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## Reporting and recording bias crime in New South Wales

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### ABSTRACT

This article presents the findings of the first study of official bias crime data held by the New South Wales Police Force. The purpose of this study was to unearth the institutional policies, procedures and practices that frame the response of the New South Wales Police Force to the reporting and recording of bias crime. While several overall patterns and trends are discernable in the bias crime data, their real significance lies in what they tell us about challenges for law enforcement in the dual process of reporting and recording bias crime. The article draws on qualitative interviews with New South Wales Police Force personnel to argue that a sustained program of capacity building and community engagement is needed if bias crime data is to provide meaningful intelligence on the nature of the problem and inform law enforcement responses.

### KEYWORDS

hate crime; bias crime; policing; crime reporting; crime recording

### Introduction

In 1999, New South Wales (NSW) became the first state in Australia to formally record multiple forms of hate crime. Yet there is no publicly available police data on hate crime in NSW. To date, the only systematic analysis of police hate crime data has been in Victoria (Mason et al., 2017). This can be contrasted with the many victimisation surveys and qualitative studies that establish the vulnerability of minority communities to hate crime in Australia (Asquith, 2004; Benier, Wickes, & Higginson, 2015; Johnson, 2005). As early as 1991, the National Inquiry into Racist Violence documented widespread reports of violence and abuse against Aboriginal, Asian and Middle-Eastern populations (HREOC, 1991). Since then, research on anti-gay homicides, the Cronulla riots, violence against international students and Islamophobia have exposed the local and global variables that impact on the problem of prejudice-fuelled hostility (Babacan et al., 2010; Noble, 2009; Poynting, 2002; Tomsen, 2010).

Different terms have been coined to refer to crime that is motivated or amplified by an offender's prejudice towards a group characteristic of the victim (such as the victim's race, ethnicity, sexuality, religion, disability or gender identity). These terms include 'hate crime', 'bias crime' and 'targeted crime'. While the concept of hate crime now dominates legal and policy domains, the more clinical 'bias crime' has held considerable sway in law enforcement circles and is the term that has been adopted by the New South Wales Police

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Force (NSWPF). In this article, we report on the first study of official bias crime data held by the NSWPF. The purpose of this study was to unearth the institutional policies, procedures and practices that frame the reporting and recording of bias crime in NSW. While several overall patterns and trends are discernable in the bias crime data, their real significance lies in what they tell us about challenges for law enforcement in the dual process of reporting and recording bias crime.

In many ways, the barriers to full reporting and accurate recording of bias crime are no different to those that impinge on other crimes. The literature, however, identifies some distinct challenges that accompany non-traditional categories of crime and victim communities made up largely of minority groups. We begin by discussing this literature. This is followed by an overview of the research study. We then present the results, first, by summarising some key quantitative data and its limitations, and second, by drawing on qualitative interviews with NSWPF personnel to analyse the obstacles to reporting and recording bias crime. While the collation of bias crime data by the NSWPF is an achievement in itself, We argue that a sustained program of capacity building and community engagement is needed if bias crime data is to provide meaningful intelligence on the nature of the problem and to inform strategic, operational and tactical law enforcement responses.

### Reporting and recording bias crime

Access to justice rests both on citizen preparedness to report victimisation and police preparedness to classify and record complaints. There are many reasons people are not willing to report crime, including lack of awareness about what constitutes a crime, embarrassment, fear of unwanted intervention, belief that the incident is too trivial or lack of faith in authorities (Dowsley & Hart, 2017; Weatherburn, 2011). Police have enormous discretion in the way they record a complaint or whether they formally record it at all. Factors influencing this discretion include directives from police commissioners, local operational imperatives, resources, insufficient evidence and individual bias (Payne & Hutton, 2017). Comprehensive reporting and recording are thus indicators of community trust and police capability (Mason et al., 2017; Murphy & Barkworth, 2014). They are also an essential source of intelligence, providing one of the most 'voluminous and rich', albeit unreliable, records of the distribution of crime (Weatherburn, 2011, p. 3). Police data plays a key role in defining a crime problem, setting the law enforcement agenda and formulating criminal justice policy (Goldsmith, 2017).

Certain types of crime are under-reported. For example, personal crimes of assault and sexual assault are the least likely to be reported to police (Payne & Hutton, 2017). Given that much hate crime is of a personal nature, it is not surprising that there is also a significant disparity between the amount of victimisation and how much of it is reported to police (Asquith, 2015; Dwyer, Ball, Bond, Lee, & Crofts, 2018; Giannasi, 2015; Wickes, Pickering, Mason, Maher, & McCullough, 2015). The European Union Agency for Fundamental Rights (FRA) identifies problems in the reporting and recording of hate crime as major barriers to justice. While recognising that crimes such as sexual assault are also under-reported, FRA suggests that 'it is more difficult for victims of hate crime to report to police than it is for victims of crimes committed without a discriminatory motive' (FRA, 2016, p. 28). While the reasons for this reluctance have much in common with the reasons for under-reporting generally, they are exacerbated by the



fear and shame some victims experience, a poor understanding of the concept of hate crime and ‘a lack of trust that police would treat them in a sympathetic manner’ given their minority status (FRA, 2016, p. 29; see also Wickes et al., 2015). This has a significant impact on the ability of police to understand, investigate and respond to hate crime (Gian-nasi, 2015; Mason et al., 2017).

