



**NSW Police Force**

**Strike Force  
Parrabell**

**Final Report**



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## **Acknowledgements**

### **Strike Force Parrabell Investigation Team**

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Detective Senior Constable Andrew Agostino

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Professor Willem de Lint

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## **List of Cases Reviewed**

1. Mark Stewart (Spanswick)
2. Paul Rath
3. David Williams
4. Walter John Bedser
5. Richard Slater
6. Constantinos Giannaris
7. Gerard Leslie Cuthbert
8. Peter Parkes
9. Ian Bridge
10. Barry Charles Saunders
11. Peter Sheil
12. Gregory Peter Regan
13. Paul Edmund Hoson
14. Julian Ricardo Joseph D'Rozario
15. Patrick O'Neill
16. Wayne (Wendy Wain) Brennan
17. Michael John Stevens
18. Phillip James Finlay
19. Giles Mattaini
20. William Anthony Rooney
21. Peter John Simpson
22. Raymond Frederick Keam
23. Keith William Richards
24. Stewart John Watts
25. Geoffrey Solness
26. Phillip Peter Crombie
27. Mark Anthony Johnson
28. Leo Press
29. Scott Johnson
30. William Emanuel Allen
31. Russell Payne
32. Samantha Raye

33. John Gordon Hughes
34. Ross Bradley Warren
35. Graham Paynter
36. John Russell
37. Andrew Currie
38. Michael John Swaczak
39. Simon Blair Wark
40. Richard Norman Johnson
41. Wayne George Tonks
42. Krichakorn Rattanajurathaporn
43. Gary Webster
44. William O'Shea
45. Michael Martin
46. Maurice McCarty
47. Noel William Walsh
48. John Stephen Cranfield
49. Felipe Flores
50. William Dutfield
51. Robert Malcolm
52. Robert Anthony Knox
53. Brian Travers
54. Simon McHugh
55. Brian Walker
56. Cyril Olsen
57. Robert John Maclean
58. Sidney Alexander Hoare
59. Donald Gillies
60. Kevin William Marsh
61. Gordon Bryan Tuckey
62. John Milicevic
63. Mervyn Thomas (Tom) Argæet
64. Barry Webster
65. Crispin Wilson Dye
66. Gordon Mills

67. Stephen Dempsey
68. James (Jim) William Meek
69. Kenneth Brennan
70. Craig Thomas
71. Scott Stuart Miller
72. Christopher Smith
73. Peter Brown Rowland
74. Geoffrey Boyson
75. Carl Stockson
76. Paul Erskine
77. Robert Campbell
78. Joseph Zimmer
79. Barry Coulter
80. David Rose
81. Trevor Parkin
82. David O'Hearn
83. Frank Arkell
84. John Chudleigh
85. Brendan McGovern
86. Harry Jansons
87. Jamie Creighton
88. Ali Mokdad





## **NSW Police Force**

### **Strike Force Parrabell**

There was a time when a man beating his wife and children was regarded as a father's duty, homosexuality, in the sense of same sexual attraction, was a hanging offence, and waterboarding was approved, in fact, invented by the Catholic Church. Through the middle of the nineteenth century, the United States of America and other nations condoned plantation slavery.<sup>1</sup>

In Australia women were forbidden to vote until after the turn of the twentieth century, and it was not until 1962 that the same right was provided to Indigenous citizens. In 1978 protest activity motivated by celebration became the basis of today's Sydney Gay and Lesbian Mardi Gras that attracted a response from police involving excessive force and arrests followed by the publication of participants' identities in a public shaming exercise. The degree of animosity towards gay men especially was not isolated to any particular section of society which reflected well entrenched social, political, legal, cultural and institutional bias. Within this context the NSW Police Force was no different with the backing of legislation that identified criminality by natural behaviour.

Violence directed against gay men and lesbians in this country and many others around the world is not a new phenomenon. According to some sources<sup>2</sup> there is evidence of gay bashings in Australia since colonisation, however it has only been recognised as a social problem in the last several decades.

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<sup>1</sup> Kwame Appiah, (2017) Background: What Will Future Generations Condemn Us For?

<sup>2</sup> The Hidden History of Homosexual Australia (Documentary directed and written by Con Anemogiannis 2005)

Whilst anti-gay violence is not new, it has grown alongside increasing visibility and openness of an urban, suburban and rural gay culture. Factors that impact upon and hopefully promote increased visibility of the Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (LGBTIQ) community and openness about sexuality and gender diversity include snowballing social and legislative reforms.

### **Legislative Reform**

- 1975:** Removal of the classification of same sex attraction as a psychiatric disorder
- 1982:** Legislative reform creating an offence in NSW to discriminate against someone on the grounds of their same sex attraction
- 1984:** Decriminalisation of same sexual acts
- 1999:** Commenced a period of law reform followed by a raft of legislation offering most of the same legal rights and obligations to same sex couples as those of heterosexual couples, excluding the right to marry
- 2003:** Legislative parity created by amending the age of consent for gay men to equal that of heterosexual relationships in NSW
- 2014:** Amendment of the Criminal Records Act to allow historical same sex attraction offences to be extinguished
- 2017:** Legislative reform creating equal rights to marry for same sex couples

### **Social Progress**

Within the same period of time when many gay men began enjoying the freedom and benefits of positive visibility, HIV/AIDS arrived in Australia with the first recorded AIDS case in 1982 and the first AIDS-related death in 1983. What followed is often referred to as the ‘AIDS

crisis', drawing a significant media and social response of gay alienation within the context of 'moral panic'.

The 'Grim Reaper' advertising campaign in 1987 epitomised this alienation, notwithstanding accolades for creative effectiveness. It certainly did not impact positively upon the gay community, given its promotion of fear, not only of AIDS itself but also of those held responsible for its spread – gay men.

In the eyes of many gay men this campaign reignited and refocussed homophobia within communities, driven by fear and supported by one of the most famous advertising campaigns of the twentieth century. The link between anti-gay violence and moral panic associated with the spread of AIDS in Australian states is well documented.<sup>3</sup>

Another factor was the social attitude towards 'beats' – locations such as public parks, beaches and toilets, where men meet or arrange to meet other men for sexual or social purposes. Some of the most highly publicised disappearances and deaths of men during this period were at known beats, including Bondi headlands (popularised by the book *Bondi Badlands*<sup>4</sup> and more recently *Deep Water*<sup>5</sup>). Moral attitudes of the time (and to some extent today) towards beats and anonymous sexual activity at such locations create a dangerous environmental context. At these locations men were identified as legitimate targets of violence, unlikely to seek police involvement or assistance.

### **Responsibility of Police**

Thirty to forty years ago the NSW Police Force was a vastly different organisation, as were many others at that time. To become a police officer, you needed to comply with height, weight and chest expansion requirements. Recruitment was driven primarily by physical size and strength rather than intellect. Women police officers did not have maternity leave; were not issued handcuffs until 1976; or firearms until 1978. Homosexual activity was contrary to NSW legislation until 1984 however police culture and societal values took far longer to change.

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<sup>3</sup> Stephen Tomsen and Gail Mason, *Homophobic Violence* (1997)

<sup>4</sup> *Bondi Badlands*, Greg Callaghan (Allen & Unwin 2007)

<sup>5</sup> <http://www.sbs.com.au/programs/deep-water>

As the enforcement arm of Government and primary law enforcement agency, a reasonable community expectation of the NSW Police Force was and remains leadership of social change, especially when reinforced by legislation. In this regard, there is no doubt that police culture inhibited the kind of impartial support now becoming a feature within LGBTIQ community relationships.

Strike Force Parrabell was developed to show proactivity, from this point in history at least, in the investigation of anti-gay bias crime. The purpose of academic review was to provide an independent account of Strike Force Parrabell's systemic validity; where possible, identify evidence of poor or biased police investigations; guide future policing strategies of community engagement; and develop a more suitable bias crime identification process.

Significant angst has been felt for some time within the LGBTIQ community surrounding questions of investigative propriety and bias as well as the prospect of offenders not being brought to justice because of solvable crimes remaining otherwise outstanding. The extent of community feeling has been mentioned in NSW Parliament on more than one occasion leaving it important that the NSW Police Force acknowledge its role in historical difficulties and failings.

### **Context: Strike Force Parrabell and the NSW Police Force**

The NSW Police Force is acutely aware of and acknowledges without qualification both its and society's acceptance of gay bashings and shocking violence directed at gay men, and the LGBTIQ community between 1976 and 2000. This is an important point, because the review of these 88 deaths by Strike Force Parrabell is not designed as commentary upon the level of violence directed towards the LGBTIQ community during these times. It is clear and beyond question that levels of violence inflicted upon gay men in particular were elevated, extreme and often brutal. The victims of these crimes fell outside the scope of Strike Force Parrabell due to their survival. Many of these people were fortunate to live.

The Gay and Lesbian Rights Lobby and later, the AIDS Council of NSW (now ACON) kept records, usually comprising self-reported incidents of gay-hate violence, that on several

occasions amounted to more than 20 entries per day. Unfortunately, fear associated with anti-gay attitudes of officers within the NSW Police Force at the time prevented these reports being formally recorded, which in turn meant that crimes were not investigated. This inherent lack of consequences or accountability meant that perpetrators were given a kind of 'social license' to continue inflicting violence upon members of the gay community. This phenomenon has been associated with what some perpetrators believed was their moral obligation, driven by poor societal expectations. The Bondi incidents together with similar disappearances and deaths of men in and around beats attracted heightened levels of violence and were often associated with a victim's sexuality or perceived sexuality.

All these factors were relevant to Strike Force Parrabell and form significant context for this report. Importantly, fear, moral panic, and moral judgements towards beats usage were very real. It would be naive to assume that these attitudes did not colour the perceptions of police officers as members of the same society so publically against gay men and the LGBTIQ community generally.

The positive progression of legislation accompanied a contemporaneous decline of social and community understanding or appreciation of equal rights for the sexuality and gender diverse minority. Throughout this time many significant political events occurred, both locally and overseas. These events are important for context because of the most likely impact on the willingness of victims and witnesses to come forward, report to police, or seek assistance from support services.

- **28 June 1969** - The Stonewall riots in Greenwich Village, New York - saw a series of spontaneous, violent demonstrations by members of the gay community against a police raid of the Stonewall Inn
- **24 June 1978** - The first Mardi Gras protest, closer to home in Sydney, ended in violence - with police making 53 arrests and a significant legacy of mistrust amongst members of the gay and lesbian community
- **1995-1997** - The Royal Commission into NSW Police from 1995-1997 revealed corrupt and abhorrent police behaviour in many areas

- **Until 14 May 2014** - Use of the 'Homosexual Advance Defence' where a homosexual advance could form the defence of provocation, resulting in those accused of murder receiving much lighter sentences
- **7 December 2017** - Passing of same sex marriage legislation in Australia after a national plebiscite that returned overwhelming community support to allow same sex couples an equal right to wed

Each of the events described was aggravated by legislation that sanctioned the criminal nature of homosexuality until the mid 1980s. History has shown time and again that legislation does not cure culture or indeed social attitudes of the time. It is little wonder that gay men were and remain fearful of reporting violence to police.

