

STANDING OPERATING PROCEDURES

BIAS CRIMES UNIT



BIAS CRIMES RESPONSE & INVESTIGATION



NSW Police Force

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NSWPF – CONFIDENTIAL*Scope of Bias Crimes*

At the very essence of a bias crime or incident, police are required to demonstrate the motivation or intent of the offender – not necessarily the perception or belief of the victim. When investigating, one of the key questions that needs to be asked is, if one of the characteristics of the victim can be replaced or changed, would that offence still have taken place? If the answer to this question is, “No the offence would likely not have taken place” then this increases the probability that the crime may be bias motivated.

Unfortunately, identifying if an incident or offence is one that has been motivated by bias is not as simple as the language used or the perceived physical appearance of the victim compared to the offender. Officers need to consider a range of indicators that can guide them when investigating. These indicators provide additional lines of inquiry and can be used as part of the investigation plan. All avenues of investigations should be exhausted prior to ruling out any real or perceived bias as a motivation for the crime.

However, sustainable community engagement is the key to addressing, responding to and preventing crimes motivated by bias. An effective bias crime response depends on the cooperation of the community as an open source of information. Although the criminal investigation is the primary focus of investigators, it is imperative that police ensure transparency and involvement of the community to build and maintain rapport with them and to strengthen those communal bonds between police and the public. These relationships need to be established prior to a crisis occurring to increase the likelihood of successful outcomes and increase confidence and engagement in police by the community.

These Standing Operating Procedures outline the elements of a Bias Crime, the tools frontline officers and LACs can do to triage the incident and formulate and implement strategies for prevention and investigation through sustainable community engagement.

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DEFINITIONS

Bias Crime: A criminal offence committed against persons, associates of persons, property or society that is motivated, in whole or in part, by an offender's bias against an individual's or group's actual or perceived; race, religion, ethnic/national origin, sex/gender, gender identity, age, disability status, sexual orientation or homeless status.

Bias Incident: An incident committed against persons, associates of persons, property or society that is motivated, in whole or in part, by an offender's bias against an individual's or group's actual or perceived; race, religion, ethnic/national origin, gender, gender identity, age, disability status, sexual orientation or homeless status but does not constitute a criminal offence.

Relevant Legislation

- *Crimes (Sentencing Procedure) Act 1999 (NSW)*
s21A(2)(h): **Aggravating factors**

the offence was motivated by **hatred for or prejudice against** a group of people to which the offender believed the victim belonged (such as people of a particular religion, racial or ethnic origin, language, sexual orientation or age, or having a particular disability),

- *Summary Offences Act 1988 (NSW)* *An outline of key sections*
s4 Offensive Conduct

(1) A person must not conduct himself or herself in an offensive manner in or near, or within view or hearing from, a public place or a school.

Maximum penalty: 6 penalty units or imprisonment for 3 months.

(2) A person does not conduct himself or herself in an offensive manner as referred to in subsection (1) merely by using offensive language.

(3) It is a sufficient defence to a prosecution for an offence under this section if the defendant satisfies the court that the defendant had a reasonable excuse for conducting himself or herself in the manner alleged in the information for the offence.

s4A Offensive Language

(1) A person must not use offensive language in or near, or within hearing from, a public place or a school.

Maximum penalty: 6 penalty units.

(2) It is a sufficient defence to a prosecution for an offence under this section if the defendant satisfies the court that the defendant had a reasonable excuse for conducting himself or herself in the manner alleged in the information for the offence.

(3) Instead of imposing a fine on a person, the court:

(a) may make an order under section 8 (1) of the *Crimes (Sentencing Procedure) Act 1999* directing the person to perform community service work, or

(b) may make an order under section 5 (1) of the *Children (Community Service Orders) Act 1987* requiring the person to perform community service work, as the case requires.

NSWPF – CONFIDENTIAL**s8 Damaging or desecrating protected places:**

(1) In this section:

interment site has the meaning it has in Part 4 of the *Cemeteries and Crematoria Act 2013* and includes a memorial (within the meaning of that Act).

protected place means a shrine, monument or statue located in a public place, and (without limitation) includes a war memorial or an interment site.

war memorial means a war memorial located in a public place, and (without limitation) includes:

- (a) the Anzac Memorial in Hyde Park, Sydney, being:
- (i) the memorial building referred to in the *Anzac Memorial (Building) Act 1923*, and
 - (ii) the land described in the Schedule to that Act, and
 - (iii) any other structure on that land, and
- (b) any other place prescribed under subsection (4) as a war memorial for the purposes of this section.
- (2) A person must not wilfully damage or deface any protected place.

Maximum penalty: 40 penalty units.

(3) **A person must not commit any nuisance or any offensive or indecent act in, on or in connection with any war memorial or interment site.**

Maximum penalty: 20 penalty units.

s11A Violent Disorder:

(1) If 3 or more persons who are present together use or threaten unlawful violence and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety, each of the persons using or threatening unlawful violence is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months.

- (2) It is immaterial whether or not the 3 or more persons use or threaten unlawful violence simultaneously.
- (3) No person of reasonable firmness need actually be, or be likely to be, present at the scene.
- (4) An offence under subsection (1) may be committed in private as well as in public places.
- (5) A person is guilty of an offence under subsection (1) only if he or she intends to use or threaten violence or is aware that his or her conduct may be violent or threaten violence.
- (6) Subsection (5) does not affect the determination for the purposes of subsection (1) of the number of persons who use or threaten violence.
- (7) In this section:

violence means any violent conduct, so that:

- (a) it includes violent conduct towards property as well as violent conduct towards persons, and
- (b) it is not restricted to conduct causing or intended to cause injury or damage but includes any other violent conduct (for example, throwing at or towards a person a missile of a kind capable of causing injury which does not hit or falls short).

NSWPF – CONFIDENTIAL**s11B Custody of Offensive Implement:**

- (1) A person shall not, without reasonable excuse (proof of which lies on the person), have in his or her custody an offensive implement in a public place or a school.

Maximum penalty: 50 penalty units or imprisonment for 2 years.

- (2) If a person is convicted of an offence under this section, the court may, in addition to any penalty it may impose, make an order that the offensive implement be forfeited to the Crown, and the implement is forfeited accordingly.
- (3) In this section:

offensive implement means:

- (a) anything made or adapted for use for causing injury to a person, or
- (b) anything intended, by the person having custody of the thing, to be used to injure or menace a person or damage property

- **Crimes Act 1900 (NSW)**
s31 Documents containing threats

- (1) A person who intentionally or recklessly, and knowing its contents, sends or delivers, or directly or indirectly causes to be received, any document threatening to kill or inflict bodily harm on any person is liable to imprisonment for 10 years.
- (2) It is immaterial for the purposes of an offence under this section whether or not a document sent or delivered is actually received, and whether or not the threat contained in a document sent, delivered or received is actually communicated to the person concerned or to the recipient or intended recipient of the document (as relevant in the circumstances).

A 'document' as defined in *Interpretation Act 1987 (NSW)*
S.21 Meanings of commonly used words and expressions

document means any record of information, and includes:

- (a) anything on which there is writing, or
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them, or
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else, or
- (d) a map, plan, drawing or photograph.

- **Crimes Prevention Act 1916 (NSW)**
s2 Inciting to crimes

If any person incites to, urges, aids, or encourages the commission of crimes or the carrying on of any operations for or by the commission of crimes that person shall be guilty of an offence against this Act.

NSWPF – CONFIDENTIAL**s3 Printing or publishing writing inciting to crimes**

If any person prints or publishes any writing which incites to, urges, aids, or encourages the commission of crimes or the carrying on of any operations for or by the commission of crimes, such person shall be guilty of an offence against this Act, and shall be liable to imprisonment for any term not exceeding six months or to a penalty not exceeding 1 penalty unit.

Other Legislation

- *Anti Discrimination Act 1977 (NSW)*
Offences of serious racial vilification s20D

(1) A person shall not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group by means which include:

- (a) threatening physical harm towards, or towards any property of, the person or group of persons, or
- (b) inciting others to threaten physical harm towards, or towards any property of, the person or group of persons.

Maximum penalty:

In the case of an individual-50 penalty units or imprisonment for 6 months, or both.

In the case of a corporation-100 penalty units.

(2) A person shall not be prosecuted for an offence under this section unless the Attorney General has consented to the prosecution.

Offences of serious transgender vilification s38T

(1) A person must not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person on the ground that the person is a transgender person, or a group of persons on the ground that the members of the group are transgender persons, by means which include:

- (a) threatening physical harm towards, or towards any property of, the person or group of persons, or
- (b) inciting others to threaten physical harm towards, or towards any property of, the person or group of persons.

Maximum penalty:

In the case of an individual-10 penalty units or imprisonment for 6 months, or both.

In the case of a corporation-100 penalty units.

(2) A person is not to be prosecuted for an offence under this section unless the Attorney General has consented to the prosecution.

Offences of serious homosexual vilification s49ZTA

(1) A person must not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the homosexuality of the person or members of the group by means which include:

- (a) threatening physical harm towards, or towards any property of, the person or group of persons, or
- (b) inciting others to threaten physical harm towards, or towards any property of, the person or group of persons.