To report a bias crime, a victim must understand the concept itself, be able to identify that an offence against them is motivated by bias and be willing to communicate these suspicions to the police (Wickes et al., 2015). This degree of public understanding is hard to achieve in Australia, where notions of hate crime or bias crime have received far less public attention than they have in the United Kingdom or the United States. The experience in Victoria is illuminating on this point. Despite the introduction of a dedicated hate crime policy by Victoria Police in 2011, a recent time series analysis of offence incident data recorded between January 2000 and June 2014 found that the strategy ‘had little influence on reporting behaviour’ (Mason et al., 2017, p. 128). Drawing on focus groups with stakeholders from vulnerable communities in Victoria and a survey of Victoria Police recruits, the research attributes this lack of impact to the fact that understanding of hate crime in minority communities remains poor; mistrust of police in these communities remains high; and recruit training has had little impact on the capacity of frontline officers to identify hate crime (Mason et al., 2017; Miles-Johnson, Mazerolle, Pickering, & Smith, 2016). More generally, the research found that when hate crime is reported, serious offences are reported at a greater frequency than other types of crime. This was attributed to the difficulty members of the public have in determining whether an incident amounts to a breach of the criminal law.

There is a spectrum of police protocols and procedures for identifying and recording hate crime (Mason, McCulloch, & Maher, 2016). At one end of this spectrum are agencies that take a legalistic approach by anchoring recording practices to prosecution requirements (FBI, 2015). In the United States, for example, many police forces rely upon shortcuts to identify typical scenarios that do not amount to hate crime, allowing officers to quickly rule out incidents, such as those where there is a pre-existing relationship between victim and offender, evidence of mixed motives or signs that the offence would have been committed even if the victim was from another background (Cronin, McDevitt, Farrell, & Nolan, 2007). Here, the classification of an event as a hate crime relies on evidence of objective facts but, ultimately, the decision lies in the hands of individual officers for whom the likelihood of offender conviction may overshadow victim experience.

This under-inclusive approach contrasts with the United Kingdom, where the public is given significant voice to decide if an event will be recorded as a hate crime. To overcome individual and institutional bias, the UK Association of Chief Police officers agreed in 2007 on a common definition of hate crime as ‘any criminal offence which is perceived, by the victim or any other person, to be motivated by a hostility or prejudice’ based on a person’s race, religion, sexual orientation, disability or transgender (College of Policing, 2014). It is mandatory for police in the United Kingdom to classify an offence as a hate crime if the victim or any other person believes it to be so, irrespective of whether it meets the legal threshold for prosecution.

The impact of these different recording practices on hate crime data is palpable. The number of hate crimes recorded by the police annually in the United Kingdom vastly outstrips other nations (ODIHR, 2016). So while the ‘perception’ test is more responsive to



community expectations, it risks being over-inclusive at the point of recording, thereby creating a large gap between recorded hate crime and prosecuted hate crime. The challenge is for police and vulnerable communities to negotiate sufficient common ground (Mason et al., 2017) to allow the former to demonstrate they take hate crime seriously and the latter to develop the necessary trust to rely upon the police.

## The study

The findings reported in this article are part of a larger study designed to analyse the institutional response of the NSWPF to bias crime. The objective of this study was to document, critique and strengthen the NSWPF's bias crime capacity in terms of organisational culture, community engagement and performance objectives. The study collected three forms of data from the NSWPF: 1) Bias Crime Standard Operating Procedures (SOPS); 2) bias crime data; 3) semi-structured interviews with NSWPF personnel on the response of the NSWPF to bias crime.

This article focuses on the bias crime data. This data has many limitations and gaps. It is these limitations that we seek to explain. To do this, we draw on the qualitative interviews with NSWPF staff to consider, first, the police-community factors that impact on the reporting of bias crime and second, data collection procedures and values that impact on how bias crime is recorded. Ten semi-structured interviews were conducted in 2017 with a mix of operational, policy and senior executive staff within the NSWPF. The sample was purposive in that respondents were selected on the grounds that they were currently or had been recently employed in portfolios with direct responsibility for bias crime or communities vulnerable to bias crime. Interview questions focused on the respondents' experiences and perceptions of the NSWPF's response to bias crime. This article uses inductive thematic analysis (Ezzy, 2002) to identify recurring patterns and divergences amongst interview respondents that illuminate practices and procedures around reporting and recording. The SOPS provide definitions, indicators and instructions for officers to properly address and record bias crimes. They frame the overall analysis. Before discussing and critiquing the bias crime data, it is important to explain how it is collected and categorised.

