

ANNEXURE F



Special Commission of Inquiry into LGBTIQ hate crimes

11 October 2022

Professor Nicole Asquith
 Director, Tasmanian Institute of Law Enforcement Studies
 University of Tasmania

By email: [REDACTED]

Dear Professor Asquith

Special Commission of Inquiry LGBTIQ hate crimes: request for expert report

I refer to your discussions with the Commissioner and to our previous correspondence.

As recently foreshadowed with you, I confirm that the Inquiry would be grateful if you would provide a report addressing certain questions, as now set out at (4) below.

(1) Expert Code of Conduct (NSW)

I **enclose** a copy of the Expert Code of Conduct with which expert witnesses in Supreme Court proceedings in this State are typically required to comply. While the present inquiry is not a Court proceeding, I would be grateful if you would read the Code of Conduct and agree to be bound by it. I suggest the following form of words be included in the body of your report in due course:

“I, [NAME], acknowledge that I have read the Expert Witness Code of Conduct in Schedule 7 to the *Uniform Civil Procedure Rules 2005 (NSW)* and agree to be bound by it.”

(2) Documents

The documents with which you have been provided, and which we would ask you to consider in preparing your report, are:

1. The Inquiry’s Terms of Reference;
2. The Final Report of Strike Force Parrabell (**Parrabell Report**);
3. The Coordinating Instructions for Strike Force Parrabell (**Coordinating Instructions**);
4. A joint written submission, dated 5 November 2018, by Professor Willem de Lint and Associate Professor Derek Dalton of Flinders University (the two principal members of the academic review team for Strike Force Parrabell) to the Standing Committee of the NSW Legislative Council;
5. The transcript of the joint oral testimony of Professor de Lint and Associate Professor Dalton to that Committee on 28 November 2018;

6. An academic article by Professor de Lint and Associate Professor Dalton entitled “*Anatomy of Moral Panic: The ‘List of 88’ and Runaway Constructionism*”, in *Critical Criminology* (2021) 29:723-743 (published online 31.7.20); and
7. A document authored by McLaughlin et al entitled “*Responding to Hate Crime: A Multidisciplinary Curriculum for Law Enforcement and Victim Assistance Professionals*”, published by the US National Centre for Hate Crime Prevention, Education Development Centre (2000).

Where you have regard to, or rely upon, any other documents for the purposes of your report, that should be made clear in your report, as the required in the Expert Witness Code of Conduct.

(3) Assumptions

In addressing the specific questions set forth below at (4), the assumptions which you are asked to make are the following:

1. In or about 2015, the NSW Police Force (**NSWPF**) established Strike Force Parrabell.
2. Strike Force Parrabell was a successor to “Operation Parrabell”, which had commenced in about 2013.
3. Strike Force Parrabell was established to review a list of 88 previously investigated deaths of persons, between 1976 and 2000, to determine if a “sexuality or gender bias” was a contributing factor”: Coordinating Instructions, p 2.
4. Elsewhere in the Coordinating Instructions (at pp 2 and 3) and in the Parrabell Report itself (e.g. at pp 17-20), other terms were used besides “sexuality or gender bias”, including “gay hate crimes”, “bias crime” and “anti-gay bias”, as also indicating the objective or purpose of the Strike Force.
5. Strike Force Parrabell was to review matters that had *already been investigated* by the NSWPF. It was not to, and did not, reinvestigate any matters. It did not contact any witnesses, suspects or family members. Rather, it reviewed written “holdings” from NSWPF files. Its aim was to arrive at a determination as to whether any of the 88 deaths were in fact motivated by an “anti-gay bias” (or the like), rather than identifying and prosecuting offenders: Coordinating Instructions pp 3, 14; Parrabell Report pp 19-22.
6. Various officers from the NSWPF were seconded to Strike Force Parrabell over an 18-month period: Parrabell Report, p 20. The names and ranks of those officers are at p 6 of the Parrabell Report.
7. NSWPF engaged academics from Flinders University (**the academic team**) to conduct a review of the work of the Strike Force: see Parrabell Report at p 21.
8. Pages 1 – 46 of the Parrabell Report comprise the report of the Strike Force officers, while the longer part of the Parrabell Report, at pages 47 – 133, consists of the academic review by the Flinders University academic team.
9. In conducting their review of the cases, Strike Force Parrabell officers used a “Bias Crime Indicators Form” (**BCIF**), said to be used by the NSWPF Bias Crime Unit: Coordinating instructions pp 3-4; Parrabell report pp 20-21.
10. That BCIF Form is set out in full at pp 4-13 of the Coordinating Instructions.