Maximum penalty:

In the case of an individual-10 penalty units or imprisonment for 6 months, or both.

In the case of a corporation-100 penalty units.

(2) A person is not to be prosecuted for an offence under this section unless the Attorney General has consented to the prosecution.

NSWPF – CONFIDENTIAL**Offences of serious HIV/AIDS vilification s49ZXC**

(1) A person must not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of a person or group of persons on the ground that the person is or members of the group are HIV/AIDS infected or thought to be HIV/AIDS infected (whether or not actually HIV/AIDS infected) by means which include:

- (a) threatening physical harm towards, or towards any property of, the person or group of persons, or
- (b) inciting others to threaten physical harm towards, or towards any property of, the person or group of persons.

Maximum penalty:

In the case of an individual—50 penalty units or imprisonment for 6 months, or both.

In the case of a corporation—100 penalty units.

(2) A person is not to be prosecuted for an offence under this section unless the Attorney General has consented to the prosecution.

NSWPF – CONFIDENTIAL**Protected Group Definitions**

Race: A group of persons who possess common physical characteristics (e.g., colour of skin, eyes or hair, facial features) genetically transmitted by descent and heredity that distinguish them as a distinct division of humankind.¹

NSWPF classifications:

- White/European,
- Asian,
- Middle Eastern/Mediterranean,
- Black African,
- Aboriginal,
- South American,
- Indian/Pakistani and
- Pacific Islander.

Ethnic/National Origin: A group of persons of the same race or national origin who share common characteristics, languages, customs, history, or traditions, or a minority or nationality group that is part of a larger community².

Religion: A belief or non belief system regarding the origin and purpose of the universe and life and the existence or non existence of a supreme being (e.g. Catholicism, Judaism, Protestants, Muslims or atheists).

Sexual orientation: means a person's sexual attraction towards persons of the same sex and/or persons of a different sex³ (e.g. gay, lesbian, bi-sexual or heterosexual)

Gender Identity: Regardless of the person's designated sex at birth⁴, their gender identity relates to their self-image, appearance and behaviour or characteristics (e.g. transgender).

Sex/Gender: The physical status of an individual being male, female or another gender (e.g. intersex⁵).

NB: Sex/Gender bias crimes may include sexual assaults and domestic violence offences. For an incident to be classified as a gender bias crime there must be admissible evidence of gender based bias, such as language or a pattern of behaviour. For assistance contact the Bias Crimes Coordinator.

Age: Age includes age group.⁶

¹ IACP National Law Enforcement Policy Center, *Investigation of Hate Crimes – Model Policy, 2008*

² IACP National Law Enforcement Policy Center, *Investigation of Hate Crimes – Model Policy, 2008*

³ IACP National Law Enforcement Policy Centre, *Investigation of Hate Crimes – Model Policy, 2008*

⁴ IACP National Law Enforcement Policy Centre, *Investigation of Hate Crimes – Model Policy, 2008*

⁵ 'Sex/Gender' includes a person's intersex status, meaning the status of having physical, hormonal or genetic features that are neither wholly female nor wholly male; or a combination of female and male; or neither female nor male.

⁶ Section 5, *Age Discrimination Act 2004* (Cth)

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Disability Status: The status of a person either having a disability or not having a disability, where ‘disability’ means:

- total or partial loss of a person’s bodily or mental functions or of a part of a person’s body, or
- the presence in a person’s body of organisms causing or capable of causing disease or illness, or
- the malfunction, malformation or disfigurement of a part of a person’s body, or
- a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction, or
- a disorder, illness or disease that affects a person’s thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour.⁷

Homeless Status: The status of a person either being homeless or not being homeless. When a person does not have suitable accommodation alternatives they are considered homeless if their current living arrangement:

- is in a dwelling that is inadequate; or
- has no tenure, or if their initial tenure is short and not extendable; or
- does not allow them to have control of, and access to space for social relations.⁸

2. RESPONDING TO AN INCIDENT – ROLE AND RESPONSIBILITIES

Current SOPs and procedures are to be practiced as any other crime scene when responding to an incident:

2.1 *General Duties*

(a) *Initial Action*

- i. secure the scene
- ii. canvas the area
- iii. attend to the victim/s
- iv. detain any Persons of Interest
- v. identify any witnesses

(b) Considerations for Bias Crimes incidents

- i. Witnesses may hold similar beliefs as the POI(s) and may decline to assist.
- ii. Witnesses may be of the same group as the victim and fear reprisal or similar attacks for assisting police and may decline to assist.
- iii. Ensure witnesses contact details are obtained even if the witnesses are reluctant or unwilling to assist in the investigation.

⁷ Section 4, *Anti-Discrimination Act 1977* (NSW)

⁸ ABS statistical definition of homelessness

NSWPF – CONFIDENTIAL**2.2 Identification of a Bias Crime**

After securing the scene and when speaking to victims, witnesses and POI's consider if one or more of the following bias crime indicators are present:

- (a) Racial, ethnic, gender, religious & cultural differences
 - i. Racial, religious, ethnic/national origin, sexual orientation, disability status, gender, gender identity, age, or homeless status group of the victim differs from that of the offender.
 - ii. Victim is a member of a group which is overwhelmingly outnumbered by members of another group in the area where the incident occurred.
 - iii. Victim was engaged in activities promoting his/her group.
 - iv. Incident coincided with a holiday or date of particular significance to the victim's or POI'S group.
 - v. Victim, although not a member of the targeted group is a member of an advocacy group that supports the victim group, or the victim was in the company of a member of the targeted group.
 - vi. Historically, animosity exists between the victim's group and the POI's group.ⁱ
- (b) Comments, written statements, gestures
 - i. Bias related comments, written statements or gestures were made by the POI.ⁱⁱ
- (c) Drawings, markings, symbols, tattoos and graffiti
 - i. Bias related drawings, markings, symbols, tattoos or graffiti were left at the scene or were seen on the POI's.ⁱⁱⁱ
- (d) Organised Hate Groups (OHG)
 - i. Objects or items that represent the work of organised hate groups were left at the scene (e.g. flyers, burning cross, etc) or
 - ii. Did an organised hate group claimed responsibility for the incident.
 - iii. There are indications that an organised hate group was involved or was/has been active in the neighbourhood.^{iv}
- (e) Previous existence of bias crime incidents
 - i. Victim was visiting a location where previous bias crimes had been committed against members of the victim's group.
 - ii. Several incidents occurred in the same area and the victims were members of the same group.
 - iii. Victim has received previous harassing mail or phone calls or has been the victim of verbal abuse based on his/her affiliation with a targeted group.
 - iv. Recent bias incidents or crimes may have sparked a retaliatory bias crime.^v

Considerations:

- (f) Victim/witness perception

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- i. Victims and/or witnesses perceive that the incident was motivated by bias.^{vi}
- (g) Motive of offender
- i. Offender was previously involved in a similar incident or is a member of, or associates with members of an OHG.
 - ii. The victim was in company of, or married to a member of the targeted group.
 - iii. The victim was perceived by the offender as violating or breaking from traditional conventions or working non traditional employment
 - iv. The offender has a history of previous crimes with similar modus operandi and involving other victims of the same race, religion, ethnic/national origin, disability status, sexual orientation, age, gender, gender identity or homeless status.^{vii}
- (h) Location of Incident
- i. The victim was in or near an area or place commonly associated with or frequented by members of a particular race, religion, ethnic/national origin, disability status, sexual orientation, age, gender, gender identity or homeless status.^{viii}
- (i) Lack of motive
- i. The victim was in or near an area or place commonly associated with or frequented by members of a particular race, religion, ethnic/national origin, disability status, sexual orientation, age, gender, gender identity or homeless status.^{ix}
- (j) Level of violence
- i. The level of violence and injuries sustained by the victim/s is greater than would be expected for a crime of that type.
 - ii. Weapons of opportunity were used in the incident
 - iii. The number of POI's was greater than the number of victims and all POI's took a role in the incident.

NOTE: The indicators are a guide only and not a legal certainty. The presence of the indicators is designed to act as a cue for deeper questioning and investigation. Be aware that none of the indicators may be present but the incident may still be bias motivated or all the indicators may be present but it may not be a bias crime.

2.3 Suspicion of a Bias Crime

After taking the facts of the incident into account and considering the bias crimes indicators, if the incident is **suspected** of being wholly or partially motivated by bias, investigate the incident as a bias crime/incident.

Once the incident is identified as a suspected bias crime, notify the mobile supervisor (or if no mobile supervisor, the station supervisor) if any of following circumstances exist;

- Homicide.
- Serious/Life threatening injuries sustained (e.g. GBH, Malicious Wounding, etc).

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- High profile public figure, religious leader or community leader was the victim or target.
- Religious or other culturally significant structure targeted
- Large scale damage (i.e. cost of repairs, coverage of damage and level of destruction).
- Particularly offensive comments or objects left at location (e.g. graffiti, animal parts, etc) which are likely to inflame the community.
- Evidence of immediate community reaction (e.g. crowds of the victim community gathering, calls for revenge, etc).
- Imminent risk to the safety of the victim/community members.
- Media presence or likely to attract media attention.
- Any other situation where an immediate police response will be required or where a planned community response is required.