## The response of the NSWPF to bias crime

In October 1999, the NSWPF integrated a statewide Prejudice Related Crime Data Collection Project into their Computerised Operational Policing System (COPS) (NSWPF, 2011).<sup>1</sup> This system has changed over time. Originally, frontline officers were required to record complaints that were motivated by prejudice by selecting one or more associated factors from the following options: racial/ethnicity; sexual preference; political; religious; and other. In an attempt to achieve greater consistency, officers are now only required to flag one generic 'bias motivated associated factor'. Members of the Bias Crime Unit (BCU) then collate these events and review them for accuracy. They re-classify events according to the nature of the biased motive and whether they qualify as 'bias crime', 'suspected bias crime', 'bias incident' or 'not bias crime'. The SOPS define bias crime as a

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<sup>1</sup>NSWPF did collect data on bias crime prior to this (eg, on homophobic and antisemitic crime) but this function was expanded and formalised in COPS in 1999.

criminal offence 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 homelessness status’ (NSWPF, undated, p. 7). An event will be categorised as a bias crime if there is sufficient evidence to show beyond reasonable doubt that the offender was at least partially motivated by bias. It will be categorised as a suspected bias crime if there is insufficient evidence but reasonable grounds to suggest that the offender was at least partially bias-motivated. A bias incident is one where there is sufficient evidence to show that the incident was bias-motivated but does not amount to a criminal offence (NSWPF, undated, p. 7). Police tend to record bias crime incidents, even though they do not meet the minimum threshold for criminal liability, as a means of gathering intelligence about tensions in a community and the potential for escalation. In NSW, there is no specific offence of ‘bias crime’ that police can use to charge a suspect. However, an offender’s biased motive will be an aggravating factor at sentencing (Crimes (Sentencing Procedure) Act 1999).

The BCU was established in 2015 and, as noted above, has responsibility for reviewing, categorising and responding to events flagged as bias crime by frontline officers. Prior to this, bias crime was the sole responsibility of one officer, the bias crime co-ordinator, who was first appointed in 2007. The co-ordinator role was vacant for three years from June 2009 to September 2012. Until recently, the BCU was located within the Operational Programs command, which has responsibility for diversity programs and related policy. Organisational restructure in early 2017 saw the BCU transferred to the new Fixated Persons Investigation Unit (FPIU), which focuses on extremism and mental health. At the time of the study, the BCU had a statewide ambit, providing policy and investigative advice, quarterly reports and intelligence to Local Area Commands and other Commands.

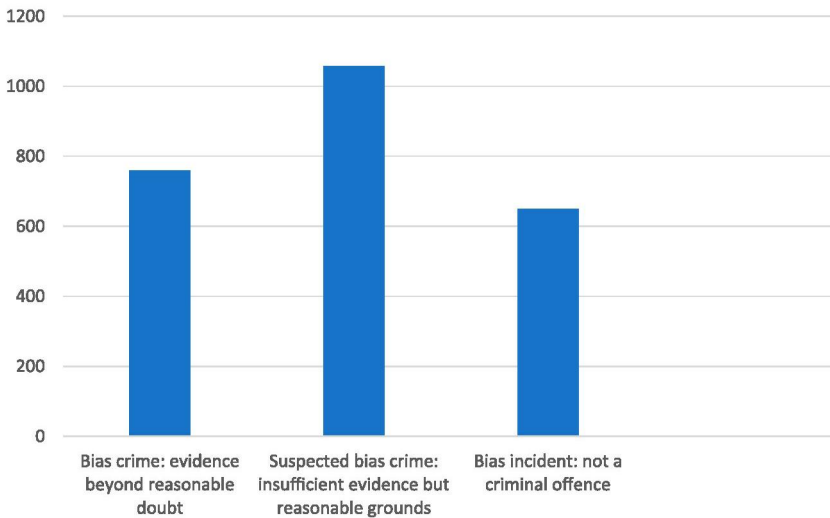
### Bias crime data in NSW

Bias crime data was provided, in different formats, by the BCU for the period July 2007 to January 2017.<sup>2</sup> There are several gaps and inconsistencies in this data. The most striking gap is between June 2009 and August 2012, when no data was collated for more than three years because, as noted above, there was no staff member working in the role of bias crime co-ordinator. Other periods where no data was available are December 2007 and March–April 2014. In addition, changes in definitions, categories of bias, the degree of detail collected and modifications to COPS make it difficult to draw firm conclusions about trends in reporting and recording over time (NSWPF Personal Communication, 29 May 2017).<sup>3</sup> Nevertheless, analysis of this data does reveal some overall patterns.

Of all cases recorded in COPS with a ‘bias crime associated factor’ flag between July 2007 and January 2017 (excluding the missing months), a total of 760 were determined

<sup>2</sup>As noted above, the BCU did not exist until 2015. Previous data was reviewed by the bias crime co-ordinator alone. In the interests of simplicity, we refer to all data recording and review processes as having been conducted by the BCU.

<sup>3</sup>For example, monthly files provided for most years of the study contained a small set of core categories such as the type of motive and the bias crime/suspected/incident/not bias crime classification. In 2013, recording practices changed, and the 2013–2017 data became more comprehensive, including demographic factors and case summaries; although these were not always complete and required the study to make its own classifications for some periods. No data at all was initially available for 2015. This data was only provided later for the purposes of this study in a distinct format and with less detail than data for the immediately preceding or following year.



**Figure 1.** Number of bias crimes, suspected bias crimes and bias incidents NSW, July 2007–January 2017.

by the BCU to fit the criteria of a bias crime (30.8%). One thousand and fifty-eight cases (42.9%) were categorised as suspected bias crime and 649 (26.3%) were categorised as bias incidents (see Figure 1). The total number of cases flagged under the ‘bias crime associated factor’ was not recorded in many of the data files, meaning that the number of reports determined by the BCU to *not* be bias-motivated was only available for some years. For example, in 2013 and 2015, 26.9% and 40.1% respectively of recorded cases were evaluated as not motivated by bias (ie, they were misidentified by first responders).