### **The NSW Police Force Response**

The NSW Police Force must acknowledge and has, to some extent, acknowledged its part in marginalisation of the LGBTIQ community during the 1970's, 80's and 90's especially. However there has been historical moments and movements within the NSW Police Force, and community generally, demonstrating a collective willingness to protect gay men, and more contemporarily, the LGBTIQ community from violence.

In 1984 a formal commitment was made to improve relationships by acknowledging violence and 'hate crimes' directed at gay men and lesbians with the announcement of a *NSW Police Force Gay Liaison Unit* with the first *Gay Community Relations Coordinator* appointed the year after.

This movement reflected a reorientation of community based policing and a response to political pressure and demands from what was becoming a well organised and mobilised gay and lesbian community. The focus upon closer community alignment was also consistent with significant law reforms of the period. A number of other key developments within the NSW Police Force also demonstrated a changing organisational and cultural commitment:

- **Since 1990** - police officers are trained as GLLOs (Gay and Lesbian Liaison Officers, now LGBTIQ Liaison Officers) to assist in building trust and confidence in police amongst members of the LGBTIQ community
- **In 1995** - the NSW Police Force released the first Australian police study examining the level of victimisation of gay men and lesbians - *Out of the Blue*. This study showed a disproportionate level of violence and harassment experienced by lesbians (six times more likely) and gay men (4 times more likely), with many reports classified as ‘hate’ related
- **Since 1997** - four policies were created to confirm the NSW Police Force commitment to working in partnership with gay and lesbian (now broadened to include LGBTIQ) communities
- **In the late 1990's** - the NSW Police Force was actively involved in the Homosexual Advance Defence Working Party and Monitoring Committee reporting to the NSW Attorney General with recommendations on reforming law and procedure. This included a recommendation to exclude a non-violent homosexual advance from forming a defence of provocation by reforming the NSW Crimes Act; removing age of consent laws; developing community education campaigns; improving judicial education, and detective training

The social context today is very different. Thankfully. Notwithstanding some bumps in the relationship road, the NSW Police Force has come a long way in terms of cultural attitudes and contemporary professionalism since the 1980s and 1990s.

### **Why These 88 Deaths**

During 2013 a number of articles were published in mainstream Sydney media together with a scholarly article published by the Australian Institute of Criminology (AIC) relating to 88 suspicious deaths with potential gay-hate motivations across NSW. Allegations were also made of deliberate police inaction; police taking part in gay bashings; and police brutality, most recently at the 2013 Mardi Gras Parade against members of the LGBTIQ community.

It is important to note that these 88 deaths do not form a representative sample. They are not drawn from any statistically significant pool. Obviously, there were many more deaths recorded in NSW between 1976 and 2000. There is no correlation between the 88 deaths identified and others confirmed during that period of time in NSW. The focus of investigators was the list developed and published by the AIC.

Unrest has continued within the LGBTIQ community without answers to difficult questions of bias motivation related specifically to these 88 deaths. Each death was and remains widely reported as involving victims with some LGBTIQ connection whether because of sexuality; gender diversity; place, or timing of death.

### **NSW Police Force - Strike Force Parrabell**

Strike Force Parrabell was created with an overriding objective:

**To bring the NSW Police Force and the Lesbian, Gay, Bisexual, Transgender, Intersex and Queer community closer together by doing all that is possible from this point in history**

This objective was to be achieved, in part, by reviewing 88 deaths of men between 1976 and 2000, each claimed as motivated, or potentially motivated, by anti-gay bias.

The NSW Police Force has many responsibilities to many communities of NSW including the delivery of services that ensure safety and security. When people do not feel a general sense of community safety there is a failure of policing. To address this failure, policing must be structured to include and protect our most marginalised communities with the provision of equal rather than special consideration.

From this perspective, we can see that our own sufferings and pleasures are very like the sufferings and pleasures of others; and that there is no reason to give less consideration to the

sufferings of others, just because they are 'other'. This remains true in whatever way 'otherness' is defined, as long as the capacity for suffering or pleasure remains.<sup>6</sup>

What we must not forget whilst reading this report is that each case represents a person's life - and death, brought about by any number of causes and generally assessed by a judicial body, usually a NSW Coroner, as misadventure, suicide, brought about by a criminal act, or left open because of uncertain circumstances.

These people's lives were taken prematurely and whilst we might consider the individual a victim, in reality there are many other victims left behind to ask unanswered questions of why. In a sense, the families and friends of victims that pre-decease them are left with life sentences of anguish. It is this anguish that Strike Force Parrabell has no wish to reignite. The situation is made infinitely worse when answers to basic questions of what caused or motivated the death of a loved one is not clear or rests in areas of factual or suspended uncertainty.

Notwithstanding the best efforts of investigators, not all family members of victims have been or are capable of being identified and notified of this report and our findings. The passage of time has worked against pre-release notifications.

For that reason, the Parrabell team, although now disbanded, has key representatives available for contact with any family member, at any time.

The aspect of humanity was not lost on the investigators that formed Strike Force Parrabell with on-the-ground leadership provided by competent and thorough investigative supervisors, together with a lead investigator whose credentials include the designation of both Detective and GLLO (Gay and Lesbian (now LGBTIQ) Liaison Officer).

### **Investigative Review**

On 30 August 2015 Strike Force Parrabell commenced a thorough investigative review to determine whether 88 deaths originally listed in a submission to the Australian Institute of

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<sup>6</sup> Peter Singer, *How Are We to Live? Ethics in an Age of Self Interest* (1993)

Criminology<sup>7</sup>, and commonly referred to by media representatives, could be classified as motivated by bias including gay-hate.

The identification of bias motivation was of primary importance, however, where appropriate, investigators were to also make recommendations about conducting further enquiries if fresh evidence might be uncovered, or bias of the original investigator was shown or suspected.

Up to 10 criminal investigators were seconded to Strike Force Parrabell over an 18-month period with oversight by the Corporate Sponsor for Sexuality, Gender Diversity and Intersex. The allocation of these resources was sanctioned at the time by then Assistant Commissioner, now Commissioner of Police, Michael Fuller APM.

This submission marks the completion of case reviews by Strike Force Parrabell. It has been a long and intensive investigative process, made necessary because each case review could only commence when investigative opportunities were exhausted in the absence of fresh information. Only after all deaths capable of review were finalised could the investigative obligation of Strike Force Parrabell close.

### **Strike Force Parrabell Terms of Reference**

“Assess each of the 88 deaths identified as involving potential gay-hate bias between 1976 and 2000

The timeframe for review is 18 months from 30 August 2015

If during the assessment suspects are identified, that information will be forwarded to the Unsolved Homicide Team for information and further inquiries/investigation

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<sup>7</sup> In 2002, a list of 88 deaths of gay men between 1976 and 2000, potentially motivated by gay hate bias were compiled by Sue Thompson, the then NSW Police Gay and Lesbian consultant. There has been significant media coverage of presumed facts associated with gay hate motivation for each of these 88 deaths.

After each assessment, a detailed report outlining the bias classification of each incident and justifying material will be prepared and presented to prominent representatives of the GLBTIQ community

Each incident will be filtered through the NSW Police Force 10 bias crime indicators as a general guide to identify direct or circumstantial evidence of bias motivation

Examine and report upon evidence capable of identifying suspected bias of the original police investigator.”

A significant part of Strike Force Parrabell is to explain investigative strategies, deliver findings, and make recommendations for improvements to policing. Additionally, funding was approved by the NSW Police Force for an academic review of Strike Force Parrabell by Flinders University, South Australia.

Strike Force Parrabell is now complete, as is the process of academic review. Recommendations have been fashioned for improvements to the NSW Police Force system of bias crime classification and to ensure future systems of operation are demonstrably competent without risks associated with community uncertainty; investigative thoroughness; or impartiality.

Neither Strike Force Parrabell nor the Academic Review Team could confidently classify every death as either involving, or being devoid of, gay-hate or other bias, leaving a number of cases classified as ‘Insufficient Information.’ To be clear, NSW Police Force investigators assigned to Strike Force Parrabell applied a general tenet to case classification by answering a simple question:

**“Is there evidence of a bias crime?”**

Consistent with police methodology, this was the foundational question that allowed greater classification certainty from a policing perspective. This position created value in the process of academic review because the academic research team did not necessarily adopt the same classification interpretation, which is one reason for differences between findings of both

teams. Whilst different findings and classifications were made, each team understood and endorsed the systemic approach of the other. The fact that findings remain different, and that they subsist after rigorous review, highlights the difficulty of bias crime classification.

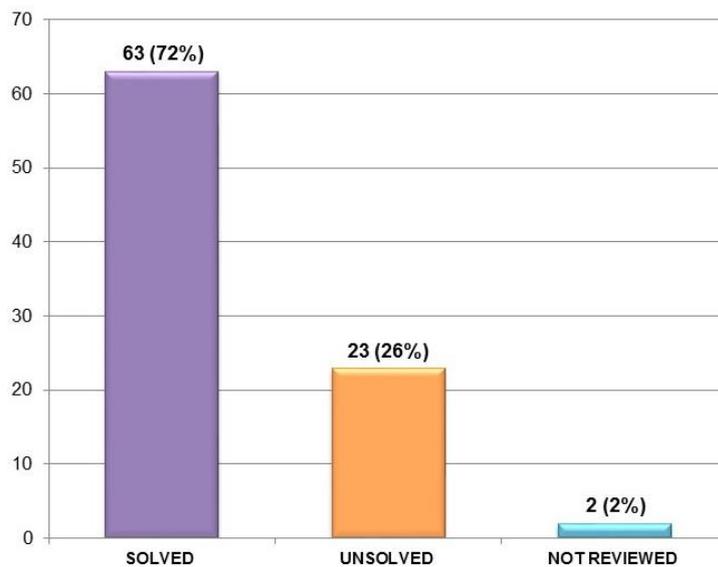
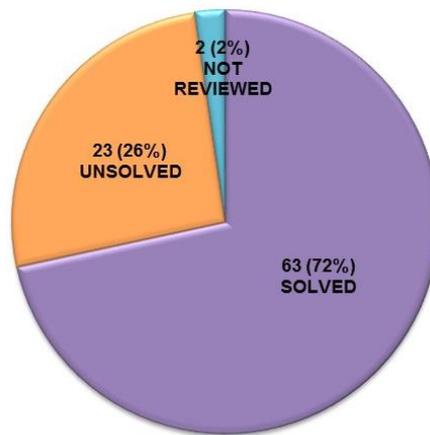
No referrals were made by any investigator with reference to a poor investigation or one that did not consider important evidence. It is important to explore this position which arises from difficulty in appropriating an intention of bias to an investigator, or team of investigators. This task was similarly seen as almost impossible by the academic review team. A key question was whether a death was well or poorly investigated based on evidence and technology available at the time.

In some cases, evidence was less developed than others however with Coronial acceptance of the brief supplied, any determination of propriety was severely circumscribed. These difficulties were evident in one of three cases comprising Task Force Taradale. Whilst investigations into two of those cases was declared poor, the Coroner was not able to ascribe investigative bias over incompetence. The latent assessment of ethical conduct by Strike Force Parrabell investigators diminished with time leaving concerns in a significant minority of cases that were impossible to differentiate between available technology (DNA was first used as a tool for criminal investigation in the UK in 1986), professional misfeasance, circumstance, or bias.