If none of the above circumstances exist, record the event as per current procedures **(See Section 5 – Recording & Reporting – for further information.)**

2.4 Supervisors

Where scene Management is required, current SOPs and procedures are to be practiced.

(a) Environmental Assessment

An environmental assessment is to consider if any retaliatory crimes or public incidents could arise as a result of the current incident being investigated. If the environmental assessment determines that there is a likelihood of retaliatory attacks or public order incidents;

- i. Deploy local resources to manage the immediate risk, such as
 - (i) Increased patrols
 - (ii) Static police presence
 - (iii) Removal of individuals and groups
 - (iv) Community engagement
 - (v) Emergency Powers
 - Public Disorder,
 - Part 6A LEPRA
- ii. Specialist resources to be organised if deemed necessary, e.g. OSG; PORS; Dog Squad; PolAir

(b) When conducting a risk assessment, take into consideration the following;

- i. Previous incidents that have occurred targeting the victim group (including any previous public order incidents).
- ii. Level of anger/resentment towards the perpetrating community.
- iii. Level of anger/resentment in general to the targeted community.
- iv. Level of anger/resentment towards police.
- v. Proximity of perpetrating community to the victim community
- vi. Presence of Organised Hate Groups or radical community groups/activists.
- vii. Media presence.
- viii. Significance of targeted individuals/structures (e.g. sacred or hold deep cultural bonds) to the victim community

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- ix. Any other factor that may increase the risk of retaliatory attacks or public order incidents.
- (c) If the risk assessment identifies the risk as low, it is recommended that increased patrols of the victim's residence and community structures be undertaken for the remainder of the shift to calm the targeted community's fears.
- (d) If the risk assessment identifies the risk as high, notify the SDO/DO and the DOI.

2.5 *Duty Officers*

For public order incidents and high profile incidents the Duty Officer will take command of the incident as per current SOPS. At high profile or active incidents the Duty Officer will engage with community leaders or group leaders and attempt to de-escalate the situation.

2.6 *Notification to Bias Crimes Coordinator*

While the OIC remains responsible for the investigation, the Bias Crime Coordinator, Operational Programs Command MEIG, is to be contacted at the first possible occasion by mobile or email (#BIASCRIMES).

NOTE: Contact details can be found on the Bias Crime Unit Strategy and Knowledge Map

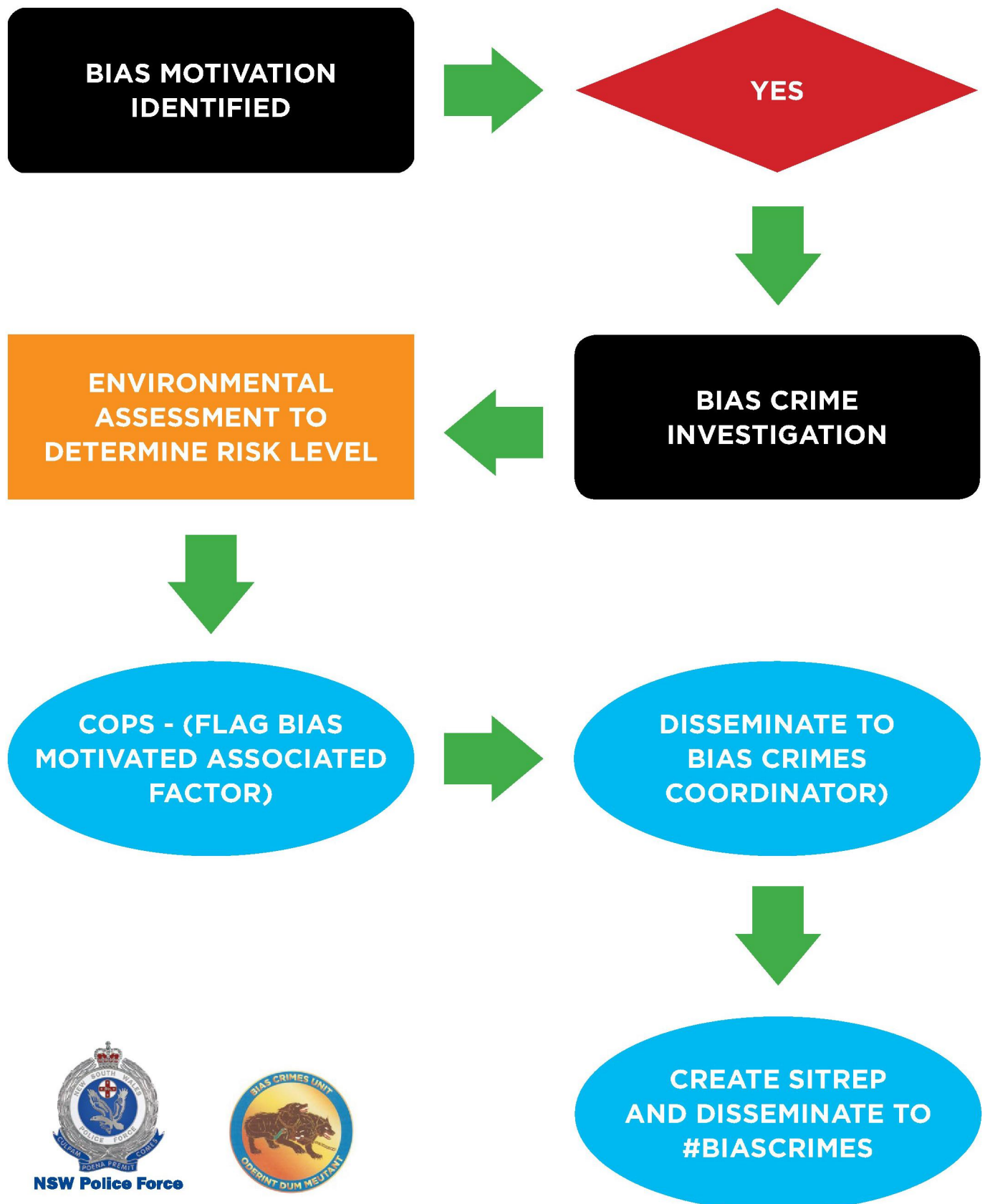
http://intranet.police.nsw.gov.au/organisational_units/operations_command/policy_and_programs/bias_crimes/contacts

The purpose is to discuss the investigation and provide guidance in relation to proving bias motivation.

If required, additional resources and assistance can be provided as agreed by the Commander of investigating LAC and the Commander of Operational Programs. Further, SITREPS are to be emailed to the Bias Crimes smac box: #BIASCRIMES

General Duties INVESTIGATION

SUSPECTED BIAS CRIME INVESTIGATION FLOW CHART



NSWPF – CONFIDENTIAL**3.1 Investigation planning when interviewing at the scene or at the police station**

There are a number of considerations investigating officers should consider as part of their investigation plan when interviewing victims and witnesses. Investigative officers need to be familiar with how a bias motivated crime can impact the victim and/or witness and their ability to communicate with police.

Example 1:

Residential area that is synonymous with persons of a cultural or religious background, i.e. the assumption often made that Leichhardt comprises of primarily Italian residents.

Person who identifies as Italian attacked in Leichhardt. Whether or not the investigation reveals it is a bias motivated crime, may impact on the wider Italian community of Leichhardt to feel threatened and fearful and impact on their engagement with Police.

Example 2:

Diversity within a identifiable group, people identifying as speaking Arabic

Multiple languages are spoken in Sudan, one of which is Arabic. However, there are three recognised dialects spoken within the Sudan. These languages include:

- Juba Arabic
- Standard Arabic
- Sudanese Arabic

Due to the nature of a bias motivated crime, victims and witnesses may be distressed at the knowledge that they have been targeted due to their own immutable characteristic, be it colour of skin, cultural identification, sexual orientation, etc. Police engaging with victims and witnesses at the scene or at the station for the purpose of interview are to consider the following inclusions as part of their current practices:

- i. Build rapport and show empathy
- ii. Calm the victim, if appropriate, offer food or something to drink
- iii. Allow time to express how they feel
- iv. Reassure they are now safe
- v. Explain the interviewing process that is going to take place
- vi. Ask permission to pose questions, as with some victims, in particular those from new and emerging communities, questioning may be seen as a form of harassment or trigger memories of previous trauma

(1) Pre Statement

In preparing the victim to give a statement, the officer that established rapport with the victim should take lead.

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- i. If required, engage a accredited interpreter (refer to interpreter policy)
- ii. Explain the statement process
- iii. Ensure the victim and/or witnesses level of understanding
- iv. Ensure to use appropriate terminology, if in doubt, ask the victim and/or witness.

Example: a person who is transgender and you are unsure how to refer to them, ask.
- Ask, do you use the name on their identification, or a name they have informed you.

- v. Avoid using stereotypes or biased terms

(2) Statements

- (a) Statements should be taken in first person narrative.
- (b) Preference should be given to obtaining the statement by electronic recording (ERISP), particularly, for victims and/or witnesses where English is not a first language.

