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Subject: Fw: ACON report on Parrabell cases - questions from The Australian [DLM=For-Official-Use-Only]
Date: Friday, 25 May 2018 12:26:00

Afternoon Gents,

Please see below a draft response, which I believe addresses a lot of Feneley's questions.

Obviously, there's a lot he wanted, particularly about the Scott Johnson matter, but I think it's pretty thorough.

Happy to hear your thoughts and have changes made, etc.

A



Ainslie Blackstone
 Media Supervisor
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Like ACON, the NSW Police Force responded to community activism, and we established Strike Force Parrabell to conduct an extensive review of investigations into deaths that occurred in NSW between 1976 and 2000.

An independent academic review of the cases was also undertaken, and we have requested their expertise to assist in developing a new system for identifying bias in everyday policing in NSW.

We are hoping to release all the findings and recommendations in coming weeks.

I look forward to being able to share our findings and working through the recommendations and create further change for a better future for the LGBTI community.

Strike Force Parrabell was established in 2013 as 'Operation Parrabell'. It was revised in 2015 to include nine specialist investigators, which include Gay and Lesbian Liaison Officers (GLLOs).

We made the change from operation to strike force in early 2017 to assist with internal recording processes. (Is this true???)

The NSW Police Force issued a formal public apology in 2016. I believe the apology was well thought-out and covered a great deal of ground – not just for the 78ers, but also to the entire LGBTI community.

Commissioner Fuller is about to meet with 78ers (ahead of the 40th anniversary of the 1978 Mardi Gras). I know he shares the concerns of what was happening at that time – and through the years – and wants to help with the healing process.

In what we've learnt from the reading of the cases (Parrabell) there is not sufficient evidence of misbehaviour or deliberate inaction from NSW Police Force that would warrant a further, broader apology.

There are concerns in some of the cases, as highlighted by the Coroner, particularly Russell and Warren, but it was police that raised those concerns, brought them to the forefront.

We anticipated perception of bias of Strike Force Parrabell – police investigating police – but the lead investigator was hand-selected, not only is he a brilliant investigator, he is also a GLLO (Gay and Lesbian Liaison Officer).

I understand the criticism, that's why we also commissioned an independent academic review from Flinders University, and their findings will be released alongside ours.

I encourage anyone who has apprehensions to read the independent review.

Make no mistake, during the 70s, 80s and 90s the LGBTI community was well and truly marginalised by society, including government agencies and a large portion of the population.

Society has moved forward, no doubt, but it has taken time and their struggles have continued into the 21st century.

Same-sex relationships were not decriminalised until 1984, and despite the change in law, it didn't change societal views or culture immediately. The Homosexual Advance Defence wasn't repealed in NSW until 2014.

Our (NSWPF) current bias assessment tools are not practical for your everyday officer on the beat. We are currently working toward a new system – it is one of the Parrabell recommendations – a system that while simple, will assure bias motivation is considered in each and every investigation.

This is important for all vulnerable members of our community.

Like the rest of the NSW Police Force, the Homicide Squad has evolved a great deal since the 70s.

The community can be confident in their abilities to investigating suspicious deaths, and in their pursuit for justice for victims and their families.

The most important aspect of the ACON report is its purpose: to seek truth, justice, healing, vigilance, advocacy, policy, awareness, and relationship building.

As the NSW Police Force Corporate Spokesperson for Sexuality, Gender Diversity and Intersex, I can say that as an organisation, we are committed to achieving the same goals.

Strike Force Macnamir: The investigation into the suspicious death of Scott Johnson.

While the Coroner did not make a recommendation for further investigation, we understand the frustration of Mr Johnson's family, who have sought the answers to his death.

The case is currently under the responsibility of the Homicide Squad and will be formally reviewed in due course.

----- Forwarded by Ainslie Blackstone/2002888/Staff/NSWPolice on 25/05/2018 12:21 -----

From: Rick feneley <[REDACTED]>
 To: Ainslie Blackstone <[REDACTED]>, Anthony Crandell <[REDACTED]>
 Date: 23/05/2018 08:20
 Subject: ACON report on Parrabell cases - questions from The Australian

Dear Tony and Ainslie,

You might be aware that ACON has produced a report on the 88 cases that Strike Force Parrabell has had under review. The ABC and I have embargoed copies of the report and I will be filing a story for Monday's edition of *The Australian*. I was hoping you might wish to respond to the report's recommendations or more generally; or that you may be able to update me on the current status of Parrabell and the anticipated timing for releasing any details.

Do you expect to make any statement on Parrabell's findings soon?

Can you yet say, or give any indication of, how many of the 88 cases might have been found to be possible or probable gay-hate murders?

Can we yet say how many of the cases might be referred back to Unsolved Homicide for further investigation?

