This is not so surprising considering an overlap of a portion of the data. Whatever the artefact of the selection methodology, and setting aside for the moment our objection to this finding, or perhaps providing an explanation for it, our list of 83 (from the original 88) finds more or less the same number, one that may not be unusual or extraordinary. There is no significant increase in the unsolved cases in the peak period of activity between the years 1986-1995. However, there is a very low clearance or percentage of solved (20%) in the first 5 cases (1976-1980).

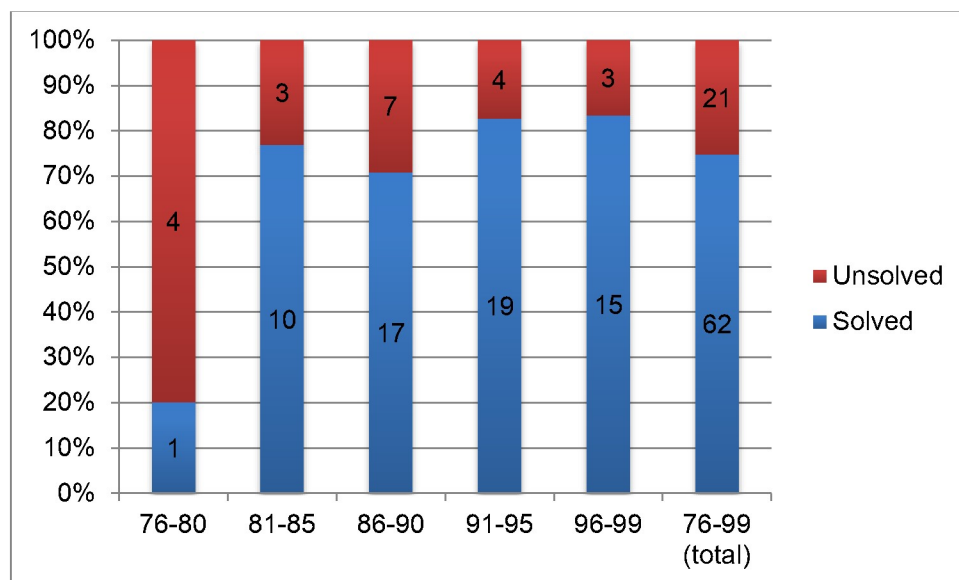


Figure 4: Clearance of 84 Cases by 5 Year Segments 76-99

¹⁷ There are also exceptional clearances, by which a case is considered solved but no offender is arrested. The rate refers to the number of offences for which a charge is made, rather than the number of offenders arrested.

¹⁸ This rather increases the time period normally permitted in calculating a rate – here the calculations are over 5 year periods and (for the total) over 20 years.

We cannot provide a comparison of gay-related male homicide clearances against non-gay related male homicide clearances. At the same time, we do not find support for the AIC report (Mouzos and Thompson 2000) that found 37 victims of gay hate homicide in the period between 1 July 1989 and 30 June 1999. We found 18 gay bias related homicides in this period, with another 18 for which there is insufficient information to make a determination. We positively determined 32 cases of gay related homicide over a period of 25 years, with another 31 for which there is insufficient information to make a determination.

Other observations

This sample reflects many of the characteristics that have been found in gay-related and anti-gay bias homicides. There is a significant age difference between the victims and offenders. The average age of the victims is 42. The average age of offenders (as far as our information was able to determine) is mid-twenties. Many of the solved cases involved multiple offenders. About 1/3rd or 22 of the 61 solved cases in which the number of offenders was known involved 2 or more offenders; however this is not the majority found by Mouzos and Thompson (2000: 3). Restricted to the solved cases, 42/63 were found to have involved excessive brutality.

No Bias Cases

Our review found no evidence of bias in 21 of 83 cases reviewed. The types of case where the academic team (and police) found no bias is worth reflecting on. In general, we were greatly influenced by coronial findings of suicide or misadventure.

Homicides occurring in close proximity to a beat are often gay-bias related, but sometimes this proximity has no direct bearing on the case. In the case of D'Rozario (14), the homicide occurred at a beat in Rushcutters Bay, however robbery was the principal motivation for the crime and no determination of a bias motive was provided in the evidence. Similarly, Campbell (77) was murdered in a frenzied attack by a knife-wielding assailant where robbery was deemed the sole motivation for the crime. In the case of Currie (37) a death occurred at a toilet block beat in North Manly, but the cause of death was attributed to a poly-drug overdose.