NOTE: Transcription will be at the cost of the LAC as per policy

Ensure that a written statement with the jurat is obtained which can adopt the ERISP as a pro forma

- (c) Exact language used by the POI is to be recorded
- (d) Where interpreters are used, follow use of interpreter guidelines (refer to interpreter policy intranet.police.nsw.gov.au/_data/assets/file/0010/425764/Language_Services_Review_Report.doc), being sure to brief the interpreter as to the interview process, ensuring effective engagement with the victim and/or witness
- (e) Description of any clothing or tattoos observed
- (f) It is important to get the facts and opinion of victims and witnesses about targeted incidents for the purpose of establishing if a bias crime has occurred as well as for further lines of enquiry. This opinion; however; may not be used for evidentiary purposes. Examples of indirect bias motivated questions:
 - i. Why do you think this occurred to you/to the victim?
 - ii. Did the offender(s) say anything?
 - iii. What did the offender(s) say?
 - iv. Did the offender(s) make any gestures?
 - v. How and what did the offender(s) gesture?
 - vi. Are you aware of any other incidents that have occurred previously? (this is for intelligence and potentially to establish tendency)
 - vii. What has impacted you most in this incident?

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- (a) After obtaining the statement,
- i. Explain what will happen with the investigation
 - ii. Identify and be realistic regarding safety issues
 - iii. Any future requirement, i.e. court attendance
 - iv. If an interpreter was used, debrief interpreter, ensure no further information was provided and reiterate the code of confidentiality

3.2 *Victims*

- (a) *Let them speak* - It is important to allow the victim to tell you what happened in their own words and way without interruption. If you identify areas of clarification or follow up questions, note them and ask them at the end by taking them back to that part of their account of events. This will aid with their recollection of events and ensure all vital elements of the incident are recorded. If you interrupt the victim while they are recounting the incident, there is an increased risk of vital information being missed and damaging the rapport you have established. Further, victims may often begin their story at the point that matters to them, by acknowledging this, it may reveal further lines of enquiry.
- (b) *Be aware of their responses* – Some victims may still be reacting to the incident, emotionally, psychologically or physically. These reactions can vary from mild to extreme and can impact on how they relay their version of events. Managing these responses as noted in 4.1 (i-iv) can assist with the victims cooperation.
- (c) *English as a second language* – While some victims may have conversational to good English, the stress of the incident may cause the victim to:
- i. Revert to first language
 - ii. Become uncomprehensive to your instructions or questions
 - iii. Become uncomprehensive in their sentence structure.

If this occurs, obtain a version of events or statement through the use of an accredited interpreter (see [Interpreter policy intranet.police.nsw.gov.au/_data/assets/file/0010/425764/Language_Services_Review_Report.doc](http://intranet.police.nsw.gov.au/_data/assets/file/0010/425764/Language_Services_Review_Report.doc)).

- (iv) If it is not possible to use a face to face interpreter or time is a factor, use the telephone interpreter service for short explanatory intervention
- (v) Attempt to calm the victim as much as possible prior to questioning

Note: The NSW Police Force, Use of Interpreters in the investigative interview is compulsory when language is a barrier to communication.

- (d) Avoid the following:
- i. Making assumptions about the victims based on stereotypes or personal biases
 - ii. Judgements of the victims behaviour, lifestyle or culture

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- iii. Questioning the victims choices about their personal safety or behaviour
- (e) Upon concluding your interview with the victim, offer to make arrangements to transport them to their residence or preferred location to ensure their safety.
- i. If the location is close by and workload permits, police are to transport the victim
 - ii. Organise a taxi or someone to pick the victim up.
 - iii. Alternatively, the victim can make their own arrangement, if they decline assistance from Police and note this in the COPS event.
- (f) Refer victims Victim's Access Line – information can be found on the NSW Police Force internet:
http://www.police.nsw.gov.au/community_issues/victims_of_crime/victim_support_and_referral .For more information, consult with your Crime Prevention Officer
- (g) Victim Follow Up guidelines are to be adhered to:
http://intranet.police.nsw.gov.au/organisational_units/specialist_operations/customer_service/victim_support
- a. Consider the impact the incident may have had on your victim both psychologically and physiologically and how this could affect their recollection of the event. Due to this consideration should be given to contacting the victim a day or two after the incident to see if they recall any additional information.
 - b. If you suspended obtaining a statement due to the victims psychologically and physiologically response to the incident, i.e. heightened level of stress or anxiety, consider resuming the interview a day or two after the incident.

Case Management if the event/incident becomes a case

- (h) Ensure victim is followed up and updated with the status of the investigation regularly (at major points in the investigation) or at a minimum every 28 days.
- (i) If the case is suspended or rejected, ensure the victim is informed
 - i. Explain what this means
 - ii. Provide reasons for the suspension and/or rejection
 - iii. Update the case with an action that the victim has been notified

3.3 Witnesses

- (a) Attempt to speak with all witnesses, obtaining their details and engage with them to stay on the scene to provide a statement.
 - i. Explain the process and why it is important for you to obtain their statement
 - ii. Where they are unable to remain at the scene, inform them that you will follow up with them at a later time

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- (b) Witnesses to crimes or incidents may capture these events on their electronic devices, i.e. smart phones, tablets, etc.
- i. Attending and investigating police are to view all such recordings as soon as possible
 - ii. Retain a copy of any such recording as soon as possible by having the witness email the file to the investigating officer from the scene.
- (c) English as a second language – refer to 4.2(c)
- (d) Be aware that witnesses may identify or hold similar beliefs to the POI or be sympathetic to the offender. This is more likely in areas where the victim is in the minority within the community.
- i. Observe and note the witnesses reactions as this may result in the witness becoming hostile towards police
 - ii. Note the witnesses language, how they refer to the victim and the offender
 - iii. Note if the witness has any identifying tattoos, markings, clothing that identify with an organised hate group
 - iv. Ensure you gauge their observations of the events as this may offer important information for the investigation.
- (e) If the witness is sympathetic or identifies with the POI and refused to give a statement
- i. Note all conversations in your notebook in first person
 - ii. If you have recording devices available (Body Worn Video, first response video camera, etc), inform the witness that the conversation is being recorded in accordance with the *Surveillance Devices Act 2007*
 - iii. Engage if the witness prefers to provide you with a written statement written in their own words
- (f) If the witness is known for biases towards the targeted group and/or supportive of the action of the POI, ensure the witness
- i. understands the jurat
 - ii. understands the consequences for supplying a false statement
- (g) Witnesses may be affected by the incident due to identifying with the victim, either being of the same targeted group, be related to the victim or have close ties to the victim. As a result some may wish to not get involved.
- i. Be familiar with the considerations outlined in 4.1 (a-c) and 4.2 (a-f).
- (h) If the witness is from the same targeted group or has close ties to the victim and exhibiting psychological or physiological reaction
- i. It is recommended that the victim be given time to recover and followed up at a minimum within 24 hours and no longer than 72 hours
 - ii. Refer to 4.1(e)
- (i) If the witness is not a member of a targeted group, has no ties to the victim and shows no signs of stress

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- i. Take the statement as soon as practicable
- (j) After taking of the statement, if the witness has exhibited signs of trauma or stress (psychologically or physiologically) consider referring the victim to Victims Access Line (VAL) who can assess the victims eligibility to counselling

3.4 Persons of Interest

The most crucial evidence for a bias crime investigation is admissions from the POI that the incident was wholly or partially motivated by bias toward the victim and/or victim group.

All policies relating to interpreters are applicable to POIs.

Whether the POI is under arrest (s99 LEPR) or not, the following procedures should be followed.

(1) At the Scene

- a. If the POI is detained at the location, ensure that Section 99 of LEPR is complied with, in accordance to current SOPs and guidelines.
- b. If there is no grounds to arrest, ensure their detail are obtained
- c. Document
 - i. Clothing that identifies with an Organised Hate Group or gang
 - ii. Tattoos
 - iii. Any items they may have in their possession such as membership or pamphlets relating to gangs or organised hate groups
- d. Ensure that all tattoos are photographed and uploaded to PhotoTrac
 - i. Tattoos are to be photographed individually
- e. Ensure all materials that support bias motivation are collected, photographed and entered as an exhibit and added to the case file
- f. Ensure that any language used by the POI that indicates bias motivation (refer to section 2.2) is recorded in first person

(2) In Custody

- (a) Any statements or conversations that the POI may have (either during a formal interview or general conversations) that indicate a bias motivation or indicate that the POI may have a bias against the victim, victim group or other group must be recorded.
- (b) The record can take the form of
 - i. custody management records,
 - ii. notebook notes
 - iii. electronic recording (in compiling with the *Surveillance Devices Act 2007*)

(3) Interview

To identify bias motivation, the interview should gather evidence relating to the offence by looking at the following.