## Findings

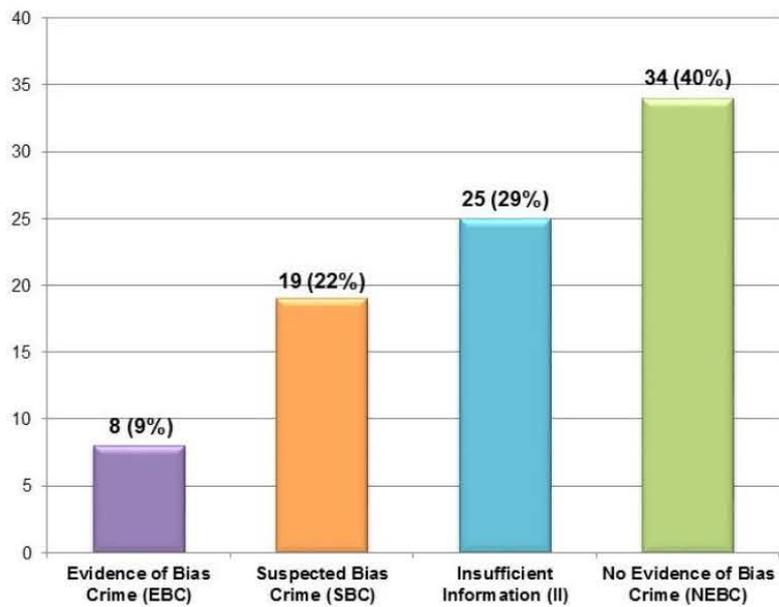
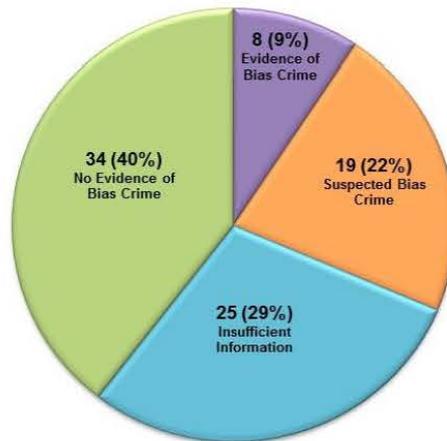
The below charts reflect the statistical findings of Strike Force Parrabell: **Of the 88 cases** - 63 cases (72%) were solved; 23 cases (26%) remain unsolved; 2 cases (2%) were not reviewed. *(Please note that all percentage figures have been rounded up or down to the nearest whole number, therefore some percentages will total 99%)*

**Strike Force Parrabell**



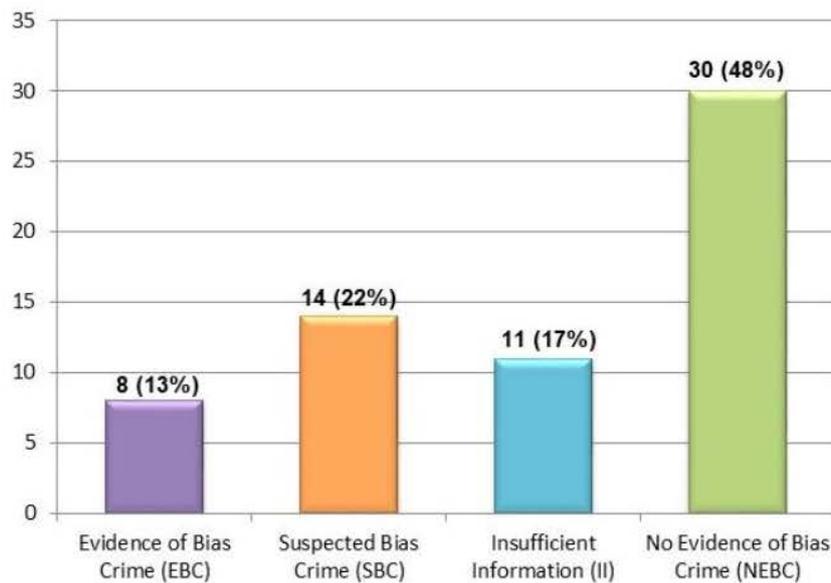
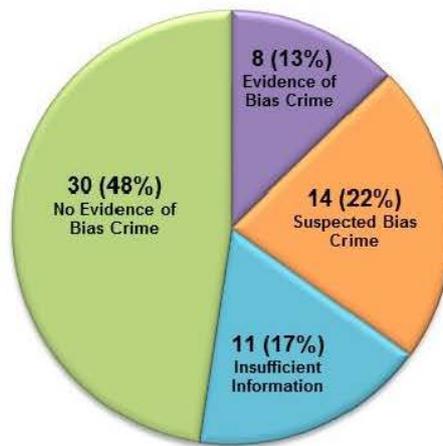
**Of the 86 cases that were reviewed** - 8 cases (9%) found evidence of bias crime; 19 cases (22%) were suspected bias crimes; 34 cases (40%) found no evidence of bias crime; 25 cases (29%) found insufficient information to determine bias crime.

### Strike Force Parrabell



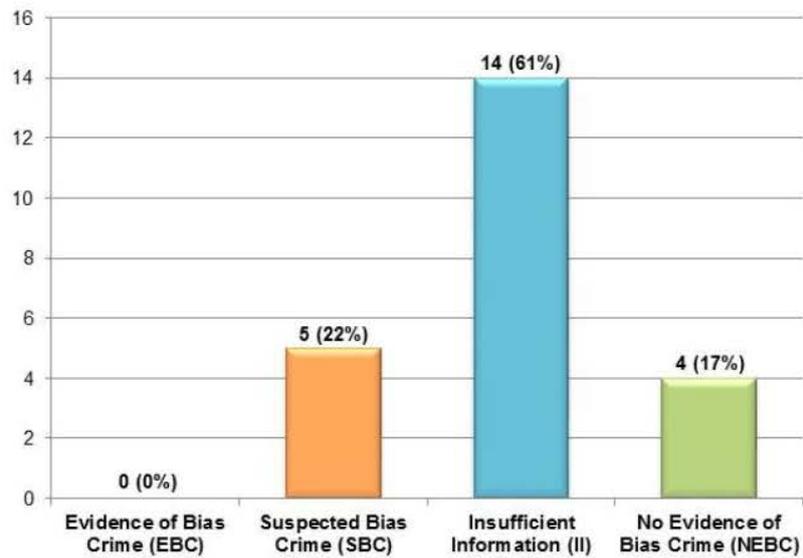
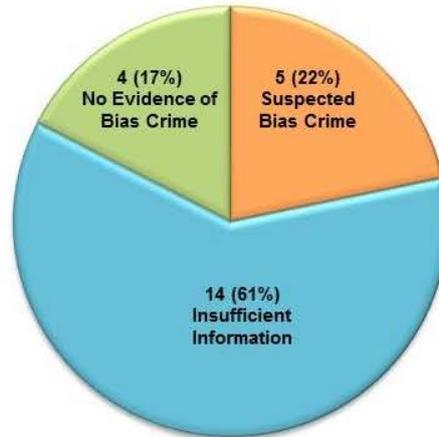
**Of the 63 cases that were solved** - 8 cases (13%) found evidence of bias crime; 14 cases (22%) were suspected bias crimes; 30 cases (48%) found no evidence of bias crime; 10 cases (16%) found insufficient information to determine bias crime.

### Strike Force Parrabell SOLVED CASES



**Of the 23 cases that remain unsolved** - 0 cases (0%) found evidence of bias crime; 5 cases (22%) were suspected bias crimes; 4 cases (17%) found no evidence of bias crime; 14 cases (61%) found insufficient information to determine bias crime.

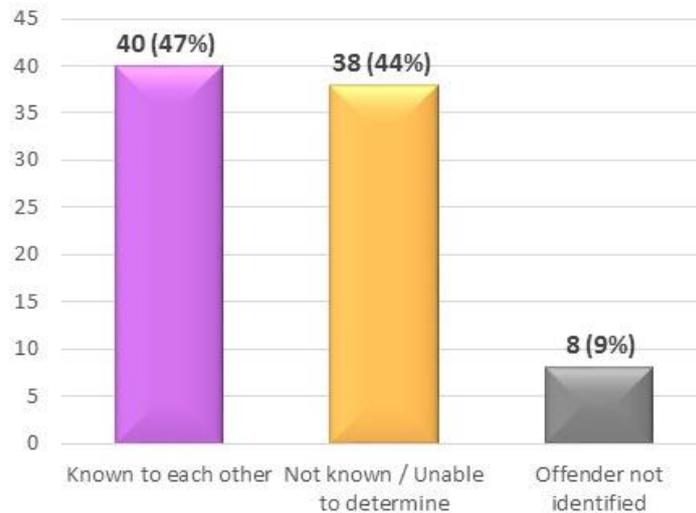
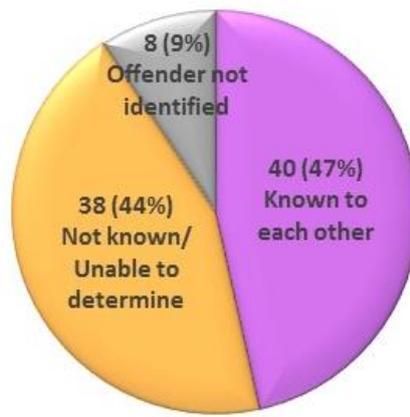
### Strike Force Parrabell UNSOLVED CASES



### Victim/Offender Relationship

40 cases (47%) found evidence of the offender being known to the victim; 38 cases (44%) found evidence of the offender not being known to the victim; 8 cases (9%) did not identify the offender. *(Please note that this information only relates to cases with sufficient information to establish a prior relationship, interaction or connection)*

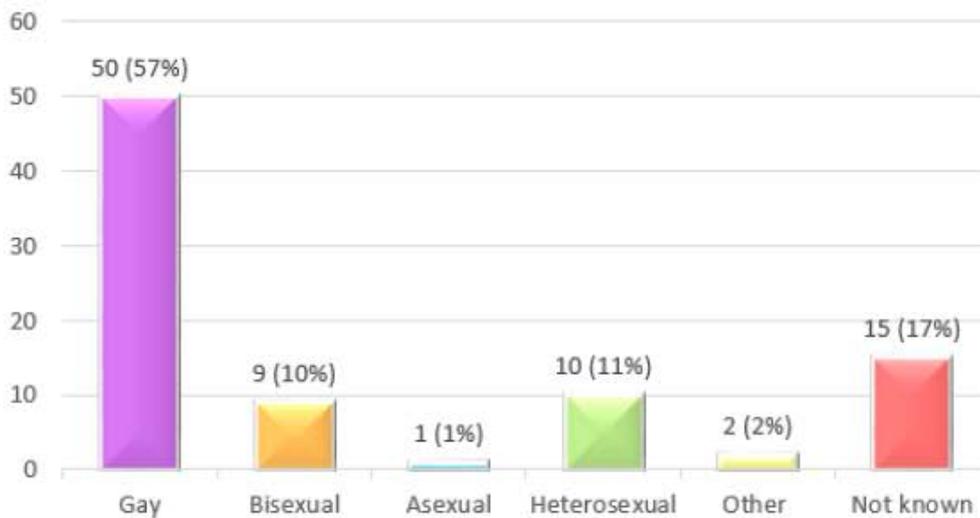
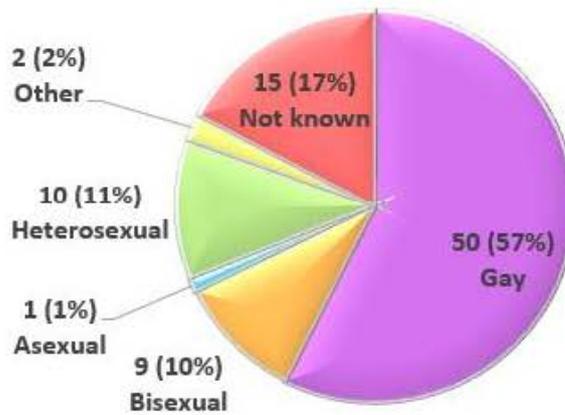
Strike Force Parrabell  
Victim/Offender Relationship



### Sexuality of the Victim

50 cases (57%) found evidence of victims identifying as gay. 60 cases (69%) found evidence of victims identifying or believed to be gay, bisexual or asexual. 15 cases (17%) found insufficient evidence to determine the victim's sexuality.

