

REPORT ON PROCEEDINGS BEFORE

STANDING COMMITTEE ON SOCIAL ISSUES

GAY AND TRANSGENDER HATE CRIMES BETWEEN 1970 AND 2010

CORRECTED

At Macquarie Room, Parliament House, Sydney, on Wednesday 28 November 2018

The Committee met at 10:00

PRESENT

The Hon. Shayne Mallard (Chair)

The Hon. Greg Donnelly

Ms Cate Faehrmann

The Hon. Trevor Khan

Reverend the Hon. Fred Nile

The Hon. Mark Pearson

The Hon. Natalie Ward

WILLEM de LINT, Professor in Criminal Justice, College of Business, Government and Law, Flinders University, before the Committee via Skype, affirmed and examined

DEREK DALTON, Associate Professor, College of Business, Government and Law, Flinders University, before the Committee via Skype, affirmed and examined

The CHAIR: Before I welcome the next witnesses, I remind everyone watching that today's hearing will contain information about violent crimes committed against the LGBTIQ community. This may be distressing and if people need assistance I encourage them to seek support from counselling services such as QLife, ACON, and Lifeline. Contact numbers for those can be found in the brochures at the back of this hearing room or on the inquiry's website. Would either or both of you like to make an opening statement to the inquiry? We have your submission.

Associate Professor DALTON: I will go first. I will say a couple of things and then Professor de Lint will also contribute a few points. I would like to start off by reflecting on the ACON report that had, as part of its title, "pursuit of truth and justice". I would like to respectfully remind the Committee that ACON do not have the monopoly on these two important concepts. Our report was also conducted in pursuit of these two very important ideas—truth and justice—and we feel this is not properly acknowledged by some of the sentiments that are circulating post-Operation Parrabell.

Secondly, I would like to stress that these deaths weighed very heavy on our minds as we were conducting this report. We had to live with being immersed in very traumatic and confronting material. We took it profoundly seriously. We took an awful lot of time and energy to prepare our report. I would stress, just as a matter of clarity and not in any way to berate the NSW Police Force because they had a very limited budget, that for every hour we were payed, we spent approximately an additional eight hours putting our report together. It was a very lengthy, very onerous process.

Professor de LINT: I would like to add that generalising across a period of 40 years is a perilous undertaking. The Committee will be aware that there have been many social and cultural changes over that period of time. There have been many transitions in police and policing, in law and legal instruments, and so it is quite difficult to try to generalise across a period of that enormity.

The CHAIR: You make that point in your submission to us and thank you for that. Certainly, we appreciate the weight of what you have had to do. We are going through the same process as an inquiry in terms of the gravity of the situation of what we are dealing with. Just to be clear, you critiqued Operation Parrabell or you offered it?

Professor de LINT: We did a review of the cases. Looking for evidence or confirming evidence of bias: That was our brief. It started out as 88 cases but actually we looked at only 85 because a few of them were excluded. We looked at them to determine whether or not the attribution of bias that was provided made sense to us.

Associate Professor DALTON: To add something additional to what Professor de Lint said, it is also true, Shayne—I guess you are right—to construct this as the police prepared an initial document in consultation with us and then, at some point, a line in the sand was drawn and we responded to their initial document, if that makes sense.

The CHAIR: Is your work incorporated into the Operation Parrabell report?

Professor de LINT: If you look at the report, there are two reports. The first part of the document is theirs. They have a report that ends, if you look at the bound copy, at page—

The Hon. NATALIE WARD: Forty-six.

Professor de LINT: Forty-six, correct, and ours starts at 47.

Associate Professor DALTON: Might we say, and once again this is not in any way to disparage the police, we always knew that they would write some sort of text that would come before our report, but we were a little surprised, if we are honest, when the report came out that their section was actually so lengthy and included graphs and all sorts of information; we thought it was going to be much more concise.

The CHAIR: Thank you for that information and clarifying that for me in terms of your role with that report.

The Hon. TREVOR KHAN: Good morning. What was the process? Were you provided with the documents that the police had access to in assessing these 88 cases? What were you given?