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- (a) Previous history (to assist with further lines of enquiry & establish tendency)
 - i. Has the POI targeted individuals from the same group previously?
 - ii. Has the POI expressed bias towards the group previously?
- (b) Language
 - i. What did the POI mean by the words used?
 - ii. What is the meaning of specific words?
 - iii. What was the purpose of using those words?
- (c) Gestures
 - i. If gestures were used, what do they mean?
 - ii. Is the POI aware that the victim and/or victim group perceives those gestures as an expression of hatred?
 - iii. Would this gesture have the same meaning for members of his /her group?
- (d) Materials and Graffiti
 - i. What is the purpose of the materials?
 - ii. What do the materials refer to?
 - iii. If related to a group, what is the group's ideology/beliefs?
- (e) Tattoos
 - i. What is the meaning(s) of the tattoos?
 - ii. What impact would they expect those specific tattoos have on the victim/victim group?
- (f) Membership to an Organised Hate Group
 - i. Is the POI a member of an OHG?
 - ii. If not a member, does the POI subscribe to the OHG's ideology/beliefs?
- (g) Targeting
 - i. Why did the POI target the victim/victim group?
 - ii. Were there any characteristics of the victim the POI targeted?
 - iii. If the victim was swapped with another victim (i.e. different culture, gender, religion, etc) would the POI still have targeted the victim?
- (h) Location of the incident
 - i. Why did the incident happen where it did?
 - ii. Why target that location?
 - iii. Any significance of the location?
 - iv. Is this a location the POI frequents or where they know the victim/victim group they targeted frequents?

NSWPF – CONFIDENTIAL**(4) Bail**

If the offence is a “show cause” offence, bail must not be granted unless the accused is able to show cause why their detention is not justified.

If the accused can establish their detention is not justified, or if the offence is not a show cause offence, then the unacceptable risk test that must be applied. This involves an assessment of bail concerns and whether those concerns can be adequately addressed by bail conditions.

Section 17 of the *Bail Act 2013* outlines bail concern to mean an accused will do (a) – (d).

17 Assessment of bail concerns

- (1) A bail authority must, before making a bail decision, assess any bail concerns.
- (2) For the purposes of this Act, a **bail concern** is a concern that an accused person, if released from custody, will:
 - (a) fail to appear at any proceedings for the offence, or
 - (b) commit a serious offence, or
 - (c) endanger the safety of victims, individuals or the community, or
 - (d) interfere with witnesses or evidence.

A person who has been arrested for a bias motivated crime is likely to give rise to bail concerns related to the risk they may pose to other persons perceived to be in the same category as the victim of the current offence.

These concerns may be able to be addressed by the imposition of conduct conditions that may include:

- (a) Place restrictions - preventing offenders attending or approaching
 - i. religious buildings,
 - ii. places of significance to a targeted group,
 - iii. places that the POI targets to locate victims (beats, night clubs, etc),
 - iv. cultural events, etc.
- (b) Communication - preventing contact with an
 - i. individual,
 - ii. community leaders/members,
 - iii. community group or advocacy group (include through a third party)
- (c) Social Media – restrictions on the use of social media to menace or harass any member of the targeted community. It may also be noted if the person is a speaker of a language other than English, identification of other social media platforms in other languages.

A restriction on meeting, associating or engaging with an organised hate group or individual is not recommended unless there are grounds to support it, such as where it is likely to prevent further offences.

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Remember that any bail conditions imposed must be reasonable to address the bail concern, proportionate to the offence charged, no more onerous than reasonably necessary and reasonably practicable for the accused to comply with.

If bail concerns cannot be adequately addressed by bail conditions there is an unacceptable risk - so bail must be refused.

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4. CRIME SCENES

- 4.1 Crimes scenes may have bias motivated evidence in the form of graffiti, including symbology or numerology as well as brochure and pamphlets. It is important that all such evidence is captured by means of:
- (a) Photo or video evidence (body worn camera, first responders recording devices, etc)
 - (b) Video recorded contemporaneous notes
 - (c) Detailed descriptive contemporaneous notes

Be aware that some symbols or numeric graffiti may not seem offensive; however, it can cause offense and fear in targeted communities. Some symbols and numbers are used by OHG and may not be known to investigating police.

For examples refer to Annexure A.

- 4.2 Police may be required to coordinate the removal of any offensive graffiti or material.
- a. Graffiti in public on private places can be organised through the local council
 - b. Pamphlets/Posters/Literature all attempts to remove and destroy those in public areas.
 - i. Penalties under *Protection of the Environment Act 1997*
 - ii. Penalties under *Summary offences Act 1988*
 - iii. Local Council penalties
 - c. If posters or other materials are displayed within a private premise, but visible from a public place,
 - i. Ask the owner/occupier to remove the material from public sighting
 - ii. If the owner/occupier declines, seek advice from Operational Legal Advice regarding further action.
 - d. Malicious damage to religiously or culturally significant structures should be covered upon evidence being collected and captured. Any repairs are to be carried out upon police completing crime scene investigation.
 - e. *Blood/bodily fluids* – any blood or other bodily fluids should be removed as soon as possible after the crime scene is released and before police leave the location. It will be the discretion of the Command as to the procedures used to remove any blood/bodily fluids.
 - f. *Objects/Structures* – if an object or structure (e.g. burning cross, hangman's noose, etc) was used it must be removed as soon as possible.










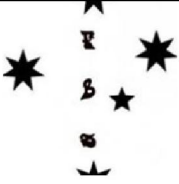

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5. IDENTIFYING ORGANISED HATE GROUPS

To be classified as an ‘Organised Hate Group’ the group;

- Must be organised
 - Have visibility in the community
 - Have an organisational structure (e.g. chapters, hierarchy)
 - Have a degree of activity in relation to the promotion of its beliefs (e.g. publications)
- Clear use of enmity towards
 - A specific group as their primary organisational focus
 - Fundamental belief system of the group must focus on the promotion of hate

Some Organised Hate Groups operating in NSW:

KKK		Volksfront	
Southern Cross Hammerskins		Crew 38	
Blood and Honour		Aryan Terror Brigade	
Creativity Movement		Christian Identity <i>(Aryan Nations symbol shown)</i>	
Sovereign Citizens		Full Blooded Skips	
Australian Defence League			

NSWPF – CONFIDENTIAL**5.1 Evidence of Organised Hate Groups (OHGs)****(1) Materials**

- (a) Any materials (pamphlets/manuals/promotional materials, etc) that are identified during an investigation are a crucial part of establishing bias motivation as well as vital from an intelligence perspective.
- (b) It is important that the context of the document is recorded, so prior to moving ensure that photographs of the document are obtained of the document in situ.

(2) Individuals

- (a) If individual members of OHG are identified during the course of an investigation attempt to establish as much information about the group and their role within the group. Including, but not limited to;

- i. Symbols and meanings
- ii. Locations
- iii. Chapters
- iv. Vehicles
- v. Group structure
- vi. Group position
- vii. Alliances
- viii. Vehicles
- ix. Properties
- x. Ideology

(3) Tattoos, Symbology and Numerology

- (a) Symbology is an important part of OHG. If during the course of an investigation a symbol or tattoo is identified that the meaning is unknown or clarification is required in relation to the meaning contact the Bias Crimes Coordinator.

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Examples of Symbolology:

Symbolology



Odin's Cross (AKA Celtic Cross)



Life Rune (AKA Algis or Elhaz Rune)



Valknut (Knot of the Slain)



Wolfsangel – Ancient rune believed to protect from wolves



NAZI Swastika

14

14 words – ‘We must secure the existence of our race and a future for white children.’

88

Heil Hitler



Othila Norse Rune – symbolises faith in Odinism

28

Blood & Honour

(4) Investigative Support

For information regarding OHG or assistance contact the Bias Crimes Coordinator.

5.2 *Graffiti, Tattoos, Symbolology and Numerology*

A sample of common bias motivated graffiti, tattoos, symbolology and numerology.



- (a) Graffiti, tattoos, symbolology and numerology must be photographed and uploaded to VIEW
- (b) For persons in custody, ensure all tattoos are photographed individually and uploaded to PhotoTrac
 - i. Add an action to the COPS event stating that OHG tattoos where photographed
- (c) If the person is not in custody and it is relevant to the investigation, photograph tattoos as per current Forensic Procedure SOPs

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- i. If Forensic Procedure SOPs are not applicable, obtain consent to photograph the tattoos
 - ii. If consent isn't given, detailed notes detailing the description of the tattoo, where it is located and record into COPS.
- (d) If the POI advised of the meaning of the tattoo or the group affiliation, this must be recorded into COPS, detailing the meaning and what the tattoo relates too.

5.3 Materials and Other Evidence

- (a) All materials are to be dealt with as per current SOPS regarding evidence.
 - i. Small documents should be scanned and uploaded to VIEW.

For assistance with large volume documents contact the Bias Crimes Coordinator for arrangements to be made for the document/s to be copied or scanned.