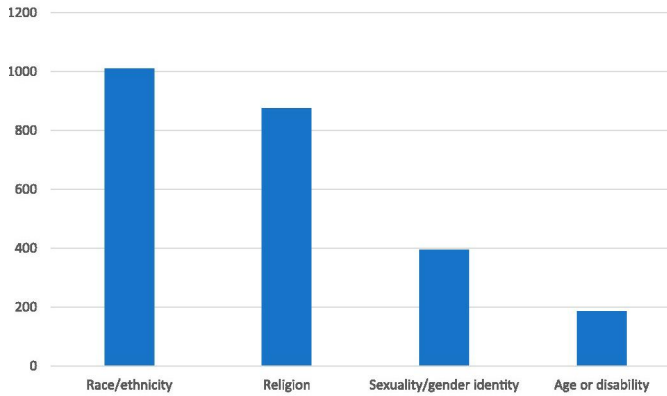
The inconsistent nature of the data does not allow concrete conclusions about trends across time.<sup>4</sup> Yet, when averaged, the data does reveal an overall downward trend in cases categorised as bias crimes between July 2007 and January 2017, a rise in bias incidents and no trend in suspected bias crimes. While this might suggest a change in the mix of cases being reported, with an increase in reports of less serious cases, it is not possible to know the extent to which these shifts reflect a genuine change in reporting practices or a change in recording practices.

For the total number of cases, prejudice based on the victim’s race or ethnicity was the most common motivation (1011 or 41%), followed by religion (876 or 35.5%), sexuality or gender identity (395 or 16%) and age or disability (185 or 7.5%) (see Figure 2). Again, firm conclusions are not possible, but the data suggests a generally steady rate in the types of prejudice being recorded except for cases of religious prejudice, which increased over the time of the study, peaking in September to December in both 2014 and 2015. The data does not allow us to establish the type of religious prejudice being recorded over this 10-year period, but it is possible that it may reflect an increase in Islamophobic incidents suggested by qualitative research (Noble, 2009; Poynting, 2002).

Bearing in mind the above caveats about the reliability of this data, two key points can be made. First, the decision of the BCU to categorise the majority of cases as suspected bias

<sup>4</sup>For this reason, particularly because of the significant gaps in time where no data is available, the data is not presented across the 10-year period of the study.





**Figure 2.** Type of bias motivation NSW, July 2007–January 2017.

crime instead of bias crime suggests that the information entered into COPS was not sufficiently compelling to show that the offender was even partially motivated by bias. This may reflect differences in the criteria applied by victims, frontline officers and the BCU in determining if an event is a bias crime. The SOPS include a set of 10 indicators that police are supposed to use in identifying bias crime (eg, a difference between victim and offender group characteristics; location; level of violence; evidence of biased statements). The BCU's familiarity with these indicators makes it likely that they apply them more carefully than frontline officers, who may have little working knowledge of the NSWPF's definition of bias crime (a point discussed in more detail below). In the years where such data is available, there are also relatively high proportions of cases determined by the BCU to be incorrectly flagged by frontline officers as bias crime in COPS (eg, 26.9% in 2013 and 40.1% in 2015). This raises further questions about the capacity of investigating officers to correctly identify and record bias crime.

Second, looking only at those cases categorised as meeting the minimum threshold of a criminal offence, we can conclude that an average of 24.9 bias crimes or suspected bias crimes are recorded each month across NSW (excluding the missing months).<sup>5</sup> This is comparable to Victorian data, which averaged 22.5 reports of prejudice-motivated crime per month between January 2000 and June 2014 (Mason et al., 2017). However, if we consider only those crimes assessed by the BCU as amounting to bias crime, the average drops to only 10.4 cases per month across nearly 10 years of the study for which data is available. Without comprehensive victimisation survey data for NSW, it is difficult to claim with cast-iron certainty that bias crime is under-reported. Nonetheless, qualitative and quantitative research in Australia and overseas reveals that under-reporting is pervasive (Dwyer et al., 2018; Giannasi, 2015; FRA, 2016; Wickes et al., 2015). For example, a study by the Victorian Equal Opportunity and Human Rights Commission (2010) found that 57% of respondents did not formally report hate crime victimization, and of those who did report, only 23% reported to the police. This is confirmed by Victoria Police who have stated that the number of reported incidents in that state puts a 'question

<sup>5</sup>If all cases are averaged across the months for which bias crime data is available, approximately 33.79 events per month are categorised as either a bias crime, suspected bias crime or bias incident.

mark' over the success of their hate crime strategy (Mason et al., 2017, p. 129). There is no reason to assume that rates of reporting are any higher in NSW.

This data is important because it represents the first window into police reports of bias crime in NSW as well as recording practices by the NSWPF. It also represents the efforts of a small group of dedicated officers and corporate sponsors within NSWPF who, in the face of some opposition and indifference, have integrated bias crime into the COPS recording system, encouraged operational staff to flag bias crime, maintained records, delivered training, built a specialist unit and kept institutional awareness of bias crime alive. Without downplaying these achievements, this data is equally important because its limitations highlight that there is still much work to be done. The following section draws upon interview data from the study to better understand the factors influencing and hindering reporting and recording of bias crime in NSW.