In other cases – some of which were close to beats, but in the absence of any indicators that bias was involved – suicide was determined to be the most likely cause of death. For example, friends reported that Raye (case 32) had been in a very fragile mental state and had expressed suicide ideation before he died. Walk (case 39) had a history of depression which was deemed likely to have led to the deceased committing suicide at 'The Gap'. The sexuality of these victims may well have led to them be accounted for as possible gay-hate related homicides in 'the list'.

Other striking 'No Bias' cases include that of Flores (case 49) who died in a park (beat) in Woolloomooloo. The victim was gay and the perpetrator was bisexual. After having consensual sex, the victim allegedly declared that he was HIV positive and this caused the other man to react with lethal violence.

Financial gain was often identified as the principal motivation for a crime. For example, in the case of Mills (66) this was the case. Similarly, in the case of Solness (25), the murder was chiefly coordinated in connection to drug dealing and a drug debt.

In the case of Johnson (27), a 20 year old man was murdered by his co-worker on a road gang. Johnson would mercilessly tease Muscat – touching him and making simulated sexual advances towards him. Muscat would get riled and very upset but the teasing did not abate. In a profoundly serious over-reaction to the persistent teasing, Muscat shot Johnson once at close range. This case may well have been collected on ‘the list’ due to the (homo)sexual nature of the teasing.

In Payne (31), the gay victim appears to have been responsible for his own death by inserting a steel object into his urethra, resulting in fatal septicaemia. In the case of Mokdad (88) and Creighton (89), the victims were gay, but their sexuality had no bearing on their murder. It was prompted when the two men allegedly made threats to the perpetrator and his family in relation to a pending criminal court case. He overreacted to these threats and shot both men with a pistol.¹⁹ And in a case that has generated much media attention (Swaczak 38), a gay youth was heavily sedated by two men who commonly sedated male youths for sexual purposes. No evidence of any bias was evident in the case file.

Difficult to code cases

It bears emphasising that even when using a carefully defined instrument to categorise cases, there was often difficulty applying it to complex case details. For example, the distinction between ‘proactive’ and ‘reactive’ can be hard to determine, even where a great deal of forensic evidence and witness testimony may be available, which in most cases it is not. For instance, in some cases the perpetrator *actively* visited or sought out contact with a person, but the resulting death from this social interaction was linked to an alleged unwanted sexual advance. In these cases a layperson might conclude that the case is ‘proactive’, but we sought to restrict this classification to cases where animus and an intention to cause harm underwrote the initial social contact.

A case that illustrates the difficulty of coding ‘reactive’ or ‘proactive’ (as though they are pure and mutually exclusive categories) is presented by that of Tuckey (61). The killer, Dunn, initially encountered Tuckey on a cycle path and violently assaulted him, supposedly because Tuckey accosted him and knocked him off his bicycle. At this stage one may have classified the killing as ‘reactive’ but the killer left the scene of the altercation and returned several hours later. The academic team saw this time lapse and the return as significant and classified the case as ‘proactive’.

Similarly, the involvement of two people present in a crime does not necessarily mean that we construed that crime as ‘Associative’. In some cases a second person privy to a crime was either not directly involved in the crime or predominantly a witness to an event that they could not or did not anticipate. Consistent with the meaning of “association” in the literature and our model, we coded these as ‘Non-associative.’ To class a crime as ‘Associative’ we wanted to see evidence of two or more people conspiring on a shared prejudice to cause harm.

¹⁹ In the case file one of the victims was referred to as a ‘poof with a bad haircut’ but in the context of the matter this was not construed as evidence of bias that inspired the commission of the crime. The two men were murdered because of threats levelled at their killer.

Whilst many cases were difficult to classify with our instrument, perhaps the case below best exemplifies how challenging some cases proved to be for the academics.