Associate Professor DALTON: We were provided with lengthy case summaries that ran off into many, many pages that would summarise relevant documents or items that the police had consulted from the archives. They might have been statements from witnesses, forensic pathology reports, comments from detectives, crime scene photographs, although they proved to not be relevant. They were summary documents but what sat behind those summary documents was a process where the police extracted relevant information from their archive boxes that were full of material.

The Hon. TREVOR KHAN: Or perhaps not full of material. At least my impression was that in many cases the documents that were available to them were quite scant in terms of—

Associate Professor DALTON: No, I would challenge that and say in some cases that was true but not in many; I think "some" would be a more accurate description.

The Hon. TREVOR KHAN: Right. Are you able to give an assessment as to how many of them appeared to be deficient in terms of their documentation?

Associate Professor DALTON: Can you elaborate on what you mean by that? We are happy to answer but—

The Hon. TREVOR KHAN: You have characterised it as "some" as opposed to "many". I suppose I am asking you to take an educated guess and say what percentage of the 88 were deficient in terms of their documentation? Let me just preface this: I know that the way police kept records and what they actually recorded back in, for instance, the 1980s was very different from how it was in—

Associate Professor DALTON: Yes, in contemporary times.

The Hon. TREVOR KHAN: —2011 when I ceased practice. The volume of material was much less in the early days.

Professor de LINT: I interject here and say that the brief for us that we were going to take the information—There were two stages: the investigation and then the Operation Parrabell team would develop summaries. We analysed from those summaries. We did not look at whatever level of cases in terms of information, whether they were boxes or just a couple folders.

The Hon. TREVOR KHAN: I accept that.

Professor de LINT: Right. That was established early on with respect to our terms of reference.

The CHAIR: How did you go about identifying gay bias in the historic assessment of those crimes, recognising that gay bias would be a cultural thing inside the organisation. I would not imagine it was documented. How did you identify it or not identify it?

Associate Professor DALTON: That is right, in terms of whether it was documented. That is crucially important factor because an archive, as I said in our report, can yield only something that was counted or identified and noted. We both looked at what the police had to say but we devised our own instrument. Of course, it was fascinating because often despite having pages and pages of information, it was very difficult, of course, unless there had been some particular sentiment written or expressed.

Professor de LINT: We were not there to determine whether or not the police were ignoring some form of graffiti on a wall on a crime scene, which suggested that the perpetrator was homophobic. In other words, if there was such a wall at a crime scene with that graffiti on it and it was not recorded or reported by the investigating officers, we would not know that.

Associate Professor DALTON: Yes, I agree.

The CHAIR: Let us talk about the Scott Johnson case. We know documentation that there was gay bias there but the assessment of that it was a suicide within hours and the crimes—

Associate Professor DALTON: Can I interrupt? The Scott Johnson matter, as we all know, had three coronial hearings. It was excised from our process because it was sequestered to the coronial jurisdiction. It was removed from the pile. We never received any files. No doubt, if we had it, they would have been the thickest because of the amount of information but it was not formally on the table due to the coronial process.

The Hon. TREVOR KHAN: Yes, but it is a reasonable example to use, because it is one where, if you were given the original box of documents, going back to those developed shortly after his death, what would you have had available to you that would have allowed you to draw a conclusion of bias or otherwise? All you would have had—this is not a criticism of you; it is just, in a sense, the process—was a recording of a pile of clothes found at the top of a cliff, and a conclusion reached by a senior constable—

Associate Professor DALTON: With all due respects, we would have had much more than that. We would have had a case file summary that would have run to many—perhaps dozens or 100-odd pages—that would have had all sorts of other information in it that would have been similar to the other case files that we read. So it would have been much more than just some information about whether the folding of the clothes related to suicide.

Professor de LINT: I think what you are trying to get at here is whether or not there was some errors or omissions, or even gross negligence or whatever, on the part of the police with respect to these cases. We would not be able—

The Hon. TREVOR KHAN: No, I am not asking you to draw that conclusion, but if Scott Johnson had been a case where there had not been a brother and family with a lot of money and a lot of tenacity, all there would have been, I tell you, is an original investigation which would not have gone to multiple boxes. Because all the evidence suggests that it was disposed of summarily.

Associate Professor DALTON: With all due respects, I do not think you can speculate about how many boxes they have for that case unless you have asked them.