## **Barriers to reporting and recording bias crime in NSW**

### ***Community factors: reporting***

Victims can only report bias crime if they understand bias crime. Research participants identified a lack of community understanding as a contributing factor in under-reporting (P1; P6; P8; P9). This has different dimensions. On a conceptual level, terminology can encourage or hinder reporting. For example, research with stakeholder groups in Victoria suggests that the term 'prejudice motivated crime' adopted by Victoria Police is confusing and a poor signifier of the problem, especially for communities whose first language is not English. In contrast, the term bias crime received support amongst our research participants, particularly because it captures both premeditated and opportunistic crimes but, at the same time, some pointed out that the concept is not well understood by the public. It requires educational campaigns that are yet to be introduced in NSW: 'We feel like there hasn't been the appropriate response on how to report' (P9). While this lacuna in service delivery was explained by a lack of resources (P1; P7; P10), it is worth noting that public campaigns to encourage bias crime reporting are usually underpinned by legal definitions and imperatives. Unlike many international jurisdictions, there is no dedicated hate crime offence in NSW (an offender's biased motive can only be taken into account as an aggravating factor at sentencing). Not only does this offer little incentive to develop policing capability in this area, it also impedes public awareness of the fact that they can report bias crime to the police.

Just as trust and confidence are key variables in compliance with the law, so too are they key variables in people's preparedness to report victimisation. Trust in police varies between communities, and research suggests that a person's race, ethnicity or immigrant status can negatively impact their experience with police, which makes them less likely to report victimisation (Oliveira & Murphy, 2015; Murphy & Barkworth, 2014). Interviewees in our study recognised that a lack of trust between minority communities in NSW and police played a central role in under-reporting (P1; P3; P4; P9; P10). As one participant put it: 'We don't know that we could say hand on heart at the moment' that stakeholder communities trust the police enough to report (P10).

Research participants were candid that a lack of trust in the police was particularly pronounced amongst Muslim, Aboriginal, LGBTI and newly arrived communities (P1; P3; P5;

P6; P7; P8; P9; P10). The specifics of this mistrust vary and are shaped by larger factors that influence the reporting practices of marginalised communities in general. For instance, although the relationship between the NSWPF and the LGBTI community was once an exemplar of how strong partnerships could be built despite a history of antagonism, it is now an exemplar of the fragility of such relationships. Several participants pointed to the way in which the allegations of police brutality and findings of excessive force that arose from the 2013 Mardi Gras Parade produced community ‘anger and dissatisfaction’ that ‘sent us right back to square one’ (P3; also P4). As Dwyer et al. (2015) show, there are signs that higher mistrust in rural areas may also influence LGBTI reporting. Commenting on recent quarterly data produced by the BCU, one participant observed that ‘the city is really the only region in NSW that’s had a sexual orientation’ event classified as bias crime (P2).

The impact of counter-terrorism policing was cited by some participants as having eroded the confidence of the Islamic community to the point that many members are unlikely to report bias crime: ‘We know the Islamic community is not reporting crime, because they’re that disillusioned’ (P7). This was said to be compounded by a lack of ‘organisational capacity’ to ‘effectively engage the Islamic community’ (P7). Similarly, more than one participant pointed out that despite much good work between police and Aboriginal communities, it is still difficult for Aboriginal people to overcome histories of abuse, over-policing and the forced removal of children (P5; P10). For example, one interviewee commented that ‘a lot of Kooris’ would be ‘loathe’ to report bias crime because they do not feel confident that police would be interested in such reports nor that they would exercise their discretion fairly (P5). Concerns about self-identifying as the victim of hate crime and the shame this might bring to an individual or their community were also cited as barriers to reporting (P1; P6).

The SOPS recognise that bias crime reporting is dependent on the development of positive relationships between police and marginalised communities through engagement strategies and confidence-building exercises that encourage cooperation (NSWPF, undated, p. 4). Community engagement was identified by participants as both the solution and the barrier to enhancing understanding, trust and reporting amongst stakeholder communities. At the time of the interviews, only minimal progress had been made by the BCU on the establishment of a formal stakeholder consultation process. As one participant explained: ‘The UK police do this proactive policing much better and it builds trust because they can visualise the police are going to be there’ (P9). While all participants believed that the recent relocation of the BCU to the FPIU opens up new operational opportunities, many expressed concern that this formal alignment of bias crime with extremism and counter-terrorism will close down opportunities for external engagement with targeted communities and internal engagement with portfolios that already have established procedures for working with vulnerable communities (such as multicultural, LGBTI, Aboriginal, elderly, and homeless populations) (P4; P6; P7; P8; P9; P10). For example, service delivery to the Aboriginal community is underpinned by the Aboriginal Strategic Direction 2012–2017, 55 Aboriginal Community Liaison Officers and a dedicated policy and training team in Operational Programs. Robust bias crime policing needs to tap methodically into these kinds of institutional and community networks to develop ‘visibility’ across the nine protected categories of bias crime (race, religion, ethnic/national origin, sex/gender, gender identity, age, disability status, sexual orientation or homelessness).