The homicide of Don Gillies (59) is a notorious crime that saw the Homosexual Advance Defence enshrined in Australian Law by the High Court in the Appeal case of *Green v. R.* [1997 148 ALR 659]. The case has been subject to sustained academic scrutiny (e.g. Statham 1998; Howe 1998; Meure 2001; De Pasquale 2002; Golder 2004; Mack 2013) which cannot be taken out of the context in which the academic team evaluated it. In this case 22 year old Malcolm Green punched his friend, 36 year old Real Estate Agent Don Gillies approximately 20-30 times in the face before stabbing him with a pair of scissors approximately 10 times. Green alleged that Gillies sexually propositioned him and that *this* proposition – in his own words – ‘forced me to open more than I could bear’ (as quoted directly from the High Court judgement by Golder 2004, p. 53). Here, Green was referring to the memory of his father *allegedly* sexually abusing his four sisters. This was a profoundly challenging case to code. Whilst bias was certainly at play, it was difficult to pinpoint the animus with clarity. Certainly Green expressed anti-gay bias when he admitted to killing Gillies by explaining his actions in the following way: ‘Yeah, I killed him but he did worse to me’. When asked *why* he did it, he replied ‘Because he tried to root me’ (as quoted from the Police case file). Confronted with a variety of animuses at play, the academic team were persuaded to classify this crime as Anti-paedophile bias. We were swayed by the age of the perpetrator (22) and the bizarre logic that the supposedly solicitous touch of a homosexual [gay] man (Gillies) somehow triggered in Green a memory of his father incestuously touching his sisters.²⁰ This categorisation may well appear slightly flawed in its logic, but the academic team wanted to capture the element of paedophile hatred captured in this most complex case.

One could argue that the academic team should have classified Gillies as that of *double bias* [anti-paedophile *and* anti-gay], but this would have produced a statistical discordance, so ultimately the academic team preferred to make the difficult decision of agreeing that there was a bias at play, but only one bias. Similarly, in Marsh (60) both anti-paedophile *and* anti-gay sentiment was at play. The anti-paedophile sentiment was somewhat *implicit* (reference to the murder victim as someone who would ‘come onto young blokes’ – as cited in the case file), but ultimately it was decided that the anti-gay sentiment overshadowed the anti-paedophile sentiment. So ultimately the academic team classified the case of Marsh as Anti-gay. Double bias was initially prevalent in approximately three other cases, but ultimately a careful revision of the case file enabled a single category of bias [either Anti-paedophile or Anti-gay] to be assigned. We provide this explanation in the interests of transparency and to illustrate how complex the process of assigning a category of animus could be.

An observation about how nuance is lost in the process of categorising cases

Our brief in this report was to categorise SFP cases according to evidence of bias. Arguably these cases demand even more layers of categorisation than we gave them. It should be stressed that when one ‘pushes’ cases into a few categories, we do damage to their uniqueness and variation. This is an unfortunate and unpreventable reality we wish to acknowledge. For example, in the case of Tuckey (61), the victim was killed because a young man who encountered him on a bike path was so enraged and angered by his cross-dressing

²⁰ Notwithstanding the fact that many commentators have suggested that this so-called memory may well have been a ‘phantasy of abuse’ or a self-serving story to aid in pleading provocation (Young 2001: 3008), the academic team had to take it at face value when reading the case file.

that he assaulted Tuckey. As Tomsen (2002: 53) notes “Some killings reflect disgust and anger with the breach of gender norms implied by public displays of effeminacy, especially through clothing and grooming”. This sort of detail – animosity towards breaches of gender norms – is precisely the sort of minutiae or nuance that gets lost when a crime is categorised (in this case as Anti-paedophile because the killer used the terms ‘poofter’ *and* ‘rock spider’ to describe the victim).²¹ Other nuances that got ‘lost’ at the point of classification included factors like race and ethnicity, class, religious beliefs, social privilege/status (or *lack* thereof), addiction, and states of physical and mental health.²²

D. SUMMARY/ IMPLICATIONS

The cases we have reviewed in this list have been proffered to police attended by the questions: Was there a significant uptick in anti-gay homicide in the period under review and did the NSWPF fail to adequately categorise and investigate these crimes in the attempt to clear them?

An allegation by families and partners of those whose deaths are still unsolved, researchers, journalists and ACON, amongst others, has been made there has been insufficient attention by police to homicides that may have been gay-related. The NSWPF have undertaken reforms including the establishment of a Bias Unit and also in a comprehensive review of all the cases on the list of 88 (reduced to 86) that have been proffered in support of the allegation. In addition, the NSWPF commissioned this research to review their evaluation of those cases. We cannot find support for the claim in the analysis of these cases as they currently stand. As above, we can find no evidence of unusual clearance of these cases. Whilst we find a slightly higher proportion of the cases as indicating the presence of bias crime, a breakdown of the bias indicates a more complex picture that involves categories and types of bias that stem from a variety of motivations.