The Hon. TREVOR KHAN: All right, fair enough.

The CHAIR: The point I was getting at is—

Associate Professor DALTON: Can I be clear about one thing from the outset. This is very important. We were not conducting a forensic audit of the content of their evidence cardboard boxes.

The Hon. TREVOR KHAN: I know that, because that was the first question that I asked.

Associate Professor DALTON: To perform that task would have required a team of, potentially, 10 people and a budget of many hundreds of thousands of dollars.

The Hon. TREVOR KHAN: You are misunderstanding why we are asking the questions. We are not seeking to be critical of the task that you undertook—far from it—but what we are seeking to determine is, in a sense, the limits of Parrabell, in terms of the police end of it, and yours. It is not a criticism of you. It is trying to work out what we have.

Professor de LINT: Can I just interrupt for one second? As I said before, if there is a methodology to determine whether or not there was, at certain times—this is too long a period of time; we are talking about 40 years and we are not capable of thinking about how that could possibly be done, with, first of all, the changes in the police force that would be relevant at the time—to ferret out whether or not there was a pocket in the police which was responsible for hiding, obscuring or un-recording or not investigating some homicides because they involved gay bias, that methodology is not in our brief. If it was possible to do that kind of methodology it would be very difficult. We would have to talk quite a lot about how you would have to go about doing that.

Associate Professor DALTON: And one would question whether it is feasible, to be honest.

Professor de LINT: Yes.

The Hon. TREVOR KHAN: I do not think that that was what I was asking. Again, this is not a conclusion by others. The nature of a bias in terms of a police investigation may not be a deliberate intent to hide. It just may be, in a sense, that they do not care. If somebody is getting rolled in a known beat the coppers may have a view, in a sense, "If you go into a beat, that is, essentially, the outcome. You take your chances." That does not involve a conspiracy by coppers. It just involves a subtle bias of uncaringness, if there were such a word. I do not your investigation would disclose that, but nor would your investigation disclose, in the case of the cases that you looked at, the level of enthusiastic forensic assessment, or lack thereof. That was partly why I was inquiring as to what you were provided with.

The CHAIR: I think you were unlikely to find a smoking gun.

The Hon. TREVOR KHAN: That is right, because there probably is not one.

Professor de LINT: I would like to add one thing. We are talking about something that changes over time. Even when you think about what "bias" means, that concrete reference is very difficult to stipulate across a number of years. It may seem that it has a constant value, but it actually does not.

The CHAIR: I accept that.

Ms CATE FAEHRMANN: Good morning. Referring to your submission to the inquiry on page 2, at 1.2, you talk about a potential further investigation:

The requisite expertise and materials required to evaluate if police have properly and diligently investigated each case would be very hard to marshal and deploy.

The last sentence of that paragraph is:

We have found the NSW police to be open to such a review taking place.

Could you expand on that, please, in terms of the type of investigation you are referring to and how the police are open to it.

Associate Professor DALTON: It was interesting because Mr Crandell mentioned to me that he would be open to performing such a task, but then we had a long, complicated discussion about it, I explained to him how we really did not have the skills, or perhaps even the time, to perform such a task. My take on this is that you would need to find a pool of people—of detectives, really—potentially from another jurisdiction, very well versed and very familiar with processes, to examine the evidence boxes or the processes, with some sort of cultural insight or knowledge of what police force investigations should or should not do. They would need to take a long, cold, hard, forensic look at it and make some determination.

The tricky think is that police officers get old, they retire, some of them die, unfortunately. The idea that we could go back in time, find the relevant officers and ask them, "Did you or did you not do X, Y and Z?" "Did you not take whatever seriously?" Otherwise, there is nothing in the archives that will reveal the answer to that question.

Ms CATE FAEHRMANN: Some of the witnesses have come before us urging something like a royal commission into this.

Professor de LINT: A royal commission could go a long way. It is up to the people that have the funding and interest to do that. It is a possibility. The problem is that I think the terms of that kind of royal commission would have to be much more stipulated than the one that you have.

Ms CATE FAEHRMANN: Yes.

The CHAIR: Can I go to the Ross Warren case? Did you look at that one?