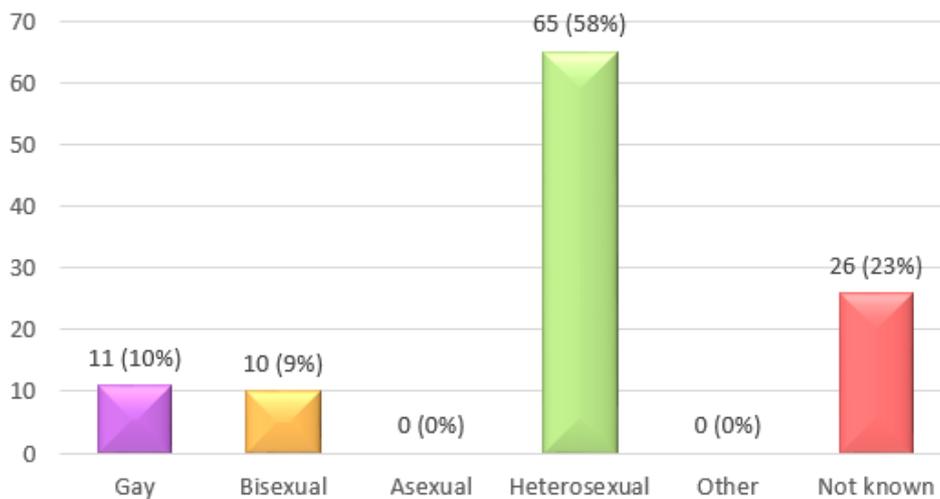
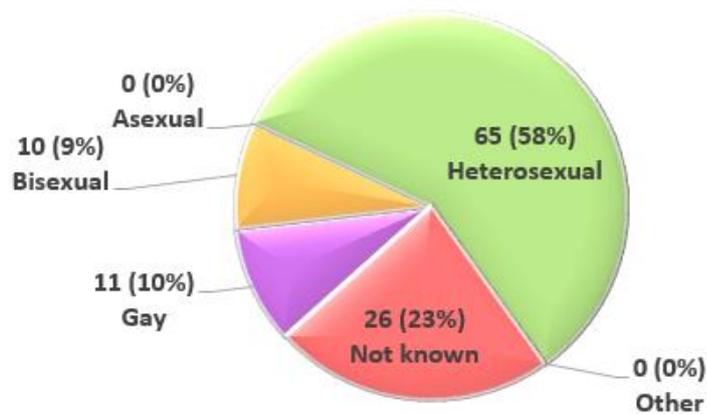
**Strike Force Parrabell  
Sexuality of Victim**



### Sexuality of the Offender

65 cases (58%) found evidence of offenders identifying as heterosexual. 21 cases (19%) found evidence of offenders identifying or believed to be gay or bisexual. 26 cases (23%) found insufficient evidence to determine the offender's sexuality. *(Please note that these figures include multiple offenders for some offences)*

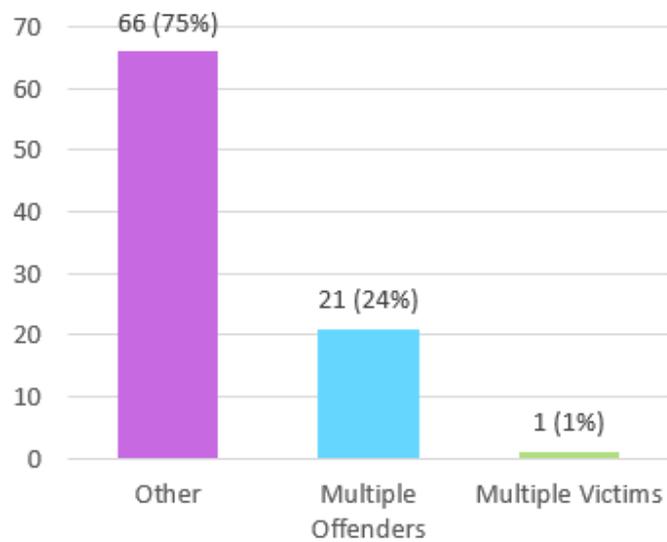
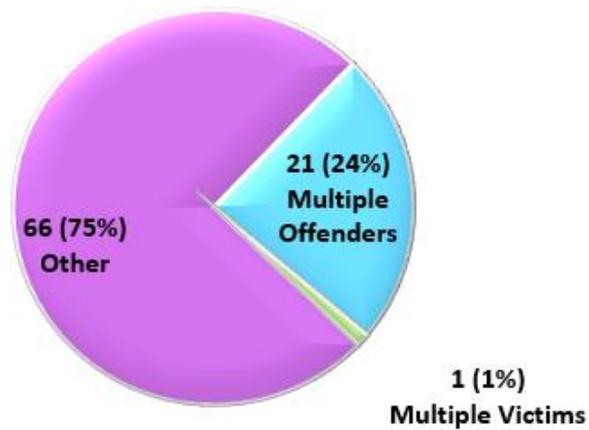
**Strike Force Parrabell  
Sexuality of Offender (\*)**



### Multiple Victims / Offenders

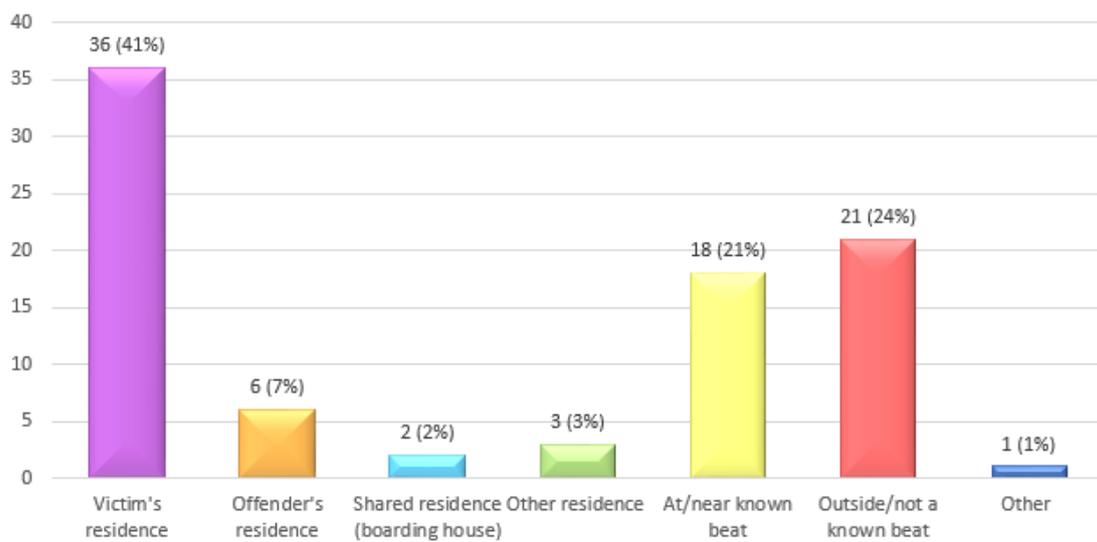
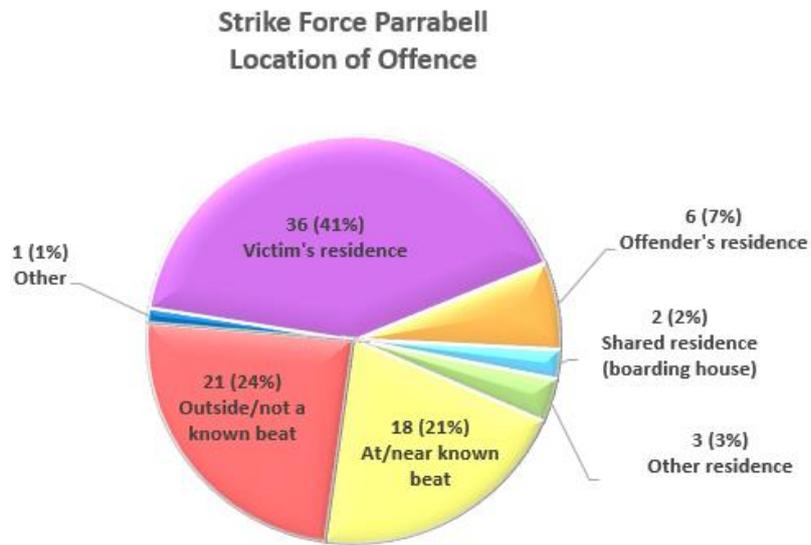
66 cases (75%) found evidence involving the death of sole victims by single offenders. 21 cases (24%) found evidence involving the death of sole victims by multiple offenders. 1 case (1%) found evidence involving the death of sole victims by multiple victims.