Our review of these cases suggests that identity conflict is an important dimension of anti-gay bias crime and appears to be under-represented in the literature. We were struck by how many cases involved perpetrators who appeared to be uncertain of their sexuality and appeared to be challenged to better define it. We derive this out of the description offered by the PS team. If this is a finding replicated in other studies of suspected anti-gay-bias homicide, then it has implications concerning the nature of anti-gay bias.

Our review also has implications for public policy that is reactive to what is properly called a moral panic as opposed to that which is based on social science. In this case, we can do a proper anatomy of that moral panic, having been given a yardstick by which to measure the extent to which panic rather than evidence has informed the reaction to anti-gay bias crime. Our evaluation of that list suggests that whatever the true dimensions of police malfeasance regarding the investigation of cases that may have involved anti-gay bias, the indicator that may be provided by the evidence of the list is not clearly evident of that malfeasance. On the

²¹ Some commentators have described this case as having a ritual humiliation aspect to it because the victim was found with a stocking tied to his penis. It is unclear whether this is indeed the case because our reading of the case file cannot preclude that the victim presented with the stocking already tied to his penis.

²² The factors were obviously taken into account when reading the case files, but they get evacuated at the point of classification.

contrary, in all cases that we have been able to evaluate, where police have found evidence of an anti-bias crime they have also been proactive in investigation.

Mason *et al* (2017) argue that in the modern era, successful hate crime policing involves clearer communication between police and communities so that misunderstandings between both parties might be minimised. In reviewing their recent book *Policing Hate Crime: understanding communities and prejudice*, Professor John Garland notes:

The history of the relationships between the police and hate crime victim communities ... have often been fractured by poor communication and breakdowns in trust and confidences (back cover book review).

Herein lies a factor that is vitally important. To the extent that NSWPF has recently fostered open and reciprocal communication with groups like ACON and the wider GLBTIQ community, it should continue to do so in a genuine spirit of transparency and cooperation. As Chakraborti and Garland assert (2015: 123) ‘Eliciting the support and trust of the public is a priority for contemporary policing’. For such relationships of trust and active lines of communication are the building blocks of mutual trust. And trust – in the modern world – is integral to the sharing of information which itself produces tangible justice outcomes like the disclosure of information pertinent to an investigation, arrests, convictions and safer communities. This, of course, is not just applicable in relation to gay-bias crime contexts, but any bias crime where the community might hold the key to solving or preventing a particular crime.

Recommendations for future of policing, community engagement, training and development of bias crime indicators/processes

These recommendations strike us as flowing out of this evaluation:

- NSWP should continue to foster reciprocal relationships of trust with organisations like ACON and the wider GLBTIQ community as they are vitally important for effective policing and building a safer community.
- Better precision is needed regarding the discovery, assessment and recording of bias crime.
- NSWP will need to develop a protocol for bias discovery that is prudent and grounded on evidence-based research.
 - Police will need to be cautious about over, under and mis-categorisation of bias crime.
 - The tools used to determine where bias crime is being expressed will need to be modified, and it is suggested that if the instrument currently in use cannot be supported by evidence, it should be dropped and a better instrument developed.
 - We believe it is prudent to consult widely for diverse expertise on the development of such an instrument. The development will also benefit from community engagement.
- Community engagement on bias crime is an opportunity not only to develop or improve a protocol, but also to educate community leaders on the necessity of policing bias from evidence.
- Training on bias should be sensitive to the negative outcomes where there is over, under and mis-categorisation.

- That the NSWPF keep in mind that bias is a dynamic and fluid concept. Whilst the anti-gay and anti-paedophile bias explored in this review prevailed in the 1980 and 1990s, police should be vigilant to new forms of bias (e.g. Anti-Muslim) and those yet to be identified at the time this report is published. Such vigilance will ensure that police respond to *emerging* categories of bias (as yet unidentified).