Associate Professor DALTON: Yes.

The CHAIR: How did you approach the huge amount of correspondence from the mother, with no responses from the police about her missing son?

Associate Professor DALTON: Off the top of my head—it is complicated for us because we are being asked questions in real time and there is a transcript—I do not recall, in terms of the case file and what we had to do, there being much of a mention of that sort of investigative detail. I do not necessarily see, in terms of how we are to determine whether bias was involved, the relevance.

The CHAIR: You would have to presume either incompetence or bias that the correspondence was just ignored for years.

Associate Professor DALTON: We cannot comment because we do not know. That was not part of our brief. That may well be true but we do not know, sorry. We cannot help you with that one.

The Hon. TREVOR KHAN: My understanding, from a meeting that I attended with police—and a bevy of others—was that, in essence, the competence of the investigation was not what Parrabell was about: that its terms, essentially, were limited to seeing if bias could be determined on the basis of what was there.

Associate Professor DALTON: That is a fair assertion, yes.

The Hon. TREVOR KHAN: I hope so. If that is the case, again we go to the question the Chair asked in regards to what you were asked to look at. In the sense of the Warren matter, you were only given part of the story.

Associate Professor DALTON: No.

The Hon. TREVOR KHAN: No?

Associate Professor DALTON: This is very difficult in real time without having seen the questions that you would put to us. There was a lot of information in the case file relating to Warren—information that would be relevant to helping us determine bias—but that information about a relative making inquiries or assertions about police inactivity would not be.

Professor de LINT: This goes back to what I was saying before with respect to the case summaries.

The Hon. TREVOR KHAN: Yes.

The CHAIR: Yes.

Professor de LINT: We are given information by the police. The police have their own team, the Parrabell team. They are separate from the investigators who were involved so this is another layer. The assumption—we will call it an assumption; it is an assumption; and it is an assumption that you might be right to contest—is that when we received that information the Parrabell team also was concerned whether or not there were missing pieces or gaps that suggest there may have been lapses, that suggest that there was bias that was there that was not otherwise discovered. In other words, we are taking from that information. We are not investigating behind it.

The Hon. TREVOR KHAN: No.

Professor de LINT: Certainly, if you had a royal commission or whatever, you could investigate behind that, or if, as we mentioned in our report to you on the point that you just raised, they could have investigators from another police service or what have you look into these matters.

The Hon. MARK PEARSON: Did you ever become suspicious that information was actually being withheld from you?

Professor de LINT: No.

Associate Professor DALTON: No.

The Hon. TREVOR KHAN: You see, I suppose I am not being critical of the police who prepared the summaries because, again, my understanding is that their direction was to look at the issue of bias in the crime, not the quality of the investigation, which may have in fact reflected another bias; that is, the bias of the cops.

Professor de LINT: That may be or it may not. I think we have to really think about it. We made reference to it in our report. Often times in homicides there is a bit of a hand-off between different players or actors. You have a person who comes across the scene and then it is handed off to somebody else, and then there is a homicide investigator that comes into the picture. In that you have to think: How is the bias maintained across those hand-offs? It may well be that the bias is maintained; the bias is covered up, or the original non-recording of an investigatory item that could suggest bias was not provided—

Associate Professor DALTON: Or overlooked.

Professor de LINT: —or overlooked. That is a possibility.

Associate Professor DALTON: I am sorry to interrupt, but I have just been thinking about some of the cases. I know certainly Warren. There is a whole lot of them that are extremely controversial and there is almost a bit of a cloud of mystery that hovers over them, but I would like to stress to the Committee in terms of the cases we have read, there are also many, many other cases where they were fairly cut and dry in the sense that there was no real mystery to them. I am not comfortable giving you examples off the top of my head, really, other than I can allude to one case where the court found that the homicide was self-defence. It was one stab wound, I recall, after a sexual advance was not welcome. There was no real sense or any suggestion anywhere that that was anything other than what it was—self-defence, not a gay hate homicide. If one was to conduct some sort of royal commission there would be a whole lot of cases that—

Professor de LINT: Can I make a point here? We are not looking at all of the other homicides in New South Wales in this period. With respect to how diligent the investigators may have been with respect to causes of the act or the motivations behind the actors, in order to suggest that there is a differential regard for elements of the crime with anti-gay homicides versus other homicides, we would need to know something about those other cases. We would need to compare the level of diligence or the kind of investigations or the nature of the

investigations against those other cases. That is not something that we have done or the police have done, or any investigator that I am aware of has really done in terms of all of these cases.