**Strike Force Parrabell  
Multiple Victims/Offenders**



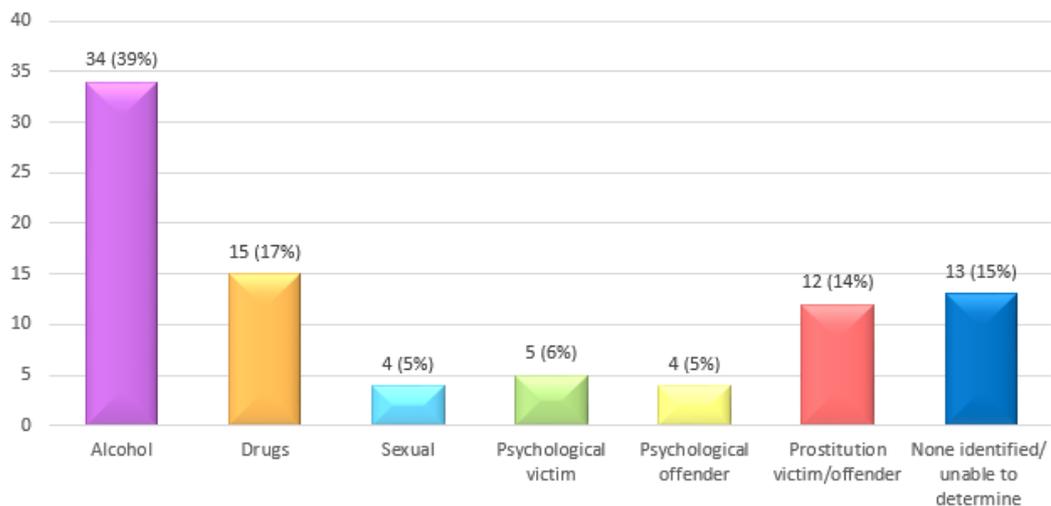
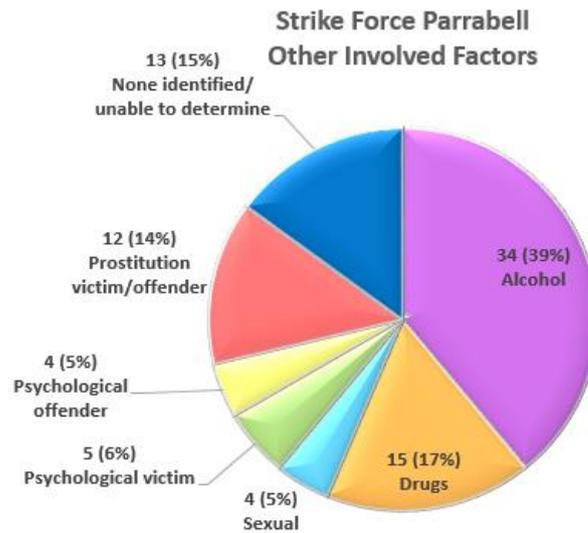
## Location of Offence

38 cases (43%) of deaths occurred at the victim's residence, including a boarding house. 6 cases (7%) of deaths occurred at the offender's residence. 18 cases (21%) of deaths occurred outside at or near a known beat. 21 cases (24%) of deaths occurred outside, not being at or near a beat location



## Other Involved Factors

34 cases (39%) found alcohol listed as an involved factor. 49 cases (56%) found alcohol or drugs listed as involved factors. 13 cases (15%) did not find alcohol or drugs as an involved factor. 12 cases (14%) found prostitution as an involved factor. 12 cases (14%) found prostitution as an involved factor. 12 cases (14%) found prostitution as an involved factor. 12 cases (14%) found prostitution as an involved factor.

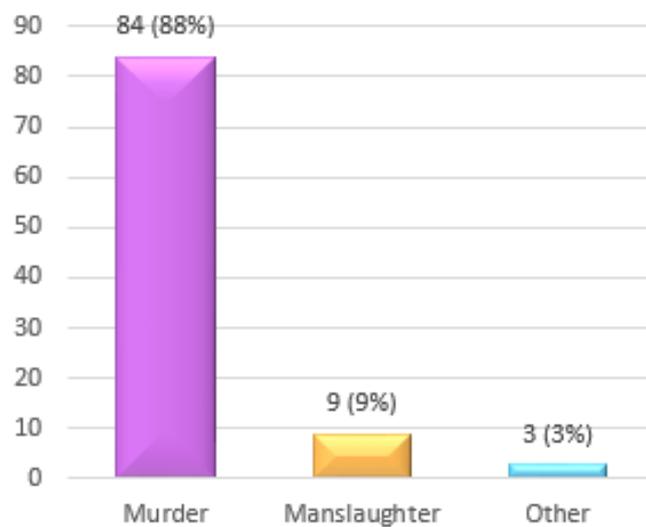
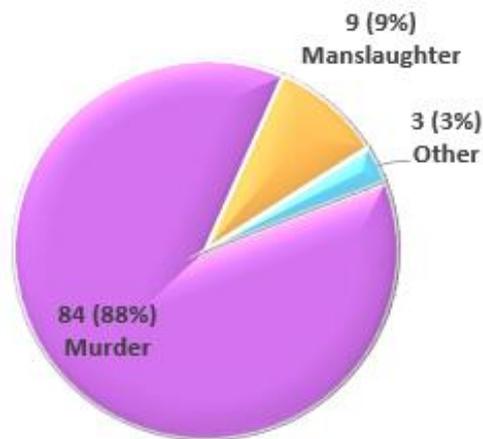


## Judicial Results

### People Charged

Of the 63 cases that were solved, police charged 96 people. 84 people (88%) were charged with murder; 9 (9%) with manslaughter; and 3 (3%) with other offences.

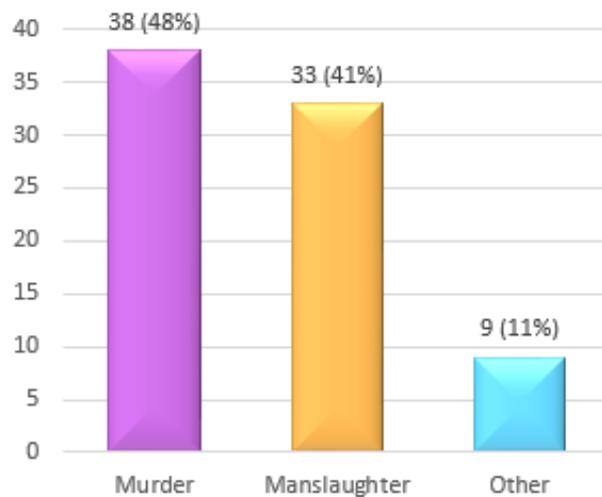
**Strike Force Parrabell  
Offenders Charged**



### Offenders Convicted

Of the 96 offenders charged, 80 were convicted. 16 charges were not successful. Of those 80 convictions, many murder charges were reduced or plead to manslaughter. 6 manslaughter charges were reduced to some other charge.

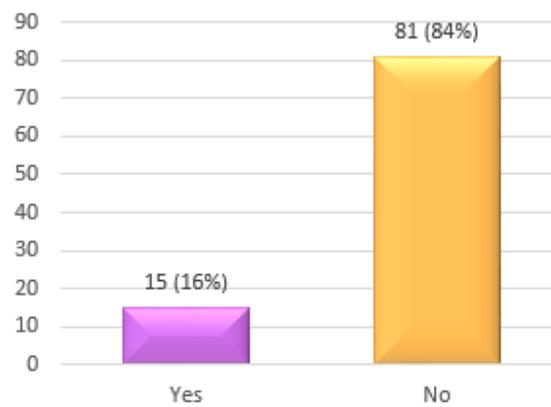
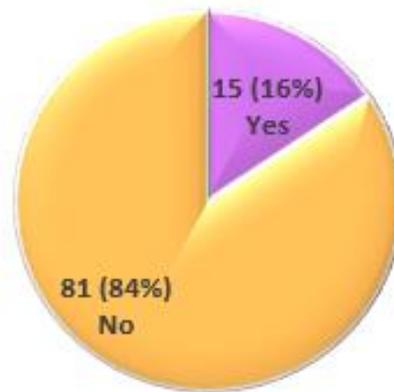
**Strike Force Parrabell  
Offender/s convicted**



### Homosexual Advance Defence

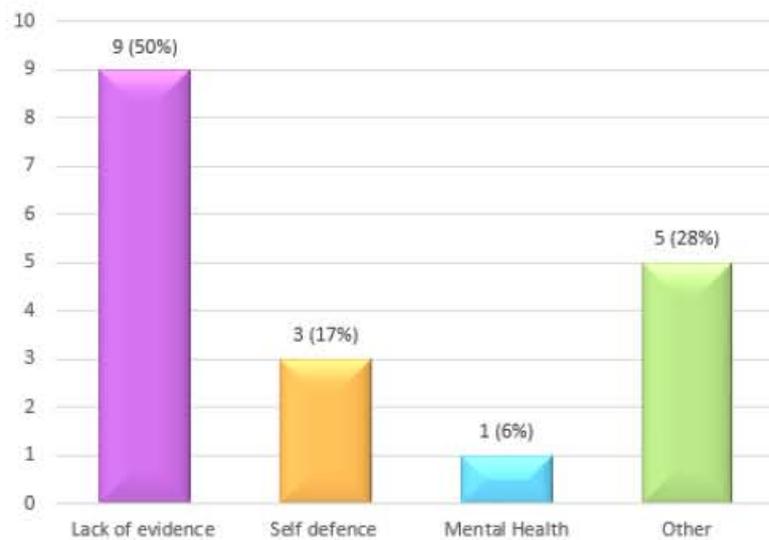
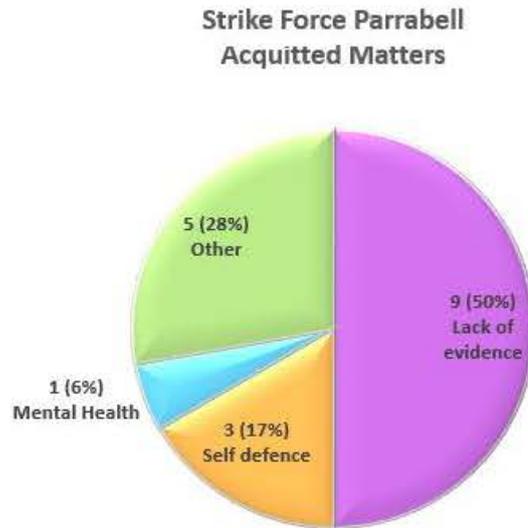
15 charges of murder were the subject of pleadings which relied upon the 'Homosexual Advance Defence' which was raised during the investigation or trial.

**Strike Force Parrabell  
HA defence raised  
(during trial/investigation)**



## Acquittals

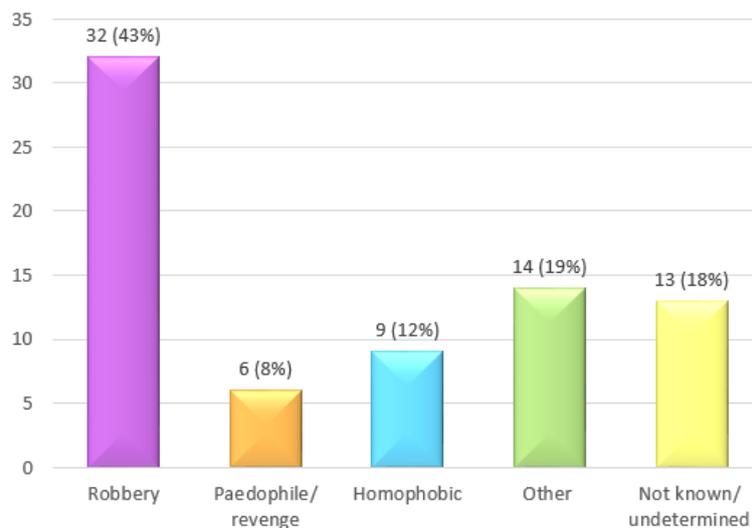
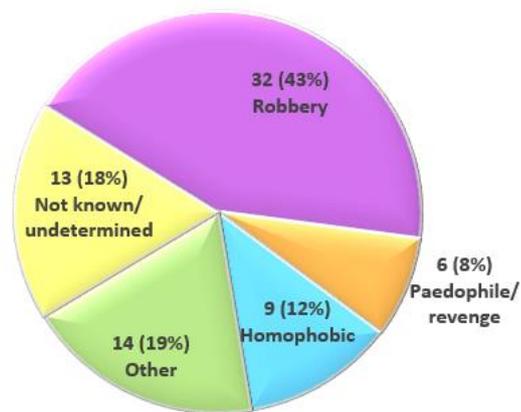
Out of the 18 cases drawing acquittal at court, 9 people (50%) were acquitted due to lack of evidence; 1 person (6%) upon grounds of mental health; 3 people (17%) on grounds of self-defence; and 5 people (28%) for other reasons.