Coda

The lamentable legacies of the past (chiefly NSWPF indifference to gay bashings coupled with a tacit social tolerance of violence directed at gay men) appears to be largely relegated to the past. The Sydney media no longer disseminate fear in the GLBTIQ community with reference to gangs with monikers such as the ‘Alexandria 8’, the ‘Bondi Boys’, the ‘Parkside Killers’ and the ‘Prime Time Kings’. Indeed, the Sydney media has been silent about recent teenage gang involvement in gay homicides or violence; the existence of such gangs now relegated to the pages of a more violent time. This, of course, is not to say that anti-homosexual sentiment cannot emerge under the right confluence of events, time and place to underwrite bias-related violence. The NSWPF should remain vigilant to the complexities and nuance of bias as it relates to sexuality and/or gender identity (including violence directed at transgender people) (see Moran and Sharpe 2004; Chakraborti and Garland 2015: chapter 5) and be poised to better combat it. The *high water mark* of such violence was certainly the period captured in this review. And given that some cases subject to review under Parrabell are still unsolved, a final, concluding recommendation is that – subject to best practice standards for reviewing ‘cold cases’ and in the interests of justice for the deceased and their families – any future leads or fresh clues that might lead to convictions be vigorously pursued by the NSWPF. The academic team does not recommend that – on the face of it – any cases it reviewed should get re-investigated or re-opened. Such an appraisal is beyond our expertise, suffice it to say that no cases we reviewed stood out as having any obvious hallmarks of being inadequately investigated in the first place.

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APPENDIX A

ACON data

Midway through this review, ACON supplied 41 complete and 8 incomplete dossiers. The dossiers are a compilation of media accounts (chiefly newspaper articles) of the crimes and some material extracted from reported and unreported court judgements, coronial documents, journal articles (mainly those of Stephen Tomsen and Sue Thompson) and library databases. The dossiers were compiled over many years and were recently vetted by teams of volunteers. The dossiers contained the following subheadings:

- Summary
- Details of person's life
- Details of person's death/disappearance
- Details of the police investigation
- Queries raised/significance
- Correspondence with family.

The NSW police read the ACON dossiers and determined that – in terms of their factual evidence [holdings] based review – the dossiers did not offer any additional information that they did not have access to previously. Thus the NSW police did not alter any of their findings. .

In terms of the academic review, the ACON dossiers were read with a view to reveal if they had captured any new or fresh material that was not in the individual police case files. This was a very challenging and time consuming task because one had to move backwards between each dossier and its relevant police case review form. The process of looking to identify new material in each dossier required painstaking attention to detail. Additionally, the ACON dossiers didn't have any definitive classification system. They just contained ideas (some of which were speculative) under the heading "Queries raised/significance" This also made evaluating the data very challenging. The academic team cannot guarantee that something significant might have got overlooked, such was the complexity of the process of reconciling the two data sets [Police review forms and ACON data].

To further complicate this process, the documents often contained similar ideas albeit expressed in slightly different language. It should be stressed that the ACON dossiers were much smaller than the individual case review forms that the NSW police used. It was also noted that some key dates and spelling of names were incorrect in the ACON dossiers. And in some dossiers the 'facts' presented were also incorrect (e.g. in one dossier it was claimed that the murder weapon was a shot gun, when in fact it was a .22 rifle). Such discrepancies make sense when one considers that ACON did not have access to the rich, factual data that the police possess. It should be noted that the section 'Details of the police investigation' was often either blank or provided criticisms of police that were not substantiated. It struck the academic review team as curious that ACON would seek to evaluate the sufficiency of a police investigation without being privy to any substantive data that would permit such an evaluation to be made.

The academic team also determined that the ACON data did not provide any significant points of difference to the more substantive NSW police review forms. Indeed, ACON's reliance on ideas gleaned from media reports or unattributed sources was considered quite

problematic for the academic team. To provide one example to illustrate this point, in the ACON Olsen dossier (case 56) it was stated that a prisoner confessed to the crime but that this confession was subsequently denied. The academic team cannot attribute weight to something that is ultimately denied or retracted. Furthermore, the academic team have no investigative powers or way of ascertaining if such a confession ever did take place and so had to discount this factor. Additionally, it should be noted that accounts of crime by journalists can be embellished (to help sensationalise a case a sell papers) and are not wholly reliable as ‘facts’. So whilst the ACON dossiers were prepared with the most noble of intentions – a genuine desire to cast some light on the cases concerned – they proved to be a resource that did not ultimately provide any compelling reasons for the academic team to reclassify any cases.²³

APPENDIX B

**[Blank copy of ‘Bias Crime Indicators Review Form’ (BCIRF)
[TO BE ATTACHED AT TIME OF PRINTING]**

²³ This is not to say that the ACON data does not have a wider social value outside the parameters of this review. Its blend of media reports and court judgements illuminates the way that these deaths were reported in the press and adjudicated in the courts during the decades in question. Such a resource is profoundly valuable for other purposes [e.g. compiling social history] and the academic team thanks ACON for cooperating and sharing their dossiers with us. That the data ultimately did not prove helpful to the academic reviewers is not a reflection on the good will that saw this data collated in the first place.