The CHAIR: That is a very valid observation in terms of getting an academic approach to understanding what happened there.

Professor de LINT: Yes. In other words, making observations about this particular cohort—

The CHAIR: In isolation.

Professor de LINT: —and making any kind of generalisation about what the police were doing with this particular cohort is almost impossible outside of understanding what they are doing in all the other cases.

The CHAIR: I accept that. I think one of the issues here is that expectations were raised quite significantly in terms of this report being a reinvestigation.

Professor de LINT: Which is wrong. It never was that.

Associate Professor DALTON: It was never construed as a reinvestigation.

The CHAIR: I think community expectation was different.

The Hon. GREG DONNELLY: Gentlemen, thank you for making yourself is available. Thank you for your detailed submission, which we have in front of us. Do you have your joint submission close by or in front of you?

Associate Professor DALTON: Yes.

The Hon. GREG DONNELLY: Can I take you to page 7, which is towards the end of your concluding comments. I will do it altogether—your 5.4, 5.5, 5.6 and 5.7.

Associate Professor DALTON: I have 5.7, yes.

The Hon. GREG DONNELLY: No. It is page 7.

Associate Professor DALTON: Yes. We are on page 7.

The Hon. GREG DONNELLY: It is point 5.4, 5.5, 5.6 and 5.7. I will wrap them all up together. It might just make it a bit easier. Do you want to elucidate on any aspects of what you say in those points? You obviously make particular and rather clear comments and views, but is there anything you wish to add to what you have said in those four points?

Professor de LINT: Yes. In terms of 5.5, we do not have any information of any comparative study with respect to Sydney and comparable cities in terms of the level or extent of anti-gay bias homicides. If someone has that, it would be news to us. We have not actually seen that. The reason that that might be, if what I am saying is true, is that it is very difficult to do any kind of comparison because, first, you have to have the same kind of measure in terms of trying to attribute a bias crime to an event. As we discussed in our report, that can be a really problematic undertaking. Secondly, of course, there are differences in legislation and in culture that will have relevance to the attribution of bias.

The Hon. GREG DONNELLY: One witness before this inquiry either on the first day of the second day made a very unequivocal statement: That they believe the number of homicides was well above the 85 or 88 that we were talking about in the course of some exchanges we had during their evidence. Is it your evidence that there is no evidence?

Professor de LINT: Yes. In terms of how many cases of anti-gay bias homicide there was in that whole period that you are talking about, we cannot deduce. There is no evidence that supports any number.

Associate Professor DALTON: Because the million-dollar question is: How many outliers are there? How many homicides between that period, that were not included in the list of 88, might be gay bias related? And that number is—one would have to speculate.

Professor de LINT: The police did not go through all of the homicides in that period to look at whether or not there was a chance of some of the whole number needing to be included in terms of anti-gay bias, so we do not know.

The Hon. GREG DONNELLY: Time is running out. The second sentence in point 5.6 reads:

Not all of this is related to homophobia; some of it is related to lifestyle and proneness.

Can you elucidate on those two points?

Associate Professor DALTON: To be very clear, and that is why we put the footnote in our report, we are very aware that people use the term "lifestyle" in a very pejorative way like the "gay lifestyle" and very nasty, but what we meant here is—and it relates to kind of the routine activity theory—one might be a person who leaves a pub or a venue late at night, walks back through the inner city, perhaps a little bit intoxicated as anyone could be who has been to a pub, and therefore is in a position of vulnerability where a potential gay basher, et cetera, might assail them. It is not about victim blaming; it is just to account for, you know, if you are another person in the suburbs who is home in bed at 9 o'clock at night, you are safe from such predation.

Professor de LINT: In other words, in certain urban areas where there are congregations of young men who may or may not be intoxicated, those are lifestyle values and proneness values in terms of assault and crime. We know generically speaking that there is going to be a lot more—

The Hon. GREG DONNELLY: That is tied into your second sentence in point 5.7 that reads:

If that assumption is made, it is still open to find that those homicides may also be related to lifestyle as well as or instead of bias.