6. COMPLETED INVESTIGATIONS

- (1) The Bias Crimes Coordinator, Operational Programs Command is to be notified upon completion of the investigation. Prior to notification, ensure the following is has been completed:
 - (a) Statements from victims and witnesses
 - (b) Statement and ERISP of POI
 - (c) Photographs have been uploaded to VIEW and PhotoTrac
- (2) The Bias Crime Coordinator will review the case and in consultation with the Crime Coordinator and/or Crime Manager discuss a final assessment as to whether the incident was bias motivated which the OIC will then be informed of.
- (3) Once reviewed, the OIC is to inform the victim of the review outcome and note accordingly in COPS.
- (4) If the victim is not satisfied with the determination of the review assessment, or requires further information and or advice
 - a. notify the Bias Crimes Coordinator and provide relevant contact details and outline any specific issues
 - b. advise the victim the Bias Crimes Coordinator will contact them to explain their determination

7. RECORDING AND REPORTING**7.1 OIC****(a) Events**

On taking a report of a suspected bias crime the OIC will create an event under the appropriate category on COPS. The 'Bias Motivation (Suspected)' associated factor field is to be selected. This factor should only be used for incidents suspected of bias on the following grounds:

- i. race (including bias within a racial group or sectarian bias)

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- ii. religion (including bias based on sectarian disputes within a religion)
- iii. ethnic or national origin
- iv. sex/gender
- v. gender identity (for example, transgender status)
- vi. sexual orientation
- vii. age
- viii. disability status (including mental illness)
- ix. homelessness status

The narrative of the event is to include the reasons why it is suspected as being a bias crime/incident. Information to consider includes;

- Victim/witness opinion
- OHG activity
- Location
- Previous incidents
- Use of interpreters or bilingual support
- Language used
- Admissions from POI
- Symbology
- Any other reason for suspecting the incident is bias motivated

See Annexure C for example

The event is to be disseminated to the Bias Crimes Coordinator.

Dissemination Address:

Attention Of: Bias Crime Coordinator

Station/Unit: Op Program Development

All documents relating to the investigation (statements, photographs, etc) are to be uploaded to VIEW.

(b) Cases

Cases are to be maintained as per current SOPS.

A record is to be made on the case in relation to all aspects of the investigation including community engagement activities as well as information coming from and going to the community in relation to the investigation.

(c) Situation Reports

For incidents that meet the criteria for a Situation Report, a situation report is to be completed and a copy forwarded to the Bias Crimes Coordinator.

7.2 Supervisors**(a) Event Quality Review**

As part of the normal event verification process, events that are suspected as being bias motivated that have not been flagged are to be resubmitted to the OIC

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for the relevant bias motivated associated factor to be added and the narrative updated with the relevant information.

Events that have been flagged as bias motivated are to be reviewed to ensure that all relevant information is recorded in the narrative and associated documents have been uploaded to VIEW.

Ensure that all events that have been flagged as a suspected bias crime/incident have been disseminated to the Bias Crimes Coordinator.

(b) Work Priority

All events that have been flagged as a suspected bias crime are to be submitted through work priority.

(c) Situation Reports

Supervisors are to ensure that situation reports are created for all incidents that meet the criteria and that a copy is forwarded to the Bias Crimes Coordinator.

7.3 *Crime Coordinator***(a) Work Priority**

Events forwarded through work priority are to be reviewed. All events are to be dealt with as per current SOPS regarding case creation. Events not requiring a case to be created are to be reviewed and a determination made as to whether the information should be directed to specific areas of the Crime Management Unit.

(b) Case Creation

Cases for suspected bias crimes are to be created as per SOPS.

(c) Consultation with the Bias Crimes Coordinator, Operational Programs Command MEIG

Upon completing quality assurance, contact the Bias Crimes Coordinator to discuss incidents that are suspected of being bias motivated. Through this consultation, the Bias Crimes Coordinator will be able to provide assistance and support in relation to further lines of inquiry, community engagement investigative and resource support.

(d) Application for a Senior Advocate – Prosecutor

Due to the nature of a bias crime, the impact it can have to the community and potential of media attention, matters are to be prosecuted by a Senior Advocate. Application is made by outlining the facts of the case to the Region Prosecution Managers. Contact details:

http://intranet.police.nsw.gov.au/law/police_prosecutions/contacts_and_people/courts_and_people

For more information, refer to section

NSWPF – CONFIDENTIAL**(e) Crime Management Unit**

The Crime Coordinator will be responsible for the dissemination of information relating to suspected bias crimes within the Crime Management Unit to assist with responding to individual incidents as well as the wider community engagement strategy of the Command.

7.4 Investigation Manager

Cases created are to be managed as per current SOPS. Before a suspected bias crime case is Finalised, Suspended or Rejected a review by the Bias Crimes Coordinator is to be conducted. The review will outline the classification of the incident and the reasoning for the classification.

7.5 Information Reports

When responding to a suspected bias motivated crime it is important for investigators to understand the important link that Information Reports can provide to assist in identifying the suspect/s. Information of behaviour, in particular when there is no known suspect/s, is an important piece of the overall jigsaw and should not be overlooked as a vital investigative tool.

Quite often bias motivated crimes targeting a specific group, individual or location are perpetrated in the same or similar M.O. This may lead to a suspect being identified and brought to justice for a number of crimes, similar to a fingerprint hit at several break and enter scenes. This highlights the importance of recording such information to enable those links to be made.

In cases where information received by police does not meet a specific crime type that would require a COPS event to be created, such as in the case of an alleged assault, intimidation, homicide, malicious damage etc then an Information Report is to be submitted.

Examples of this may include, but not limited to;

- Information relating to Organised Hate Groups (e.g. members, location, symbology)
- Information relating to identified or suspected persons that may be involved in bias motivated activities
- Detected online bias motivated activity that potentially may escalate
- Planned activities that may be motivated by, or incite, a bias motivation response by counter person/s
- Type of bias motivation e.g. gay, anti-Islamic,
- Modus Operandi e.g. Pamphlet drops, flag burning

The category of '**Bias Motivated**' is to be used in conjunction with any other relevant category. All information reports, like COPS events, are to be disseminated to the Bias Crimes Coordinator (OP Program Development) when they have Bias Motivation as an associated factor.

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8. PROSECUTION

8.1 *Prosecuting Bias Crime*

Section 21A (2)(h) of the *Crimes (Sentencing Procedure) Act 1999* No.92 allows sentencing of crimes motivated by hatred or prejudice to take into consideration the motivation as aggravating circumstance.

Crimes where bias motivation has been determined should be prosecuted with the above section in mind. Prior to proceeding with a prosecution using the above section the Prosecutor must be consulted to ensure the relevance, reliability and admissibility of any evidence that is to be used to show a bias motivation^x.

If a matter is to be prosecuted as a bias crime the facts sheet is to be completed with the opening paragraph stating that the matter is believed is suspected of being bias motivated towards a protected group (identify the protected group in the narrative). The remainder of the paragraph is to outline the evidence supporting the bias motivation.

See Annexure C for example

The Crime Manager or OIC should make an application to Police Prosecutions Command for a senior advocate for incidents deemed to be of high profile.

If the Prosecutor declines to use the section, the case/event is to be updated with the reasons the section was not used.

The following should be considered when determining what evidence is to be used to show a bias motivation;

- Association or affiliation with an Organised Hate Group
- Materials in possession at the time of the offence
- Materials in possession at the residence or other location belonging to the POI
- Tattoos or symbology
- Clothing
- Location of incident
- Previous history of incidents targeting the same victim group
- Language/comments made/gesture made to the victim or witnesses
- Language/comments made/gestures to friends or co-accused
- Admissions made by the POI
- Any other information that shows a bias motivation

8.2 *Victim and/or Witnesses*

Due to the nature of bias crimes, victims may be more reluctant or fearful to attend Court. To reduce the impact of these factors on victims consider the following;

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- i. Explain the process and be realistic. Utilise resources available on the police website which explains the role of police, the investigation process in Easy English, 16 languages, Auslan and vodcasts.
- ii. If possible pick up the victim and take them home after the hearing
- iii. Prevent contact between the victim and POI (use of safe rooms, etc)
- iv. Refer the victim to support groups/advocacy groups or
- v. Arrange witness assistance through Witness Assistance Service (WAS) if the matter has been referred to the Office of the Director of Police Prosecutions (ODPP). For more information, refer to: http://intranet.police.nsw.gov.au/eguides/webcops/user_material/webcops_user_guide/charge_management/notify_dpp_of_victimnok_details
- vi. Consider victim/witness conferencing, allowing the victim/witness to be familiar with the court room setting, build rapport with the prosecutor and familiar with the strategies and tactics of the defence

At the conclusion of the hearing, the victim should be escorted from the Court to prevent any retaliation from the offender, family members or supporters.

8.3 Community

Depending on the nature of the incident there is the possibility of community interest in the court case. It is important that community leaders/representatives are informed of the status of the case (be mindful not to breach any privacy laws). If it is known that members of the community will be attending the court ensure that the court is informed of this.

Bias motivated crimes have the potential to initiate public order incidents, and court is no exception. For high profile cases or cases which had a significant impact on the community it may be necessary to have additional resources at court or on standby and notify the Sheriff's Office.

9. MEDIA

The NSWPF Media Policy is to be complied with at all times.

For public statements in relation to suspected bias crimes, the focus is to be on the investigation of the incident and not speculation in regards to motivations. The suggested response is;

“This matter will be fully investigated and all possible motives for the incident will be examined, including any bias motivation. Only at the conclusion of the investigation will any comment be made regarding any motivations.”

If any media statements are to target specific communities then those statements are to be ‘written for translation’, in consultation with the Cultural Diversity Team, Operational Programs MEIG. This will ensure clarity of terminology, concepts and acronyms. Further, contact can be made with the NSW Police Force Multicultural Media Liaison Officer.