In short, respondents saw community engagement as the most pressing priority because: ‘if they’re not reporting to police, it gives us no external pressure for the police



to do anything' (P9). If police do not know what is happening in the community, they do not have the intelligence to react strategically. This requires proactive engagement from the BCU as well as at the Local Area Command (LAC) level. Indeed, some respondents pointed out that trust is built at the level of the LAC, and the location of the BCU in a single policy-oriented portfolio has been a structural impediment to enabling the unit to 'join the dots so that the LAC is geared up' on bias crime (P1). Whether its relocation to the FPIU, which has a more operational focus, will overcome this impediment is yet to be seen.

### ***Institutional factors: recording***

It is impossible to know the extent to which the apparent low number of recorded bias crimes is attributable to under-reporting and how much is attributable to recording procedures and practices; or, for that matter, how approaches to recording contribute to people's willingness to report victimisation. One thing we do know, however, is that infrequent reporting of bias crime does rub off on recording practices in the sense that frontline officers struggle to identify and respond to bias crime when they deal with it irregularly (Cronin et al., 2007).

The capacity of operational police to identify bias crime was cited as the number one barrier to accurate recording. Indeed, a history of false positives and confused classifications (eg, officers typically struggle to tell the difference between racial or religious bias) led to the introduction of the simplified recording system that we have described above. According to some participants, this has improved recording standards to the point that misidentifications are now around '20–30% whereas in months gone by it was up around 50–60%' (P8). Nonetheless, one interviewee still expressed concern at the proportion of misidentified events. Citing examples from the most recent quarterly report produced by the BCU at the time of the study, this respondent explained that the BCU deemed 24% of events in the Central Metro region to be incorrectly flagged as bias crime, while in the North West region 32% were misidentified, and in the Northern Region 33% were misidentified (P1). A typical case of misidentification involved an officer flagging an event as bias crime solely because the victim was from a minority group, such as a gay man (P1).

While second-tier review is essential to confirm the accuracy of cases, the BCU can only perform this quality assurance role for those events that have been initially identified by frontline police as potential bias crimes. This requires knowledge on the part of first responders. It is this knowledge that continues to be in short supply and to lack consistency:

But the knowledge of the cop? If someone was to say to that cop what is a hate crime? ... We don't think they'd know. ... We think they would struggle. What do the SOPS say about investigating a hate crime? They wouldn't be able to answer. (P7)

If you asked that question to ten different cops, you'd get ten different answers. (P3)

The reasons why frontline officers have difficulty understanding and recognising bias crime are a mixture of intrinsic, individual and institutional factors. Just as the concept of bias crime is confusing to members of the public, so too is it confusing to police. It is neither self-explanatory nor integral to law-enforcement parlance (P4). The SOPS

contain a list of 10 indicators to help officers determine if an event is a bias crime, but many of these indicators have sub-indicators, bringing the total to 25 (NSWPF, undated, pp. 14–15). In the view of one experienced research participant, these indicators are too complicated, discouraging frontline police from developing the skills necessary to efficiently and accurately recognise bias crime (P3). The SOPS also fall prey to resistance amongst individual officers to take the time to understand and record bias crime when it is not seen as essential to routine policing (P4; P8; P9):

The major challenge has been ... getting cops to see it as a part of their everyday business. ... It needs to be seen as a part of your job rather than an add-on. (P10)

This perspective is compounded by the fact that police are not trained to look into the question of motive: ‘we don’t teach our cops to ask why. We ask what, when, how, where and who but we don’t ask why’ (P8). It was suggested by some interviewees that police in NSW will only take bias crime seriously when it constitutes a substantive offence in itself, allowing police to charge offenders and apply the kind of punitive measures that are attached to penalty enhancement provisions in the United States and the United Kingdom (P8; P9).

Unlike the United Kingdom, where police are required to record an event as a hate crime based on victim perception, several participants pointed out that the NSWPF takes a more ‘accurate’ ‘investigative’ approach that requires clear evidence that an offence is motivated by bias before it is recorded as such (P3; P7; P9). This is spelt out in the opening sentence of the SOPS: ‘At the very essence of a bias crime or bias incident, police are required to demonstrate the motivation or intent of the offender – not necessarily the perception or belief of the victim’ (NSWPF, undated, p. 4). The emphasis that the SOPS place on proof of the offender’s motive helps explain the high proportion of events that are classified only as ‘suspected’ bias crime by the BCU (42.9%). It is arguable that the category of suspected bias crime offers a sensible compromise where there is insufficient evidence to prove beyond reasonable doubt that an event is a bias crime, without losing the intelligence contained within such reports to the category of ‘not a bias crime’.