Professor de LINT: Yes. You have to try to disaggregate the proneness to violence in being in a particular place at a particular time because we do know there is a relationship between violence and crime and time and place.

Ms CATE FAEHRMANN: I am particularly interested in your research around why you have separated anti-gay bias and paedophilia. You suggest there were 17 or 20 attacks that were anti-gay; however, you are not including in that paedophilia. Although, of course, in the 1980s and 1990s, as we know, it was largely an accusation thrown at all homosexual or gay men that in fact they were paedophiles. Why would you not include the attacks on people who were alleged to be paedophiles and that is why they were attacked?

Professor de LINT: Can I just answer that quickly?

Ms CATE FAEHRMANN: Yes.

Professor de LINT: We were saying as a matter of public policy there is a distinction between someone who has an animus towards someone because they think they are a paedophile and someone who has an animus towards someone because they think they are gay. That to us is an important public policy.

Ms CATE FAEHRMANN: I understand that as an important policy point for 2018; however, this is looking historically. You could imagine—"imagine" is not a good word to use—in say 1989, if a man coming out of a beat was set upon and murdered and the attackers said they thought he was a paedophile, would you not have expected that that would be a reasonably common view by some of the perpetrators that all gay men were paedophiles at that time, regardless of the public policy?

Professor de LINT: It may also be a question whether the perpetrators in these cases, whether those individuals themselves were abused by adults as adolescents or children. The research suggests that quite a few individuals do get molested. Where people are drawing animus from—in other words, what kind of experience individuals are drawing animus from—is a very live question and it is difficult to attribute.

Associate Professor DALTON: We always had to look for evidence that that was the case because I think we could all agree as a generalisation that the further back in time you go the more likely it would be that a man would perceive gay men to be also synonymous with paedophiles, rock spiders or whatever euphemism you want to use. But to assume that all men back in that period would be very dangerous because for some men they would just go, "A homosexual man is a homosexual man period" and there would be another class of person who would say, "A homosexual man is synonymous with a paedophile, rock spider" or whatever the term is, that would be related to their individual characteristics, education, background, class and all sorts of things. To be very clear, we only were keen to disaggregate the idea of the anti-paedophile if we saw evidence of it in the case files, and often there was. We did not think it was helpful to just go, "Okay it is one and the same as anti-gay bias. Let's just count it as anti-gay bias." We thought the distinction was worth preserving.

Ms CATE FAEHRMANN: So there was enough evidence, I think you say, in 12 of 29 cases in which you found motivation on a categorical bias that the offenders expressed animus towards gay paedophiles.

Associate Professor DALTON: To be clear, expressed animus to what they perceived to be gay paedophiles. You know, whether or not these men in fact had been convicted of paedophile offences or were factually paedophiles is a matter of summation, but what was important was what was motivating the hatred. As we know, there were some terrible cases where that was the logic at play. Does that help?

The CHAIR: There is plenty of evidence from people who survived bashings that part of that process was being called a paedophile.

Associate Professor DALTON: I think we can all agree on that, yes.

Reverend the Hon. FRED NILE: Have they ever tried to separate the cases that were based on a misunderstanding?

The CHAIR: That is what Ms Faehrmann's question is about. Gentlemen, can you hear Reverend the Hon. Fred Nile's question?

Associate Professor DALTON: No, sorry. It was not very loud.

Reverend the Hon. FRED NILE: In trying to establish the motivation of the people who attacked a person, has anyone ever tried to say that some of these attacks were based on the mistaken idea that they were a paedophile, not just a homosexual?

Associate Professor DALTON: Yes, the case files—

Professor de LINT: We were not aware of this before, sort of the morning of the press air, that the police themselves now have in one of their tables "motivation".

Associate Professor DALTON: Yes, they did, from memory.

Professor de LINT: On page 37 they have got 8 per cent that they have attributed to paedophile revenge.