NSWPF – CONFIDENTIAL**9.1 Contact**

The Police Media Unit should be contacted for assistance in drafting statements for the media in regards to bias motivated incidents.

Where an incident requires police comment, please seek information from or refer to:

- i. Corporate Sponsor, Bias Motivated Crime
- ii. Bias Crimes Coordinator

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10. COMMUNITY ENGAGEMENT

Apart from the direct impact on the victim, bias crimes have a ripple effect, reaching individuals and communities not the original target. As such an effective bias crimes response is an important community engagement and crime prevention tool.

Community engagement is vital for not only responding to bias crime incidents but also in preventing them. An effective bias crimes response depends on the cooperation of the community, not just a police response. Following a bias crime/incident community engagement is vital for a number of reasons, including assistance with the investigation, prevention of further incidents and preventing retaliatory incidents.

On notification of a suspected bias crime, the victim community is to be contacted to discuss the incident and community reaction. Contact with community leaders is the preferred approach, but if not possible, a representative community group should be approached. Engagement should focus on three areas, being; the incident, community reaction and management of the community reaction.

10.1 *Incident*

Representatives of the victim community should be spoken to about the initial incident. The facts of the case as known by police must be explained and feedback sought in relation to any discrepancies with what the community has been told or is circulating within the community. Any errors in facts must be addressed as soon as possible.

The representatives of the community should be briefed about the investigation and the process of the investigation (ensure that realistic information is given). The community representatives should be advised that the investigation is independently reviewed by the Bias Crimes Coordinator at the completion of the investigation. Arrangements should be made in relation to the frequency and format of updates in relation to the investigation. The community representatives should be advised that the investigation will be transparent and at the end of the investigation the opportunity will exist for the outcome of the investigation to be explained to both the victim and community representatives.

A single point of contact for the community should be designated to aid in the dissemination of information from the community to police and police requests to the community should be processed through this point of contact.

10.2 *Community Reaction*

Discussions should be held with the community representatives, members and sub groups in relation to the reaction of the community. Areas to consider include;

- Current level of trust in police and the investigation
- Community sentiment to the offending community (if identified)
- Current level of tension within the community
- Potential for retaliatory incidents/public order incidents

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- Identification of potential hotspots or instigators for violence
- Identification of any individuals/groups that may be of concern

10.3 *Managing the Community Reaction*

Discussions should be held with the community representatives in relation to the best approach for managing the community reaction. Areas to consider include;

- i. Visibility of police – need for increased or decreased police presence in areas
- ii. Community safety information
- iii. Community forums – safety and investigation information
- iv. Public order considerations – protest/demonstration activity including during any Court appearances

Following discussions with the community representatives a plan should be developed on how both the police and the community representatives are going to manage the community reaction. Once a plan is developed no changes should be made without community consultation (unless operational needs dictate otherwise).

Community engagement is vital for not only responding to bias crime incidents but also in preventing them. An effective bias crimes response depends on the cooperation of the community, not just a police response. Consideration should be given to conducting these community discussions via the use of interpreters.

11. REFERRALS

Victims/witnesses and communities should be referred to support services and advocacy groups following a bias crime. By referring victims to the Victim's Access Line (VAL), they are able to triage and refer the victim to the most appropriate services, ranging from counselling to assistance with victims compensation. For more information, visit:

http://www.police.nsw.gov.au/community_issues/victims_of_crime/victim_support_and_referral

Victims of bias incidents are to be advised that although police cannot take any action that they can make a complaint to the NSW Anti Discrimination Board or the Australian Human Rights Commission.

See Annexure A for a list of referral agencies.

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12. BIAS CRIMES COORDINATOR RESPONSIBILITIES

The Bias Crime Coordinator is the NSW Police Force subject matter and source expert. The Bias Crimes Coordinator assists the LAC to establish and maintain sustainable community engagement by providing support and advice and another level of review.

The Bias Crime Coordinator has a number of duties in relation to the bias crimes/incidents. These duties include;

12.1 *Review*

The Bias Crimes Coordinator is to review all incidents that have been flagged as a suspected bias crime. Incidents are to be reviewed as soon as possible to identify any trends, community disorder issues and potential for public order incidents.

12.2 *Investigative Support*

On notification of an incident the Bias Crimes Coordinator is to contact the OIC ascertain if any support is required for the investigation. If support is requested an agreement is to be developed with the OIC outlining what support is to be given. Support that is available includes:

- Canvassing
- Intelligence/Analysis
- Assistance with victims/community
- Assistance with investigation

The OIC will remain in charge of the investigation unless otherwise agreed upon. The bias crimes case management database is to be updated with the support offered.

Statement Analysis

The analysis of language in written and verbal can be utilised to identify deception or where information is being withheld. Statement analysis looks at the person's language such as pronouns, verb tenses, unique words, etc.

Its application can assist and support investigators to identify if the person being interviewed or questioned is being misleading, withholding details or being deceptive.

"Actually"

This word is often used when a person is comparing two thoughts.

Question: "Are you capable of killing somebody?"

Answer: "You know I would say, **actually**, I would say no..."

The subject answers with a "no" but what is the answer being compared to? Most people would state that in defence of their life or someone else's life they would be capable of killing.

Assistance is available either at the time interviews are being conducted, or following interviews and statements to assist the investigator.

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On notification of an incident the Bias Crime Coordinator is to contact the Customer Service Duty Officer at the Command the incident occurred in to discuss any community issues as a result of the incident. Support can be offered to the command in relation to a community engagement strategy.

The case management database is to be updated with the results of the contact and support that is offered. If the CSDO is not contacted the reasons for this are to be recorded in the bias crimes case management database.

12.4 Classification

At the completion of the investigation all information is to be reviewed and a classification for the incident is to be made in consultation with the Crime Coordinator (refer to section 7.3(c)).

Incidents are to be classified as either;

- **Bias Crime (BC)** – sufficient evidence exists to prove beyond a reasonable doubt the offenders actions were motivated either wholly or partially by bias.
- **Suspected Bias Crime (SBC)** – insufficient evidence exists to prove the offender's actions were motivated were either wholly or partially motivated by bias beyond a reasonable doubt, but there are reasonable grounds to suggest the incident may have been bias motivated.
- **Bias Incident (BI)** – sufficient facts exist to show that the incident was bias motivated, but is not a criminal offence.
- **Not a Bias Crime (NBC)** – a review of all evidence shows that there is no evidence that the incident was either wholly or partially motivated by bias towards a protected group.

Once an incident has been classified the event/case is to be updated with the classification and the justification for the classification is to be recorded in the event/case.

12.5 Intelligence

The Bias Crimes Coordinator is responsible for maintaining an intelligence capability in relation to Organised Hate Groups and individuals as well as conducting analysis to identify trends and hotspots and an analysis capability to support investigations. The purpose of this database is to assist in identifying potential hot spots, potential suspects, contact points and assist with analysis of incidents.

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13. Corporate Sponsor Responsibilities

The Corporate Sponsor Program is part of the NSWPF Corporate Governance Framework. The Program allocates a senior police officer to develop the NSWPF response to key Crime, Public Safety and Community and Partner issues.

Corporate portfolios are allocated to the issues that have been identified as being of strategic importance to NSWPF, but generally do not have a substantive command assigned with an existing Head of Discipline/Crime Area who can lead the NSWPF response in this area.

14. Support/Assistance

For information regarding Bias Crimes check out the Bias Crimes knowledge map.
http://intranet.police.nsw.gov.au/organisational_units/operations_command/policy_and_programs/bias_crimes

For support or assistance in relation to bias crimes/incidents contact the Bias Crimes Unit by emailing [REDACTED]

Alternatively:

Sgt Steer, Bias Crime Unit, Team Leader

Eaglenet: [REDACTED]

External: [REDACTED]

Email: [REDACTED]

Intelligence Analyst

Eaglenet: [REDACTED]

External: [REDACTED]

Senior Policy Officer

Eaglenet: [REDACTED]

External: [REDACTED]

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APPENDIX A

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BIAS CRIME INVESTIGATION TIPS & TRICKS

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NSWPF – CONFIDENTIAL**VICTIMS****OBTAINING A VERSION:****Location:***Safe/Comfortable Location:*

The preferred place to obtain a version from a victim is a place where they feel comfortable, so if possible allow the victim to nominate a place where they feel safe and comfortable. It is understood that this may not always be practicable for numerous reasons (time restraints, location, etc), but if possible allow the victim to chose a location.

Police Station:

If a safe/comfortable location of the victims choosing is not possible the next best place to obtain a version from the victim is a police station. If using a police station it is important to explain to the victim that they are not under arrest and explain the process (especially for survivors of torture). Again it is important to make the victim feel as comfortable as possible. Choose a quiet location where you are not likely to be interrupted. To assist in calming the victim, offer them a drink or something to eat.