During the course of the interviews, however, it became apparent that the category of ‘suspected bias crime’ also serves a strategic public relations function. Many interviewees pointed to the powerful influence of community perceptions (P1; P4; P6; P7; P8). The category of suspected bias crime was described as a way of keeping a community ‘happy’ by allowing them to feel that their story is being heard in circumstances where there is insufficient evidence from a police point of view to record an event as bias crime (P8). Indeed, the BCU itself was presented as functioning to help LACs handle situations of community anxiety and outrage:

We’re here to help you. You’ve got an aggrieved community that believe that they’ve been targeted for whatever reason. Now you might on the surface go ‘No, it’s not. It’s a storm in a teacup. It’s nothing’. But to them it’s like the worst tragedy in life. Utilise us to assist you so if you’ve got some vocal agitators in that community ... the Commander can stand up and say ‘I’m going to ask the guys from the unit to explain to you why it wasn’t [a bias crime]’. ... We would be hopeful that under those circumstances [the community] may not agree with our decision but they’ll at least accept that there was no stone left unturned. And they’ll go ‘oh well, we’re still not happy’. But, ok, we [the police] did our best. There just wasn’t enough evidence available to us to suggest that this was a bias crime’. (P8)

At times, the classification of events into bias crime, suspected bias crime or not bias crime appeared to be driven by this damage-control imperative, suggesting that recording is itself a tactical response not just to the problem of bias crime but also one designed to reduce community fear, head off adverse media publicity and control deterioration in long-term relations between police and the community (P1; P7; P8). It would be a mistake, however, to see these calculations as always directed towards downplaying or denying bias crime. The capacity and preparedness of senior staff to negotiate and acknowledge community concerns was equally key to calming the community and developing the necessary intelligence to build relationships:

This is what the community is going to do to you. They will turn on you and they will push and push and you need to start thinking about these things. ... The community is going to want answers when they believe they've been targeted so if they know they have a Commander on side who is willing to listen to the community and ... not make excuse after excuse that will help develop trust in the community. (P8)

The absence of systematic and ongoing training emerged again and again as a major contributor to the lack of understanding amongst frontline officers and their superiors. Despite the best efforts of the BCU to have bias crime education integrated into all recruit training, this has not happened. Instead, bias crime training is intermittent and patchy; for example, it is delivered at individual station training days. Yet, the small but steady improvements that have been made to the quality of recording were attributed to the impact this training has had on those officers and regions who had received it (P2; P6; P8; P9). As one participant put it, whether the average police officer understands bias crime 'depends if they've have a presentation from [the BCU]' (P2). With a police force of approximately 18,000 members and a BCU of approximately 4–5 members, the logistical challenge of delivering training across the board speaks for itself. The content of training is also of paramount importance. Here, some participants raised concerns about a noticeable emphasis on extremism and organised right-wing groups in bias crime training (P2; P7; P8; P9). This was attributed to core members of the unit having been trained or influenced by United States policing models, particularly the FBI. The European Agency for Fundamental Rights (FRA, 2016) is critical of the association of bias crime with right-wing extremism which, it says, encourages police to see bias crime as a matter of social order or state security rather than an everyday violation of the human rights. This, in turn, acts as a disincentive to identify and record run-of-the-mill bias crime, particularly when it is against groups who are not the major targets of the far right such as the LGBTI and disabled communities. Specialist units like the BCU are responsible for defining bias crime, setting institutional priorities and training others. How they approach this is ultimately framed by the quality and suitability of the bias crime education they themselves have received (given that the UK police are recognised as world leaders in this field, we might ask whether the NSWPF should be looking to the UK College of Policing for best practice rather than the FBI).

While recording practices are heavily indebted to the capacity of individual officers to identify bias crime, they are equally beholden to their preparedness to do so. Unconscious bias was singled out as an ongoing problem: 'It's a lot better than it used to be but it's still there' (P5; also P4; P6; P9). Police culture was said by some to have a 'mindset' that struggles with change, making it difficult for individual officers to be 'that voice outside



of the norm' by promoting the importance of bias crime (P10). This absence of new or fresh thinking means that bias crime is often overlooked, as some officers are 'really good at finding reasons why [an event] *wasn't* a bias crime' (P10). However, resistance to acknowledging bias crime cannot be reduced to individual prejudice alone. Several interviewees claimed that there is political pressure on the NSWPF to downplay the problem:

You kind of have to be naive to think that the reason we're not jumping up and down saying bias crime is happening here is not political. ... There's definitely ... pressure at levels much higher than mine to not present NSW ... as a dangerous place to be. (P4)

We've got to have a hate crime response because the communities are making a [fuss] but we don't want to acknowledge it because if we acknowledge it then ... we're the same as America, we're the same as the UK ... and we don't want to be seen as that racist country. ... The problem is if you acknowledge that issue, then it opens up a whole load of political worms that nobody wants to deal with. (P7)

According to the perspective of these participants, low bias crime numbers equate with political appeasement. From an institutional perspective, where performance is partly measured by statistics, low numbers may garner support from senior personnel who are reluctant to engage strategies that escalate reports of bias crime because this 'makes it look like you've lost control of your command' (P7). The contradiction, of course, is that once police engage a community effectively, bias crime reports are likely to rise. From a community perspective, then, low numbers equate with low levels of engagement and trust. For those police directly tasked with addressing bias crime, low numbers ultimately equate with poor intelligence, a lack of institutional prioritisation and insufficient financial resources. To a degree, this has been the experience of the majority of NSWPF personnel interviewed for this study (P4; P6; P7; P8; P9; P10).