Might any statement include findings or recommendations from the independent academic review of Parrabell's work? My understanding is that review was completed last year.

Does that academic review include any analysis or findings on the FBI method for assessing bias crimes, as adopted by NSW Police, and whether or not it is an adequate tool for considering possible gay-hate murders?

(I refer you back to questions I sent in December and the background that Sue Thompson and Stephen Tomsen, the original proponents of these 88 cases, argue the FBI bias-crime methodology is not fit for the purpose. Former homicide detective Steve Page shares their concerns and fears that applying the FBI method to these cases will create a "whitewash". He notes that it was used in the Scott Johnson case and led police to the conclusion that the remote area where Scott died was not a likely location for such a crime, whereas the coroner not only found the area was a gay beat but he accepted testimony that it was attended by gay-bashing gangs and that, indeed, at least two people motivated by gay hatred attacked Scott. For your background, Thompson and Tomsen and Steve Johnson's US legal adviser Martha Coakley say the FBI tool was designed as crime statistics tool for tallying bias crimes in which there is enough evidence of the perpetrators' motive - so better applied to crimes already solved, or better suited to, say, terrorists who have clearly and unequivocally stated their motives, or in cases where there is ample evidence of such motives; they say gay-hate killers will rarely have left such a convenient trail, and particularly in historical cases that attracted little police attention immediately after the death. Even when considering the eight cases that NSW police have already identified as "possible" or "robable" gay-hate killings, Thompson fears only one - the Richard Slater murder in Newcastle - would meet the FBI criteria because the suspect had a history of meeting gays for sex, then bashing them (although ni conviction was achieved in that case).

What has been the duration of Parrabell? My recollection was that

Operation Parrabell may have dated back to 2013. When did it become Strike Force Parrabell, and from what point did its focus become a review of the 88 cases?

Regarding the ACON report, its recommendations are many but I'll list those I think you might find most relevant for comment (though, please, comment on any others if you wish):

- a roundtable be supported and attended by key stakeholders including NSW Police Force, Victim Services, Attorney General's Office, and relevant community and legal services to explore issues relevant to historical violence including those contained in this report.
- acknowledgement or a formal apology by the NSW Parliament and/or the NSW Police Force to the LGBTI community for the inadequate or slow responses to violence throughout this period.
- an independent investigation into the actions of the various arms of the criminal justice system to fully understand the impediments to justice during this period in history, their relevance to current practices, and to identify opportunities to finalise unsolved cases. (The report says: "Some decisions and actions, and indeed at times lack of action, taken by police and the courts appear to have been shaped by prejudice.")
- establishment of a police taskforce or similar formal process to support and encourage survivors of violence and other community members with evidence relating to historical crimes to make an approach to the NSW Police Force to have their experiences recorded and investigated.
- the introduction of appropriate sexuality and gender indicators in health and justice data collection systems relating to LGBTI violence related crimes.
- The NSW Government should review ... bias assessment tools, as well as better monitor crime-related trends to protect vulnerable communities. (The report says: "While there is evidence that bias was considered during some police investigations, bias was not consistently considered as a motive therefore hindering the justice process.")
- strengthening the Bias Crimes Unit's capacity to appropriately respond to the needs of LGBTI communities.
- development of a sexuality and gender identity prejudice **assessment tool for use by police.**
- recommends **sexuality and gender identity prejudice is routinely considered as a motive in homicides** and that appropriate measures are explored to support this.
- **"Whilst killings and physical violence against gay men have reduced** since the

period of this investigation ... there has been a **disturbing trend of increased physical and sexual violence against transgender people in recent times in NSW.**"

- ACON recommends the exploration of innovative programs that aim to identify potential offenders, settings and circumstances where LGBTI hate crimes may occur. [REDACTED]

I sent extensive questions to police media and various units early in December following the findings in the third Scott Johnson inquest. There was no response to the specific questions at the time, but I'll resubmit them here, for your information, in case any of them can now be answered. My December email included the following:

Firstly, there is the overall coronial finding – that Johnson died as a result of an attack by at least two people who were motivated by gay hatred. This is contrary to the analysis presented to the State Coroner in the report of former Strike Force Macnamir head Pamela Young. (DCI Young expressed her surprise immediately after Magistrate Barnes's finding.) The Barnes conclusions also directly contradict the assumptions made in the police bias crime assessment concerning the North Head area where Johnson died.

Point 111 of Mr Barnes's findings (page 23 of the redacted version) refers to the bias crime assessment conducted in 2013 by officers attached to Operation Parrabell. It "concluded the North Head beat was an unlikely location for anti-gay bias motivated crimes. The principal basis for that conclusion was the remoteness of the location of the beat and its relatively rough terrain, its use primarily as a day-time beat, along with the absence of any reported anti-gay violence or other identified suspicious deaths involving suspected bias motivation".