Ms CATE FAEHRMANN: Where it says "motivation", if motivation is from the perpetrator, they say to the police at the time, "I thought he was a paedophile"—

Associate Professor DALTON: They might not say it that directly but there would be some sort of sentiment expressed or—

Ms CATE FAEHRMANN: I want to finish my question so it is really clear. Have you removed those from the anti-gay bias because they have referenced paedophilia or did there have to be evidence that in fact the victim was indeed charged with paedophilia?

Associate Professor DALTON: No, we did not. If the sentiment was, "You're a rock spider, you're a paedo", whatever the term was, that was it. The secondary question of the validity of that assumption was not relevant.

Ms CATE FAEHRMANN: And they were removed from the report. In terms of your numbers, therefore, they are not in the anti-gay bias numbers?

Professor de LINT: The people that are in the anti-gay bias numbers are those perpetrators who we thought demonstrated beyond a certain threshold that they had an anti-gay bias as opposed to an anti-paedophile bias. That is stated in a few of the cases.

The Hon. MARK PEARSON: But in the police summaries in the report, they would distinguish quite often that it is not a gay-bias crime and then conclude it is a paedophile-bias crime.

Professor de LINT: No, I do not think the police were doing that to a large degree.

The Hon. MARK PEARSON: Would you repeat that?

Professor de LINT: They were providing us with summaries which included comments as Associate Professor Dalton just mentioned.

Associate Professor DALTON: In fact, I am trying to be very accurate here because it is important to be accurate. My sense is the police would often, for argument's sake, identify a case that involved the paedophile sentiment as bias. We came along and we pretty well said, "Yes, we agree it is bias but we think it's a slightly different category of bias, hence the anti-paedophile." Does that make sense?

Reverend the Hon. FRED NILE: No.

Associate Professor DALTON: To be clear, to try to be accurate about this, you could almost really say our anti-gay category plus our anti-paedophile category get collapsed and for the purposes of what we did they were both counted as forms of bias.

Professor de LINT: There is a problem with bias that comes up. I do not know how many of the perpetrators but a number of the perpetrators had at least a question mark in terms of whether they were themselves gay or not. It is very difficult for us to know motivation but the bias literature discusses the problem of bias against one's own—

Associate Professor DALTON: Conflicted sexual identity.

Professor de LINT: Yes, basically a conflicted sexual identity.

The CHAIR: Did you exclude motivations like robbery and assault?

Professor de LINT: There is another problem.

Associate Professor DALTON: Robbery gave us so many headaches. There is a long footnote in our report that you can refresh your memories and read later about robbery. We quoted some literature from America. We had constant discussions with the police about it because for police purposes often if robbery is the intrinsic motivation some of these other factors are somewhat secondary. You can imagine how complicated it gets. You rob someone in the middle of Centennial Park and they happen to be Asian. Is that robbery because you are after their goods and their money or is it an anti-Asian sort of crime? Unless someone says something expressively— I wrote in our report that robbery is such a problematic concept that it just really muddies the waters.

Professor de LINT: In other words, we were much more comfortable where we saw associated proactive actions in terms of the offenders, or perpetrators, where the offender has gone out of his way to put himself in a situation where he can subordinate some other person on the basis of their perceived identity.

The CHAIR: It goes to your point about lifestyle. We had evidence that rolling gays in a beat was equivalent to going to an ATM to get cash: they are soft targets and they are not likely to go to the police.

Professor de LINT: That is right. It is a very difficult one because what happens there is: is the primary motivation related to an anti-gay bias or is it a question of proneness and vulnerability? As you just said, these are the softest targets for this particular crime.

Associate Professor DALTON: Of course, the further back in time we go the more likely that was to occur, particularly prior to decriminalisation or when there was a period when being outed would cause more problems. We could all agree that a lot of the victims of those men were not exactly going to present themselves at the police station to make a report.

The CHAIR: Our time has ended. It has been very informative to have this discussion with you. Thank you for your time. You may have taken some questions on notice.

Associate Professor DALTON: Our sense is we did not take anything on notice.

The CHAIR: We will check that. If you have, you will have 21 days to respond. The secretariat will let you know. We appreciate the work you have done and the time you have given us today.

Associate Professor DALTON: We appreciate the opportunity to contribute too. Thank you.

(The witnesses withdrew)

(Short adjournment)