## Motivation

32 cases (43%) were identified as motivated by robbery. 9 cases (12%) were motivated by homophobia. 6 cases (8%) were motivated by paedophilia. 14 cases (19%) attracted other motivations while 13 cases (18%) could not be determined. *(Please note that these statistics take into account the dominant motivation of a single or multiple offenders when more than one intention existed)*

Strike Force Parrabell  
Offence Motivation (\*\*\*)





## **Recommendations**

1. Details of all cases required significant investigative effort by Strike Force Parrabell operatives. The system of archiving across NSW Government departments including the NSW Police Force has been historically deficient given the existence of paper-based files consistent with general use during the period of review. The NSW Police Force must ensure that the system of electronic recording and storage of evidence consistent with use of the e@glei system remains in use with policy imperatives requiring storage of all investigative material in the same location, so that permanent records of investigations from commencement to judicial conclusion are maintained.
2. A policy position is taken by the NSW Police Force that assessments of crime are to commence from an open-mind position regarding motive, so that all motives, including bias motivation, are properly considered before any decision of exclusion.
3. A revised system applicable to the early identification of bias crimes requires development with guidance from academic resources. The current system with 10 bias crime indicators requires greater rigour and is not user friendly for operational police who are likely, as the first point of contact, to make an initial determination of bias motivated criminal activity.
4. Once a suitable system of bias crime identification is determined, a training package is required for the information of all officers within the NSW Police Force to ensure the efficient and most accurate capture of bias related crimes consistent with any national standard or the best possible inter-jurisdictional system, which may incorporate gay-hate, religious, language, race-based, or other recognised bias.
5. A review is required of prompts to operational police when recording crimes on the COPS database to ensure that appropriate questions are being asked in

light of this report and that sufficient understanding of the nature of bias crimes exists across a critical mass of police officers.

6. The terms of this review included the identification of bias from police investigators. No referrals were made given the difficulty in appropriating an intention to an investigator on the basis of a poor investigation or one that did not consider important evidence. This task was similarly seen as almost impossible by the academic review team. A key question was whether a death was well or poorly investigated based on evidence produced at the time. In some cases, evidence was less developed than others however with Coronial acceptance of the brief supplied, any determination of propriety was severely circumscribed. A latent assessment of ethical conduct diminished with time leaving a case for the NSW Police Force to ensure the teaching of foundational investigative ethics within criminal investigator training at all levels. In that regard, a review of criminal investigation training is required to ensure sufficient and ongoing ethical and cultural values are taught and embedded throughout an officer's career.
7. It is noted that all homicide investigations, whether conducted by local or specialist criminal investigators attract a team-based, Task Force managed response which is now normal and applied consistently. For any unexplained death, specialist forensic officers are required to attend together with suitably qualified officers performing full time criminal investigative duties. This approach must continue as a safeguard against individual pockets of potential bias. By involving several officers, including forensic practitioners, mischief associated with perceptions or suspicions of bias can be better mitigated.
8. A major success in recent times has been the involvement of members of the LGBTIQ community in the education of every potential police officer at the NSW Police Academy. The Commissioner of Police should endorse this educational strategy as a permanent part of the recruit development and learning system consistent with an ongoing commitment by the NSW Police Force to the LGBTIQ community.

9. The GLLO (LGBTIQ Liaison Officer) Program has created an operational policing network capable of providing support to LGBTIQ communities throughout NSW and within the NSW Police Force. An expansion of the GLLO Program will maximise understanding and mutual respect among police and with the LGBTIQ community. Improvements to the GLLO Program development and delivery to capture as many NSW police officers as possible is required.
10. Equity and diversity awareness is available to all police officers, as is training in ethics and ethical behaviour. Examples provided in equity training require experience from and involving the LGBTIQ community to provide officers with specific context and raise even further sexual orientation and gender identity awareness.
11. Significant progress has been made with engagement activities across other jurisdictions of policing and emergency services throughout Australia. The Commissioner of Police should endorse a mandatory LGBTIQ Conference on a two to three-year rotation to enhance cross jurisdictional networks and inclusion practices.
12. The Commissioner of Police should endorse the wearing of GLLO badges at all times on police uniform by qualified LGBTIQ Liaison Officers. Allowing the prominent display of the GLLO symbol signifies respect for the LGBTIQ community and acknowledges the skills of suitably trained police to provide support and advice whether for LGBTIQ police officers or members of the community.

**Tony Crandell APM**  
**Assistant Commissioner**  
**NSW Police Force Corporate Sponsor**  
**Sexuality, Gender Diversity and Intersex**



## **Annexure A**

### **Comparison of police investigations from the 1970s, 80s and 90s to 2018**

Basic investigative requirements of identifying witnesses by canvassing around crime scenes; taking statements; and interviewing suspects has and always will be an integral part of competent criminal investigation, albeit enhanced by technology.

#### **1970s to 1980s**

Local police officers would attend the scene of crime. If homicide was suspected, the Homicide Squad, which was part of the Criminal Investigation Branch (CIB), would attend the scene, however may not necessarily lead the investigation.

The Police Scientific Branch, which was also part of the CIB, would attend the scene using limited forensics capabilities, which included dusting for fingerprints (with only manual searches available); blood group matching (no DNA); ballistics; crime scene photography; shoe print and tyre mark interpretation.

Post Mortem examinations were conducted at various locations with police officers usually assisting the medical examiner.

Investigative techniques were reliant upon paper records of interviews with suspects; and the taking of witness statements. Investigation management comprised the manual recording of 'running sheets' on papers that were numbered and indexed to correspond with a system of index cards. A 'job book' was created, with inquiries recorded and 'written off' by an investigator completing the relevant running sheet. Limited managerial oversight occurred with investigators trusted to perform their duties for the greater good. If a suspect was not charged, the brief including statements, running sheets and exhibits was archived.

There was limited to no use of covert evidence gathering techniques in the form of listening device technology; surveillance; or telecommunications interception. Media strategies were developed by senior investigators with media connections.

## **1980s to 1990s**

Similar investigative practices were employed as described in the previous decade with manual handling and management of evidence, heavily reliant upon communication with witnesses and paper records.

In the early 90s Homicide Squads were created, becoming separate entities in a regionalised deployment model which saw disbandment of the CIB. By the late 1990s however, the Homicide Squad was again centralised forming part of Crime Agencies, now known as the State Crime Command.

Running sheets were still prepared however moved from manual to electronic recording and an electronic, reviewable case management system.

The Police Scientific Section changed its name to Crime Scene and separated from the central agency to become independent from criminal investigators without technical or physical evidence processing capabilities.

Advancements in technology included DNA identification, albeit at extraordinary cost, refined practical and interpretive procedures for crime scene management; eg: blood spatter and video recording. Evidence from post mortem examinations became more advanced with increased technology, medical expertise and forensic experience.

There was an increase in the use of covert evidence gathering techniques including use of listening and surveillance devices; telecommunications interception; and computer analysis coincident with increased technology to retrieve data. Intelligence analysts were used more frequently as part of the investigative response to widen the scope of investigations, identification of suspects and motives.

Victimology became important, to discover why certain people become victims of crime whilst others do not, which links with bias motivation.

The Homicide Investigators Course was developed and delivered in the mid to latter portion of the 1990s to develop expertise in specialist and contemporary homicide investigative techniques.

Significant advancements came with technology including analysis of credit card, Automatic Teller Machine data, and banking records. Use of media strategies and corporate rather than individual contacts were used more often to drive mass community interest and suspect identification.

Partner agencies such as the NSW and Australian Crime Commission, both with coercive powers to compel the provision of evidence, were engaged more often.

The formation of Task Forces with combined teams of NSW police and civilian officers became standard operational procedure, requiring defined Terms of Reference for each major investigation and reporting obligations. These standards moved criminal investigators into fields of project and people management, with a defined reporting and accountability structure.

## **2000's to present**

Similar procedures exist to those of historical crime scene preservation by initial responding police. The Homicide Squad remains centralised as a component of the State Crime Command, however is now far more involved in leading or advising investigation teams.

Management of major investigations is electronic within a NSW Police Force system (e@glei) of unlimited capacity and restricted investigator access. The e@glei system is designed to centrally store all material relative to every major investigation, with monitoring and reporting capability to ensure thorough investigative oversight.

Post Mortem examinations are still critical to competent investigations, with further improvements in forensics; DNA: hair analysis; and legislation permitting the taking of samples from suspects or volunteers. (Forensic Procedures Act, NSW)

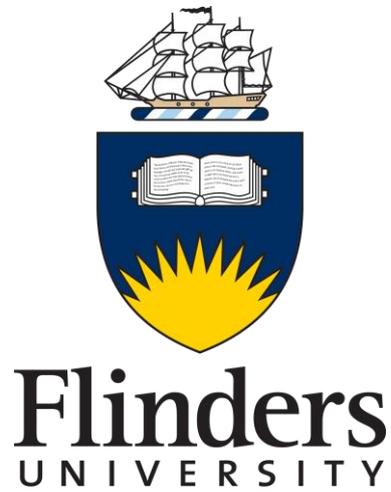
Improvements have occurred in crime scene and forensics management, now allowing the recording of crime scenes with forensic laser scanning technology; three-dimensional evidence recording; CCTV from various sources; and exhibits analysis.

A large increase in covert evidence gathering techniques and capability using listening and surveillance devices. Advances in technology has revolutionised computer interrogation and

interaction with greater access and understanding of telecommunications information and data analytics.

Roads and Maritime Services (RMS) and other public and private source CCTV cameras provide tracking capabilities to identify suspect movements and interact with facial recognition technology. Media strategies and contacts are prominent with the expansion of social media generating data capable of interrogation via various systems and platforms. Victimology via background information is taught to all NSW Police Force criminal investigators.

Accountability is significant with the Strike Force methodology requiring Terms of Reference to underpin reporting obligations; investigation management and chain of command oversight by police managers. Most recently, oversight and monitoring by the Law Enforcement Conduct Commission contributes to investigative competence and transparency, especially when related to critical incident investigations.



Anti-Gay Bias Homicide, 1976-2000: An analysis of the  
record of investigation by the New South Wales Police Force  
*Strike Force Parrabell*



Anti-Gay Bias Homicide, 1976-2000: An analysis of the record of  
investigation by the New South Wales Police Force  
*Strike Force Parrabell*

Derek Dalton and Willem de Lint<sup>8</sup>

*EXECUTIVE SUMMARY*

Discovering bias in criminal acts including homicide is not an exact science and reflects changing cultural values and institutional conditions. Over several years in NSW, a list of homicides was developed with the intent that it would provide a foundation for further investigation into the listed cases. The list has increased popular interest and has been used as a proxy for the view of anti-gay police bias in the New South Wales Police Force (hereafter NSWPF).

In this report, we provide an analysis of the review of 85 homicides that derived from that list. These were re-examined and sent to us from *Strike Force Parrabell*<sup>9</sup> (hereafter SFP). In reviewing the summary of findings of 85 cases, we cannot conclude that these investigations provides evidence of institutional anti-gay police bias.

For this analysis, we categorised the 85 cases into five groups: insufficient information to make a determination (II), no evidence of bias (NB), or three *types* and two *categories* of bias or animus.