Mr Barnes rejected this rational. He accepted the testimony of the beat's gay users that gay bashers did indeed attend the North Head beat. And Mr Barnes, while unable to point to the perpetrators, believed it was likely that at least one group of convicted gay bashers who gave evidence to his inquest had committed assaults at the same North Head beat.

Mr Barnes also found in point 116 that the "absence of recorded reports of police incidents ... does not support a conclusion that no such incidents occurred. On the contrary, the evidence of men who had frequented the beat before and after Scott's death leads me to conclude

that such violence did occur there around the time of Scott's death".

Given these findings, does NSW Police accept that it got it wrong when it came to assessing the North Head gay beat? Does it accept that the third Johnson inquest revealed ample evidence that not only was the area a gay beat – contrary to explicit police advice to the first coroner in 1989 – but that gay-bashing gangs did attend the beat?

The advice of then Det Sgt Cruickshank in 1989 to Coroner Hand was that the area was not frequented by gay men because, if it had been, it would also have been frequented by people who would have come to harm the gays, and so police would have learned about it. **Given this advice, is NSW Police concerned by testimony that at least some police had attended this gay beat on patrols in years preceding the Johnson death?**

The State Coroner found that police at the time leapt to the conclusion of suicide. On the day the body of Scott Johnson was found, December 10, 1988, Manly's Constable Troy Hardie wrote a report concluding it appeared that the "deceased committed suicide by jumping from the headland". In his evidence to the State Coroner, Hardie said that, had he known the area was a gay beat, "I would have kept an open mind to how the incident occurred".

Does NSW Police accept that its early assumption and advice that it was not a gay beat precluded the possibility of a thorough investigation in the Johnson case from the outset?

Does NSW Police now accept that the original investigation was flawed? (DCI Young rejected this proposition in her ABC *Lateline* interview in 2015. It met the standards of the day, she then argued.)

Will NSW Police review the methodology for the bias crime assessment that led to its assumptions in 2013 about the North Head beat? I understand those methods have been applied to the 88 Parrabell cases.

Does the Johnson coronial finding have implications for the Parrabell review, and/or for the findings regarding the 30 or so cases – a subset of the 88 – that Sue Thompson and Stephen Tomsen had proffered as unsolved murders that could possibly be explained

by gay-hatred?

You may be aware of considerable criticism that the **FBI methodology to assess bias crimes**, adopted by NSW Police, is not fit for the purpose of assessing gay-hate attacks – especially when considering crimes that remain unsolved. The critics include Thompson and Tomsen, but also Martha Coakley, who served as District Attorney of Middlesex County, Massachusetts, from 1998 to 2006, was Attorney-General of Massachusetts 2007-2015, and who assisted the Johnson family pro bono for the latest Scott Johnson inquest.

Thompson and Tomsen say the FBI method is designed for the categorisation of crimes for statistical purposes after they have been solved. They argue the method is not appropriate when crimes are yet to be solved or even investigated in the light of potential gay-hate motivation.

Coakley is concerned that the FBI criteria requires proof of the subjective motivation of the convicted offender. By definition, she says, none of the **unsolved** cases could qualify. In many of these cases, the original police investigations had not entertained the possibility of murder, let alone that gay-hatred might have been a motivation.

NSW Police has assessed **eight** of the unsolved cases to be possible or probable gay-hate killings. Sue Thompson fears that, if the FBI test was now applied to those eight cases, only one would meet its criteria for a bias crime: Richard Slater in Newcastle, in 1981.

(Slater was a married man who died after he was found semi-conscious in the Birdwood Park toilet block in Newcastle, a known gay beat. He was bashed and robbed. There was semen on the victim's clothing. Police charged a suspect in 1982 but prosecutors "no billed" the case. Police maintain it is a probable gay-hate murder.)

Thompson says witnesses went on the record about the arrested man's spoken intentions on the night Slater died and his history of having sex with men then bashing them. Thompson fears that only such inarguable – and very rare – evidence would make police now identify a case as anti-gay under the FBI methodology.

Does NSW Police share Thompson's concern?

Does NSW Police have any concerns about the FBI bias crime

methodology and how it might apply to these cases under review?

Has the academic review of Parrabell raised concerns about NSW Police using this FBI methodology?

Will NSW Police investigate what Mr Barnes described as “continuing suspicion” surrounding the relationship between former (corrupt) police Ray Peattie and David Patison and one of the convicted gay bashers who gave evidence to the inquest, [NP1] [NP1] ([NP1] confirmed that Peattie, and possibly Patison, attended his wedding.) Will police explore the suggestion from counsel assisting the Johnson family that [NP1] brother paid a \$50,000 bribe to police to get a lighter sentence for [NP1] for his gay bashings?

Thank you for your attention. Any help with these questions would be much appreciated.

Rick Feneley

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