Special Commission of Inquiry into LGBTIQ hate crimes

3

11. According to the Coordinating instructions (pp 3-4 and footnote 1), and the Parrabell Report itself (see pp 67-70 within the academic review section of the Report, and footnote 20 thereto):
 - (a) Indicators 1-9 in the BCIF had been derived from the US document authored in 2000 by McLaughlin et al (document 7 above), while
 - (b) Indicator 10 (as to “Level of Violence”) had been developed by the NSWPF Bias Crime Unit.
12. The methodology employed by the Strike Force officers, including their use of the BCIF, was set out at pp 3-4 of the Coordinating Instructions and at pp 19-22 of the Parrabell Report. It was the subject of comment by the academic team at pp 65-70 of the Parrabell Report.
13. In respect of each of the cases considered by Strike Force Parrabell:
 - (a) the BCIF form was completed by one or more of the police officers who comprised the Strike Force, in the sense that the 10 sets of “prompts” and “indicators” in the left hand column of the form were answered in writing in the right hand column;
 - (b) such police officers were of varying ranks and experience;
 - (c) such answers, and thus such completed BCIF forms, were of varying lengths and composition;
 - (d) the answers to such “prompts” and “indicators”, in each particular case, were composed by whichever Parrabell officer or officers was or were assigned to that case, derived from the views formed by such officer/s in the light of their reading of whatever historical files were available in that case; and
 - (e) in all or most completed forms, there was a final box headed “Summary of Findings”, in which the assigned Parrabell officer/s ascribed one of four possible descriptors to the case, namely either “Evidence of bias crime”, or “Suspected bias crime”, or “No evidence of bias crime”, or “Insufficient information”.
14. In Recommendation 3, the Strike Force officers expressed the view that *“the current system with 10 bias crime indicators”* was *“not user friendly for operational police”*: Parrabell Report, p 39.
15. The academic team expressed reservations about the BCIF tool used by the NSWPF: Parrabell report pp 68-71 and footnote 20.
16. The academic team used a different methodology, as outlined by them at pp 56-58, 70-71 and 79-91 of the Parrabell Report.
17. The academic team created and applied their own definition of “bias”: Parrabell Report, pp 82-83.
18. The academic team then categorised bias crimes based on whether they were
 - (a) “proactive” or “reactive”, and
 - (b) “associative” or “non-associative”: Parrabell Report, pp 88-90.
19. On 5 November 2018, Professors De Lint and Dalton made a joint written submission (document 4 above) to the Standing Committee of the NSW Legislative Council on Social

Special Commission of Inquiry into LGBTIQ hate crimes

4

Issues, which was conducting an Inquiry into Gay and Transgender Hate Crimes between 1970 and 2010 (the **Parliamentary Committee**), in which they said, among other things:

- “There are difficult questions to be asked when assessing whether an incident is a bias crime and quite often investigators do not have the information to answer them” – at [3.4];
- “The tool used by the NSWSP, the Bias Crime Indicators Review Form (BCIRF), draws its ten indicators from the National Centre for Hate Crime Prevention ... It leaves too much discretion and does not rank or prioritise among the indicators and is being discontinued by the NSWSP” – at [3.6];
- “[W]e designed a simple three-part test of bias is as follows. Bias crime: *expresses* a categorical animus (directed at a person or group on the basis of his/her perceived identification with a *vulnerable* group); produces an act that *intentionally*, by way of criminal predation on the basis of that categorical animus, causes harm to that person or group; is mitigated or aggravated by an offender’s contemporaneous *associations* that are linked by a commitment of *denunciatory non-identification* with the vulnerable person or group” – at [3.8].

20. On 28 November 2018, Professors De Lint and Dalton gave joint oral testimony (a transcript of which is document 5 above) to the Parliamentary Committee, in the course of which they made statements to the following effect:

- At p 11 – that the material with which the academic team was provided, and on which they based their analysis, consisted of “case summaries” (*which the Inquiry at this stage, subject to any later clarification, understands to be a reference to the completed BCIF questionnaires with the ten sets of “prompts” and “indicators”*) created by the Parrabell police officers (*in 2015-16*);
- At pp 11-12 and p 14 – that the academic team did not look at any of the primary documents which “sat behind” those summaries;
- At pp 10, 14 – that the academic team looked at the case summaries “to determine whether or not the attribution of bias that was provided (*by the Parrabell officers*) made sense to us”;
- At p 15 – that the police did not attempt to ascertain whether other homicides in the relevant period, beyond the list of 88, might be gay bias related; and
- At pp 17-18 – that the academic team treated cases of anti-paedophile bias (where in their view that was indicated, from the case summaries) as separate and distinct from anti-gay bias.