In the most serious types of bias (Type A and B), the offender seeks to subordinate a victim on the basis of his animus towards a vulnerable group and expresses that animus in a criminal act. The offender may do this targeting *in association with others*, further suggesting proactive deliberation. We found that 20 of the 85 cases, or 24%, involved this type of bias.

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<sup>8</sup> Dr Danielle Tyson contributed to the evaluation of the cases and the revision of this Report.

<sup>9</sup> Strike Forces are assigned random names in the NSWPF. No significance should assigned to the word 'Parrabell'.

It is noteworthy that *Strike Force Taradale* (hereafter SFT) concentrated on a cluster of cases that were geographically connected and where it was suspected that crime was linked to perpetrators who had some sort of connection or relation to each other [e.g. group or gang affiliation]. Our review found, by and large, that proactive association (Type A offences) accounted for just 8 of the cases for which there is sufficient information to make an interpretation (16%). Anti-gay bias homicide is not typically a case of serial homicide offending where offenders or associates are linked to more than one case. There were 16 cases in which two or more offenders were involved (and five cases of 3 or more offenders [Johnson, Stevens, Rattanajurathaporn, Rowland and Milicevic]), but of these 13 were Type A offences and we coded only 8 as strictly anti-gay bias. This is not to assert that groups targeting gay men for violent assaults were not operating in the Bondi region in the 1980s and 1990s.

A further nine cases we reviewed as reactive bias crimes (Type C). In these cases, there was no evidence that offenders *proactively* sought to express an animus, but likely reacted to a situation in a manner that suggests that an animus towards a vulnerable group contributed to the motivation for the crime.

A significant number of cases involved large age differences between offenders and victims. Anti-paedophile animosity underwrote a substantial amount of lethal violence in the homicide cases under review. In 12 of the 29 cases in which we found a motivation of a categorical bias, the offenders expressed an animus towards gay paedophiles, leaving 17 cases where we had confidence that a generic anti-gay bias attended the crime.

In sum, we counted 17/85 cases positively as anti-gay bias crimes, and a further 12 as anti-paedophile animus. We found NB in 23 cases and II in 33.

Our view is that the over-reporting and recording of bias can produce unfortunate consequences. Over-reporting and recording is fuelled by a confirmation bias, where there is a tendency to search for evidence in accordance with a perception that the phenomenon is more widespread than records would indicate. This can lead to more inclusive categorisation and a 'confirmation' that the phenomenon is indeed widespread.

In addition to over-recording, mis-recording may occur where different kinds of bias motivation are collected under one categorisation. If the motive is complex, over-recording may occur where the *subtlety* of that motivation cannot be registered. For instance, we believe

that a person who acts out once in sudden violence or without planning on apparent animus or fear toward a much older male may well not be homophobic just, as a woman who acts out aggressively against an unwanted sexual solicitation by a male is not necessarily anti-heterosexual.

Given the importance of avoiding mis-categorising and over-categorising the primary motivation of the offender, in our analysis we sought to ensure a concordance between offender motivation and target category. As reviewers, we found the need to distinguish anti-paedophile animosity from anti-gay bias in the more generic form. This finding may cause controversy.

Most segments of society will not view paedophiles as a vulnerable group, and consequently they should have no inclusion or protection as ‘victims’ of hate crime. In the meantime, a familiar slur on homosexuals is that most paedophiles are male, and many paedophiles prefer boys.

We sought not to conflate homosexuality with paedophilia (the two are *not* synonymous). If an offender is targeting a specific victim on the basis of a belief that that particular person is a paedophile, it would be wrong to categorise that animus generically as anti-gay.

This analysis only embraces the SFP cases. This does not mean that institutional police bias or cultural pockets of police bias did not exist within the NSWPF. NSWPF readily acknowledge that they have needed to educate officers about homophobic bias.

That such bias influenced homicide investigations and that the outcomes of these cases were impacted by this bias is more difficult to establish.

Retrospectively, it is reasonable to ask, as Sue Thompson and Stephen Tomsen among others have done, whether being better informed to the possible connection of homicides to a pattern of bias crime would have permitted police to alert the public at large or a vulnerable population to the danger.

Whilst that principal is reasonable, it depends upon the discovery of connected events and individuals through a systemic review. CrimTrac<sup>10</sup> and other devices are used to discover such connections. These are only as good as the precision and accuracy of the information that is collected for dissemination and analysis.

Connecting bias crime depends upon a sound evaluation of the motivation of the offender through the review of forensic materials. Very often, particularly in homicides, that evaluation is confounded by a lack of strong evidence.

In many cases of homicide, the attribution of a bias motivation is often a matter of conjecture as to the most likely motivation.

It is known that the attribution or discovery of bias crime will be related to organisational, agency or institutional factors. For instance, an agency with an anti-bias unit will be more likely to discover bias crime than an agency without one, unless that unit has itself fallen out of favour with the homicide unit. An agency with a prominent KPI to reduce (a type of) bias crime may be more likely to discover it. And legislation which is more capacious in the definition of bias crime (for instance, as per the subjective view of the victim) will also feed law enforcement that discovers more of it.

In trying to fathom the cluster of discovery of anti-gay violence, it is worth recalling that the decriminalisation of homosexuality in NSW in 1984 was a significant social and legal occurrence. Homosexuality was being normalised in the 1980s and 1990s, but some degree of resistance may have been at play. The violence that many men were subjected to may be partially understood as prevailing social animosity amongst those men who felt aggrieved and challenged by the relinquishment of homosexuality from the purview of the criminal law. Their violence may have been a symbolic expression of anger and resentment that homosexual conduct was no longer a criminal offence and that gay identity was being redefined as socially respectable.

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<sup>10</sup> CrimTrac was a former Agency in the Attorney-General's Department that was merged with the Australian Crime Commission in July 2016 to form the Australian Criminal Intelligence Commission. It had been responsible for developing and maintaining national information-sharing services between state, territory and federal law enforcement agencies.

Altogether, the policy question on combatting anti-gay bias is not as simple as some moral crusaders make it out to be. Publicity around anti-gay bias can be a two-sided coin. Promotion of a social problem may, however paradoxically, draw attention to the issue and foster more anti-social behaviour. The publicity may also fuel fear of crime in the wider community and somewhat distort the risk of victimisation that actually exists.

## PREFACE

Each and every death accounted for in this report – be they the result of misadventure, suicide crime or a reason that still eludes authorities – left in its wake great sadness, suffering and torment for the family, friends and work colleagues of the individual victims. Those who died were, variously: fathers, brothers, sons, husbands, friends and work mates and their deaths left many family members, friends and the wider community bereft and grief stricken.

Reviews of this nature can appear clinical and detached in the way that they literally ‘account’ for these individual cases. The production of categories, statistics, tables and graphs – and indeed repeated references to lists – can exacerbate an impression that these individual victims – in their totality – are stripped of their distinctiveness. As authors of this report, we wish to recognise that criminological writing can appear unconcerned with the unique humanity that victims possess in life. To the extent that individual cases are juxtaposed with other cases to produce categories, statistics and findings this process is done with a view to determine objective facts. This may go some way to making better sense of these deaths. In doing so, a future might emerge in which gay-bias related crime is better *identified, understood* and *mitigated*.

Many of the cases examined by *Strike Force Parrabell* and the academic review team were ultimately classified as Insufficient Information. That is, despite an exhaustive exploration of the archived material, it was ultimately impossible for the detectives to make definitive determinations about many of the deaths under review, and based on available information, the academic reviewers concur. Part of the reason this was the case can be attributed to a relative paucity of information. During the period many of the original cases were examined, the collection/recording and analysis of evidence were not as they are today. Additionally, recent scientific advances in DNA collection and analysis were, of course, not available in the past. This is not to assert that modern standards would have necessarily made a difference to the determinations, but these realities must be understood as part of the complex context of the *Strike Force Parrabell* review. In addition the failure to make definitive determinations about some deaths, a quarter of the cases remain unsolved. For about one third of the total cases at least this report may not offer a form of closure that families of victims and those in the GLBTIQ [Gay Lesbian Bisexual Transgender Intersex Queer] and wider community might have hoped for in contemplating this review.

## **i. Overview of Parrabell review: some background information**

In 2005 *Strike Force Taradale* re-investigated a number of deaths that occurred in the Bondi area during the 1985 and 1990 where it was alleged that gay men were being specifically targeted, assaulted and forced off the cliffs by ‘gangs’ of youths. Some of these cases were solved, however several remained unsolved (Co-ordinating Instructions page 2). *Strike Force Taradale* was prompted by allegations that at the time of these crimes the NSWPF did not properly consider motives of bias in their investigations and therefore did not investigate these deaths adequately.

In 2002, the then NSW Police Gay and Lesbian consultant, Ms. Sue Thompson, identified 88 cases between 1976 and 2000 that potentially involved anti-gay bias. The death of Scott Johnson and five others in the *Strike Force Taradale* investigation were included in this list of 88 cases. More recently, there has been significant media coverage of a so-called ‘gay hate crime wave’ of the 1980s and 1990s in Sydney. A TV documentary and a fictional drama focussed on the phenomenon of gay bashing and murders have fuelled public interest in the prevalence of gay-bias related homicidal violence. For example, a review of the SBS television drama ‘*Deep Water*’ was published in 2016 under the heading: ‘A licence to bash gays’: 1980s crime wave revisited in new TV series’ (Medhora, 2016). Another article entitled ‘Gay hate: the shameful crime wave’ was published in the *Sydney Morning Herald* in 2013 (Sheehan 2013). Such articles have referred to cases identified by Thompson and others and have suggested that an anti-gay bias played a significant role in the deaths.

The NSWPF have not been unresponsive to this criticism. The Force recognises that the community has valid concerns, that, as they put it, the Force has not always been proactive with respect to investigating anti-gay bias crime and that therefore ‘the community’s concerns may be addressed through a comprehensive review of the relevant cases from a bias crime perspective’ (Co-ordinating Instructions page 2). In 2015, *Strike Force Parrabell* was established to review deaths between 1976 and 2000 to determine if a sexuality or gender bias was a contributing factor in the list of deaths that have been cited. The mandate:

1. Conduct a review of the NSWPF holdings in relation to potential gay hate crimes resulting in death;

2. Determine if any anti-gay bias was involved in any of the deaths (Co-ordinating Instructions pages 2-3).

The NSWPF then sought tenders and appointed an academic team to provide independent advice on SFP's review of these investigations. The principal task of the academic team was to comment on the efficacy and quality of SFP's review and to comment on the extent of agreement with the SFP outcomes and determinations. Additionally, the academic team was to provide recommendations for future policing, community engagement, training and development of bias crime indicators and processes. The academic review commenced in October 2016 and concluded its investigations in September 2017.<sup>11</sup>

In terms of the work conducted by the academic team, Associate Professor Derek Dalton led a three-person project team consisting of himself, Professor Willem de Lint and Dr. Danielle Tyson. Dr. Dalton oversaw liaison between the NSWPF and the academic team, conducted negotiations regarding the terms of the review, and undertook an initial two-day exploratory trip to Sydney to meet with the SFP team. Dr. Dalton and Professor de Lint attended a subsequent trip to Sydney for further discussions and drafted the report. Professor de Lint developed a concept matrix and definition to analyse the cases. Dr Tyson assisted Professor de Lint and Associate Professor Dalton to analyse the cases based on her expertise in relation to homicide data and case analysis. Dr Tyson also participated in deliberations about how the cases should be classified where disagreement was encountered.