## Conclusion

It is only recently that the operational and tactical value of bias crime data has come to be appreciated by the NSWPF. This has come about through a strengthening of the bias crime capability associated with the establishment of the BCU in 2015. Towards the end of 2016, the BCU started producing quarterly reports that provide each region with a summary of incidents enabling them to see who is being targeted and where they are being targeted (P1; P8). Prior to this, some participants pointed out that bias crime events recorded in COPS were not always systematically reviewed and, indeed, were not collated at all during some periods (P7; P9). While this was recognised as a 'tactical error', it exposes several fundamental organisational mistakes: the bias crime co-ordinator's role was allowed to remain vacant for three years; limited resources meant that staff felt compelled to drop data collation and analysis in favour of more immediate intelligence gathering; and the purpose of bias crime data gathering and review has never been clearly articulated or integrated into the business model of the NSWPF.

Unequivocal commitment to bias crime from organisational leaders is a core ingredient of best practice policing (Home Office Police Standards Unit, 2005). Symbolic messages on their own, however, have little instrumental impact without broader change in the occupational culture and professional values of individual officers (Grattet & Jenness, 2005). In

other words, police need to come to terms with ‘the unique needs and vulnerability that result from being a victim of hate crime’ (College of Policing, 2014). Under-recording and misidentification will remain significant problems until training is systematised across NSW, obliging officers to meet minimum standards for recording and responding to bias crime. Unfortunately, the type of training likely to be effective is less clear. Recent research with Victoria Police suggests that awareness training does not necessarily enhance the ability of recruits to correctly identify and classify bias crime (Miles-Johnson et al., 2016). This lends support to the views of some of our interviewees who believe that bias crime education is better delivered as an integrated part of diversity training later in an officer’s career (P3; P6; P10). Appropriate education for specialist bias crime personnel is equally important. These are the people who will train others, evaluate data and formulate priorities. Can we expect gold star bias crime data if those who are responsible for producing it have not received quality training and resources?

To date, the NSWPF’s approach to categorising and recording bias crime has been modelled on criteria that demand evidence of offender motive capable of being proven in a court of law beyond reasonable doubt. While this strict legal standard makes sense in jurisdictions where such evidence is essential to successfully prosecute offenders for specific bias crime offences, its applicability to NSW, where no such charges can be laid, is questionable. Taking greater lead from the UK College of Policing – which gives precedence to victim perception in recording procedures – would enable the NSWPF to better fulfil its stated commitment to ‘sustainable community engagement’ as the key to addressing bias crime (NSWPF, undated, p. 4). This need not involve mandatory recording of bias crime based solely on the victim’s perception but might, for example, involve a re-prioritisation of the kind of evidence needed to flag and categorise an event as bias crime. In addition, systems of third-party reporting have proven effective in encouraging reporting in international jurisdictions by allowing victims to report bias crime through a trusted community organisation rather than laying a complaint directly with police (Asquith, 2015; Giannasi, 2015).

While internal capability to identify, record and analyse bias crime is at the heart of strengthening intelligence in this area, such progress is dependent on members of the public having the confidence to report bias crime. This calls for proactive policing strategies that measure success not just by performance outcomes, such as prosecutions, but also by the processes through which police demonstrate values such as respect and fairness in their interactions with vulnerable communities (Sunshine & Tyler, 2003). One interview participant put it like this:

If we don’t care why that young Indian girl was attacked we’re not going to do anything when the next young Indian girl gets attacked in that particular area ... if we’re not looking at *why*, we’re only looking to catch the guy that did it. (P8)

Police can only do something about the ‘next young Indian girl that gets attacked’ if they have the intelligence to identify patterns, trends and hotspots. For this intelligence they are dependent on crime reports. Communities will only report if they trust that the biased aspect of their victimisation will be understood, formally recorded and investigated by police.

The European Agency for Fundamental Rights (2016) has identified several measures to enhance bias crime visibility and encourage victims to report, including raising victims’

awareness of their rights and support services; building trust in police; tackling discriminatory attitudes amongst police; enabling online reporting; and establishing specialist units and contact officers. The NSWPF is already doing some of this work, but their bias crime capability remains restricted. For example, the NSWPF has a specialist unit, but the small number of personnel in the unit makes its successful functioning dependent on low volume reporting. If reporting increased, as surely is desirable, the unit would be swamped. Alternative solutions include the appointment of specialist bias crime officers in each LAC, the delivery of bias crime training for all investigators and enhancing the capability of multicultural, Aboriginal or gay and lesbian liaison officers to address bias crime. Either way, if reporting is to be encouraged, the BCU needs to work directly with vulnerable communities. It needs to ‘make the first move’ by reaching out to communities through partnership agreements with NGOs (FRA, 2016). For example, the Police Service of Northern Ireland works closely with dedicated hate crime advocates from the community who provide information and support to victims (Police Service of Northern Ireland, undated). Community partnerships already exist across diversity portfolios in the NSWPF. However, polarisation in the organisation’s response to diversity and its response to extremism creates a hurdle for the work of the BCU. As long as bias crime is framed as a problem of extremism, full integration into diversity and community prevention strategies will be hindered. Yet it is through these partnerships that police and targeted communities will negotiate a common understanding of bias crime (Mason et al., 2017) that gives the public confidence to readily report and police the confidence to know how to accurately record bias crime.

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