Where you make other assumptions in your report, in addition to those set out above, you should clearly state those assumptions, as the Code requires (see paragraph 3 thereof).

(4) Questions to be addressed

Making such assumptions, the questions which the Commissioner would like you to address are those set out below.

1. Please outline the origins and use of the Bias Crime Indicators contained in the BCIF, whether in this country or overseas, including any literature that has evaluated or critiqued those indicators.

Special Commission of Inquiry into LGBTIQ hate crimes

5

2. In relation to bias crime, or hate crime, against LGBTIQ people, what do you consider to be the appropriate indicators in that particular context and why?
3. What is your view as to the appropriateness of the methodology used by the Strike Force Parrabell officers, including the use of the BCIF, having regard to the objectives of the Strike Force (as to which see assumptions 3, 4 and 5 above)?
4. What is your view as to the appropriateness of the different methodology used by the academic team, having regard to those objectives?
5. What are the other ways and/or models of which you are aware, in which bias crime has been, or may be, identified and/or documented and/or characterised and/or analysed, whether in Australia or overseas? If there are any relevant differences between models of identifying and analysing bias crime available today and those available in 2015-2018 when Strike Force Parrabell was carrying out its work, please include a discussion of those differences.
6. Please outline the more widely accepted views to be found in the literature relating thereto, including whether any consensus has evolved or is evolving.
7. Please outline the history and development, both in Australia and overseas, of the use of the terms "bias crime" and "hate crime", and/or related language, in relation to offences against LGBTIQ people, and provide your views as to what terminology is preferable and why.

Thank you very much for your assistance.

Please do not hesitate to contact Enzo Camporeale on (02) 9372 8600 if you have any queries in relation to this matter.

Yours faithfully



Enzo Camporeale
Director, Legal

Encl. (1)

Uniform Civil Procedure Rules 2005

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Schedule 7

Schedule 7 Expert witness code of conduct

(Rule 31.23)

1 Application of code

This code of conduct applies to any expert witness engaged or appointed—

- (a) to provide an expert's report for use as evidence in proceedings or proposed proceedings, or
- (b) to give opinion evidence in proceedings or proposed proceedings.

2 General duties to the Court

An expert witness is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceedings or other person retaining the expert witness, to assist the court impartially on matters relevant to the area of expertise of the witness.

3 Content of report

Every report prepared by an expert witness for use in court must clearly state the opinion or opinions of the expert and must state, specify or provide—

- (a) the name and address of the expert, and
- (b) an acknowledgement that the expert has read this code and agrees to be bound by it, and
- (c) the qualifications of the expert to prepare the report, and
- (d) the assumptions and material facts on which each opinion expressed in the report is based (a letter of instructions may be annexed), and
- (e) the reasons for and any literature or other materials utilised in support of each such opinion, and
- (f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise, and
- (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications, and
- (h) the extent to which any opinion which the expert has expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person, and
- (i) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the court, and

- (j) any qualification of an opinion expressed in the report without which the report is or may be incomplete or inaccurate, and
- (k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason, and
- (l) where the report is lengthy or complex, a brief summary of the report at the beginning of the report.

4 Supplementary report following change of opinion

- (1) Where an expert witness has provided to a party (or that party's legal representative) a report for use in court, and the expert thereafter changes his or her opinion on a material matter, the expert must forthwith provide to the party (or that party's legal representative) a supplementary report which must state, specify or provide the information referred to in clause 3(a), (d), (e), (g), (h), (i), (j), (k) and (l), and if applicable, clause 3(f).
- (2) In any subsequent report (whether prepared in accordance with subclause (1) or not), the expert may refer to material contained in the earlier report without repeating it.

5 Duty to comply with the court's directions

If directed to do so by the court, an expert witness must—

- (a) confer with any other expert witness, and
- (b) provide the court with a joint report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing, and
- (c) abide in a timely way by any direction of the court.

6 Conferences of experts

Each expert witness must—

- (a) exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the court and in relation to each report thereafter provided, and must not act on any instruction or request to withhold or avoid agreement, and
- (b) endeavour to reach agreement with the other expert witness (or witnesses) on any issue in dispute between them, or failing agreement, endeavour to identify and clarify the basis of disagreement on the issues which are in dispute.