At the scene:

Due to the nature of operational policing, most versions obtained from victims will be obtained at the scene of the incident. To obtain the best version from the victim at the scene, find a quiet location where you are unlikely to be interrupted. Understand that the victim is likely to be fearful remaining at the location of the incident so reassure the victim of their safety. If possible speak to the victim away from witnesses and other onlookers. One option is to use a police vehicle. If using the vehicle ensure that the police radio is turned down or off and that the MDT can't be seen by the victim.

Support Persons:

It is preferable that when speaking to the victim it is a one on one discussion, but if the victim requests a support person allow them to have that person present. If a support person is present, explain their role to both the victim and the support person.

NSWPF – CONFIDENTIAL**Obtaining the Version at the Scene:**

The preferred option is to obtain a version from the victim at the time of the incident with a formal statement being obtained in the following days. The reason for this is that following hormonal induced stress the recollection of the victim immediately after the incident may be poor. Given a day or two to recover the recollection of the victim is greater.

When obtaining the version of the victim it is recommended that the victim is allowed to write their version. The victim should be offered the opportunity and the resources to write down what happened in their own words without any assistance from any other person including police. If the victim is unable to write or English is not their first language it is recommended, if possible, to record the victim's versions (complying with the requirements of the Surveillance Devices Act) or if that is not an option to be written by a police officer using the exact words used by the victim.

Once the victim has written their version, read the version and if further clarification is required ask questions and record the victims answers. Any questions asked can be recorded either at the end of the victims version or in the officer's official notebook.

Have the victim sign and date their version as well as any additional questions and their answers.

OBTAINING A STATEMENT:

When obtaining a statement from the victim, the preferred method is to allow the victim to write their statement in their own words (in the approved statement format). If any clarification is required, this should be done as question and answers at the end of the statement. This approach will allow for statement analysis techniques to be used to identify areas of the victim's statement that may require follow up.

WITNESSES**OBTAINING A STATEMENT:**

When obtaining a statement from a witness, the preferred method is to allow the witness to write their statement in their own words (in the approved statement format). If any clarification is required, this should be done as question and answers at the end of the statement. This approach will allow for statement analysis techniques to be used to identify areas of the witness's statement that may require follow up.

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APPENDIX B

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COPS EVENT EXAMPLE

VICTIM: John DOE

123 Sesame St, Kickatinalong
DOB: 01/01/1990

POI 1: Unknown

Male

White/European

18 – 20 years old

Medium Build

Short cropped light coloured hair

Tattoos: Right forearm - circle with cross through centre

Left forearm – 1488

Left neck – straight line with one line off main line approx 1/3 from bottom on left and one line off main line approx 1/3 from bottom on right (see VIEW for sketch)

Clothing: Black t-shirt with unknown decal on right chest

Blue jeans with bottoms rolled up

Red braces (off shoulders)

Black GP style boots with red laces

WEAPONS: Beer bottle

WITNESS: John SMITH

15 Big St, Kickatinalong
DOB: 02/02/1980

LOCATION: Near Toilet block - Smith's Park, Kickatinalong

BIAS MOTIVATION: This incident is believed to be a sexual orientation bias crime (*or incident if not a criminal offence*). The victim identifies as gay and was assaulted at a known beat. In the past 3 months there have been several assaults in the surrounding area with gay males and beat users being targeted. In all incidents a similar MO was used by the POI's, with the victim being lured to the location for sex and being attacked as they approached the toilet block by a group of males. During the assault the POI's used homophobic language (see narrative for exact words).

NARRATIVE: About 10pm on the 01/03/14 the victim attended the location to meet a male person. As the victim exited his vehicle he saw POI 1 approach him. POI 1 said, "There's the fucking filthy fag, get him." A group of approximately 6 males ran towards the victim grabbing him and dragged him to the bush area behind the toilet block where they commenced to assault the victim. POI 1 appeared to the leader of the group and threw the

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first punch at the victim, striking him on the left side of the jaw, knocking him to the ground. Once on the ground all the males started to assault the victim kicking, punching and stomping on the victim to head, chest, groin and legs. At some stage during the attack an unknown POI has hit the victim to the head with a beer bottle, causing the bottle to smash, causing a deep laceration about 5cm long to the top of the victim's head. The laceration went down to the skull on the victim. During the attack the victim heard several of the males say, "fucking fag," "how do you like this you faggot cunt." After several minutes the group stopped attacking the victim and all of the POI's spat on the victim. POI 1 then kicked the victim to the groin and stomped on his groin, before the group walked off laughing.

As short time later the witness was passing by and heard the victim moaning and located the victim in the bush about 10 metres from the toilet block. The victim was semi conscious. The witness contacted 000 and a short time later an ambulance arrived and conveyed the victim to Kwickalong Hospital.

As a result of the incident the victim suffered a laceration to the head, broken jaw and eye socket, subdural haematoma, broken ribs, bruised kidney, broken upper leg, internal injuries.

Investigations continuing.

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APPENDIX C

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FACTS SHEET EXAMPLE

This incident is believed to be a disability bias crime. The victim in this matter suffers from a cognitive injury as a result of previous non related injury. The victim was approached by the accused and asked for a light, when the victim said he didn't have one the accused commenced to verbally abuse the victim, referring to him as a "fucking retard" and "fucking spastic". During the subsequent assault the accused abused the victim telling him "you don't deserve to live you spastic" and "retards should be killed". The accused stated to police, "fucking retards don't deserve to live." The accused is a member of the White Power skinhead crew.

About 9am on the 26th April, 2014 the victim was standing on platform 1 of Blacktown railway station waiting for a train when he was approached by the accused. The accused asked the victim for a light, when the victim told the accused that he didn't have one the accused verbally abused the victim, yelling at the victim, "fucking retard, fucking spastic." The accused started to walk away from the victim, walking about 10 metres before turning around and running at the victim. The accused has punched the victim to the right side of the head with a closed fist. The force of the impact knocked the victim to the ground. The accused has commenced to punch the victim to the head with both fists. During the assault the accused was heard to scream at the victim, "you don't deserve to live you spastic" and "retards should be killed." After assaulting the victim the accused has started to walk away, the accused has stopped and run back to the victim kicking him to the head twice with his right foot before stomping on the victims head once. The accused has then spat on the victim before walking away. The assault was captured on CCTV.

Police attended a short time later and stopped the accused at a nearby taxi rank. The accused matched the description of the person who assaulted the victim as supplied by a witness. On speaking to the accused police observed blood spatter on the clothing of the accused. The accused was cautioned and arrested and conveyed to Blacktown Police Station where he was introduced to the custody manager. The accused declined to be interviewed.

Whilst in the custody the accused made comments that were heard by the custody manager in relation to disabled persons. The accused stated several times, "fucking retards don't deserve to live."

The accused was charged with the matters know before the Court.

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NSWPF – CONFIDENTIAL**Endnotes**

ⁱ National Center for Hate Crime Prevention, Education Development Center Inc & United States Department of Justice, Office for Victims of Crime 2000, *Responding to Hate Crime – A multidisciplinary Curriculum for Law enforcement and Victim Assistance Professionals*, pp 15-17.

ⁱⁱ National Center for Hate Crime Prevention, Education Development Center Inc & United States Department of Justice, Office for Victims of Crime 2000, *Responding to Hate Crime – A multidisciplinary Curriculum for Law enforcement and Victim Assistance Professionals*, pp 15-17.

ⁱⁱⁱ National Center for Hate Crime Prevention, Education Development Center Inc & United States Department of Justice, Office for Victims of Crime 2000, *Responding to Hate Crime – A multidisciplinary Curriculum for Law enforcement and Victim Assistance Professionals*, pp 15-17.

^{iv} National Center for Hate Crime Prevention, Education Development Center Inc & United States Department of Justice, Office for Victims of Crime 2000, *Responding to Hate Crime – A multidisciplinary Curriculum for Law enforcement and Victim Assistance Professionals*, pp 15-17.

^v National Center for Hate Crime Prevention, Education Development Center Inc & United States Department of Justice, Office for Victims of Crime 2000, *Responding to Hate Crime – A multidisciplinary Curriculum for Law enforcement and Victim Assistance Professionals*, pp 15-17.

^{vi} National Center for Hate Crime Prevention, Education Development Center Inc & United States Department of Justice, Office for Victims of Crime 2000, *Responding to Hate Crime – A multidisciplinary Curriculum for Law enforcement and Victim Assistance Professionals*, pp 15-17.

^{vii} National Center for Hate Crime Prevention, Education Development Center Inc & United States Department of Justice, Office for Victims of Crime 2000, *Responding to Hate Crime – A multidisciplinary Curriculum for Law enforcement and Victim Assistance Professionals*, pp 15-17.

^{viii} National Center for Hate Crime Prevention, Education Development Center Inc & United States Department of Justice, Office for Victims of Crime 2000, *Responding to Hate Crime – A multidisciplinary Curriculum for Law enforcement and Victim Assistance Professionals*, pp 15-17.

^{ix} National Center for Hate Crime Prevention, Education Development Center Inc & United States Department of Justice, Office for Victims of Crime 2000, *Responding to Hate Crime – A multidisciplinary Curriculum for Law enforcement and Victim Assistance Professionals*, pp 15-17.

^x Legal Advice – Police Prosecutions Command, December 2007 – Reference: LS/F/2007/03787

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