Both consultation and deliberation were productive. Meetings were held in Sydney, where clarifications were sought by both parties as the process unfolded. Consultation permitted the probing of classificatory decisions by SFP and deliberation enabled the academic team to explore the classification system and moot disagreements in a manner that ultimately produced a more nuanced understanding of the most complex cases both in their own right and in the context of their totality. The academic team worked collaboratively with the NSWPF as findings were being finalised and experienced a strong spirit of cooperation in its interactions. This might strike some observers as irregular (in terms of the logic that a review must be conducted from a perspective of pure objectivity), but the academic team believed it was

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<sup>11</sup> In addition to this report, it is anticipated that a co-authored research article based on the SFP analyses will be published.

prudent to engage in open and productive discussions as the work of SFP drew to a close, rather than face the possibility of working on misapprehensions or misinterpretations of processes and methods.

Deliberation was a particularly important aspect of the process. In looking for and determining the existence of bias crime, differences in opinion emerged and had to be reconciled. Much in the same way that the SFP detectives sought to rigorously review their findings, the academic team engaged in carefully measured debates about each individual case in the interests of being thorough, consistent and precise.<sup>12</sup> This was vitally important because it allowed the academics to develop a more nuanced understanding of the logic that underpinned the categorisation decisions of SFP. At the second Sydney meeting, a large police delegation discussed differences in opinion with regard to the cases under review. The police finalised their position on the cases and declared a cessation to their deliberations. At this point the academic team members were able to clarify various assumptions and move forward on the basis of these deliberations. From this point on the academic team could formally evaluate the operations and ‘findings’ of SFP.<sup>13</sup>

This report should be understood as a combination of a process that was collaborative and consultative. The academic team also contacted Ms. Sue Thompson and wrote to ACON and received valuable documents and information that informed this review process. Established in 1985 as the *AIDS Council of New South Wales*, ACON (as it is now known) works to end HIV transmission among gay and homosexually active men, and promote the lifelong health of LGBTI people and people with HIV. Based in Sydney and funded by the NSW government, ACON also has offices in key regional locations and provides services throughout NSW. In addition to their tireless work promoting health initiatives, ACON has been at the forefront of advocating for justice for victims of former harassment and violence; when homosexuality was subject to social hostility and intolerance. In that spirit of a pursuit for justice, ACON compiled dossiers linked to cases of suspected gay hate resulting in death. Such work was seen as a form

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<sup>12</sup> This was important given the voluminous nature of the case file data. The two large case folders provided to each academic team member contained approximately 1700 pages. Reading the case files was an onerous process that was exacerbated by the traumatic nature of the case material.

<sup>13</sup> A caveat has to be declared here. The late release of three cases from Unsolved Homicides necessitated that the NSWPF subject these 3 cases to the same process of evaluation as the completed cases. The police then provided these final three cases to the academics who then subjected them to scrutiny and adjusted their findings accordingly. To have excluded these 3 cases so close to the end of the review period did not make any sound methodological sense.

of accountability and consciousness raising for perceived police indifference and/or public indifference to potential cases of homophobic violence. [SEE Appendix A].

The NSWPF readily acknowledge that by today's standards there was room for improvement in mitigating the personal and social impact of homophobic bias in the period under review. In the meantime, this report cannot make claims about how effectively or objectively the NSWPF conducted homicide investigations where anti-gay bias may have been a motivating factor in the death. It can only offer a review of the findings of SFP that – to the extent which the summary evidence is capable of indicating – there were cases in which there was anti-gay bias, and these may not have been fully investigated as bias crimes. The reason that the report cannot generalise beyond these cases will be discussed below. However, it is important that the reader is aware at the outset that the terms of reference for the academic investigators are narrow and preclude our being able to comment on that most important question. Addressing that larger question would require a comparison of the investigatory procedures or efficacy of all homicides in the period against those motivated by anti-gay bias. This would be underpinned by a rigorous, empirical methodology that would begin with a selection of the cases where there is the strongest evidence that the crime was an anti-gay bias crime against a strong control group that possessed like factors excepting that one.<sup>14</sup>

## **ii. Historical backdrop against which this review proceeds: situating anti-homosexual bias in the Australian context**

The bashing and murder of gay men occurs across changing social, legal, cultural and institutional settings and relationships.<sup>15</sup> Not too long ago the view that homosexuality is abnormal and uncommon was ubiquitous and commonplace, but today it is viewed as normal and common. Consequently, in sociological terms the formation of animosity towards men perceived to be homosexual is nuanced and dynamic. Historically it is not only individuals, but organisations and institutions (e.g. the Church and corporate mass media) that have been hostile to men and women who have fallen outside a strict heterosexual norm. Prior to the latter part of the 20<sup>th</sup> century, consensual homosexual sex was a crime in all states and territories of

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<sup>14</sup> An AIC study (Mouzos and Thompson 2000) that was conducted along these lines is unfortunately flawed in its dependence on the Thompson list as for the experimental group.

<sup>15</sup> We are reporting on historical relations, and we are confident that anti-gay bias is no longer tolerated in most places (and the right to marry beckons as a possible momentous social change for gays and lesbians in Australia), however, the legacy of anti-homosexual sentiment is still with us.

Australia with many men being prosecuted and imprisoned for crimes including ‘gross indecency’ or ‘sodomy’ (Carbery 2010; Dalton 2011). Same-sex attracted men lived furtive, secret lives with the threat of exposure and criminal prosecution hanging over their heads. During the Cold War period (Wotherspoon 1989; Willett 1987) the popular tabloid newspaper *The Truth* regularly published stories that exposed gay men as sexual deviants, ruining their lives and careers (French 1986; Murdoch 1998). Such was the fear of job loss and family rejection that many men lived closeted lives prior to the era of increased tolerance that followed the *Stonewall* inspired gay rights movement heralded during the 1970s and 1980s (Wotherspoon 1991; Willett 2000).

Institutional authorities play a significant role in guiding the cultural preferences of groups and individuals. Together with significant others, educational and religious and community organisations perform functionally to shape behaviour; police, courts and correctional facilities may offer reinforcement of moral codes in legal norms, where they are up to the task. Not only do social and cultural expectations change over time, institutional guidance is not always current or free from corruption. The police have played a major role in suppressing homosexuality prior to the decriminalisation era. Sting operations would be conducted whereby young policemen would loiter in public toilets and either wait for a man to importune a sex act with them or encourage such an act to take place by pretending to be there for that purpose (Dalton 2007). Whilst such entrapment practices were not specific to Australia (Moran 1996; Maynard 1994) the NSW police were particularly keen to target homosexual men because the [then] acting Police Commissioner Delaney prioritised policing the ‘scourge of homosexuality’ (Wotherspoon 1993), ensuring that Vice Squad detectives devoted considerable time and resources to the task. Indeed, the reminiscences of a famous Sydney detective named Sergeant Joe Chuck published in 1956 devote two chapters to his personal recollections of combating homosexual ‘sex pests’ in Sydney between the two world wars (Kelly 1956).

Where the police would combat homosexuality by prosecuting homosexual men, the popular tabloid media, in turn, would disseminate stories of their spectacular social downfall in salacious detail that in naming and shaming them (as individuals) functioned as a warning that the cost of the behaviour is public or social ruination. In tandem, medical discourse played a

role in admonishing homosexuality. Prior to its removal from the DSM<sup>16</sup> in 1973, homosexuality was understood in psychiatry in Australia as a disorder that could be treated. In Sydney and Melbourne the lower courts (termed ‘Local’ in NSW and ‘Magistrates’ in Victoria) sometimes sent a procession of convicted offenders for aversions treatment to ‘cure’ them of their homosexuality. For individual offenders, agreeing to undertake such treatment could mitigate against a potential prison sentence. Such treatments typically involved subjecting the men to electric shocks or nausea inducing drugs whilst being exposed to homoerotic stimuli (Dalton 2002).<sup>17</sup> Lastly, the role of the various Churches in Australia during this period should not be overlooked. They propagated the notion that homosexuality was an abominable crime and that men who participated in homosexual sex were indulging in the gravest of sins – unnatural sex (Henderson 1996). Tomsen sums up the historical situation: ‘male homosexuals were regarded as fully deviant and heavily criminalised’ (2009: 44).

In 1975 South Australia made legal history by being the first State to decriminalise male homosexuality, followed by the ACT in 1976 and Victoria in 1980. NSW and the Northern Territory followed suit in 1984 and Western Australia in 1989 (Bull, Pinto and Wilson 1991). Decriminalisation of homosexuality is connected to civil rights campaigns and the liberalisation of civil society. But while much of society was being liberalised culturally and this culminated in legislative recognition or victory, the 1980s still harboured a significant segment of Australian society that maintained unsympathetic views toward homosexuality. The paradox at play here, as Tomsen (2009) notes, is that the emergence of a normative gay masculinity (with many gay men out and about in public) created a newly *visible* target for marginalised youth. It is not only in NSW that a violent pushback against a gay ‘coming out’ has been noted. Anti-gay hate violence, investigative journalism by Whittaker (2016)<sup>18</sup> contends, was also common in South Australia, where gay bashers operated with impunity in Adelaide in the 1980s and 1990s.

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<sup>16</sup> The Diagnostic and Statistical Manual of Mental Disorders (DSM) is published by the American Psychiatric Association (APA) and offers a common language and standard criteria for the classification of mental disorders. The DSM is now in its 5<sup>th</sup> edition.

<sup>17</sup> The advent of HIV/AIDS did much to pathologise gay men as dirty and diseased. Repudiated as a class of people addicted to causal sex and in doing so ‘spreading AIDS’, public health responses – including the infamous Grim Reaper with a bowling ball television advertisement (Lupton 1993; Donovan 1995) – contributed to a climate of fear where gay men were understood as sexual subjects synonymous with death and suffering.

<sup>18</sup> The article contains first-hand testimony from victims savagely beaten by gay bashers during this era. It may be reasonable to infer that other states also have histories of abuse similar to NSW and SA. Whittaker contends that South Australian police were implicated in gay-hate violence and murder, but this needs further substantiation.

The cumulative and collective reputational damage to homosexuality that its outlaw status had fostered over more than two centuries has been undone in increments. The homosexual man may well have been freed from the criminal law, but the pejorative language of ‘faggot’, ‘poofster’, ‘pillow biter’ and ‘queer’ (before the GLBTIQ community could reappropriate this term) endured as terms of derision for gay men well into the 1990s. Indeed, some of these terms appear in the SFP case archives. This is a reminder that the legacy of anti-homosexual ideas has its origins in the historic period when the law, church, popular media and psychiatry conjoined to speak of homosexuals as variously; deviant, sinful, perverse and mentally ill. Furthermore, Tomsen (2009: 41) has asserted that ‘the views of perpetrators have been linked to wider ideologies of prejudice and bolstered by the past and recent actions of state and criminal justice agencies’.

Currently, there is a widespread acceptance of homosexuality, especially in large multicultural cities like Sydney. Television shows like *Modern Family* and the visibility of gay men (e.g. the Olympic swimming champion Ian Thorpe and Rugby League player Ian Roberts) have bolstered community acceptance and tolerance of homosexuality.

This context is worth keeping in mind. This Report concerns historical attitudes in society at large that have, at times, reached into smouldering pockets of the NSWPF. The crimes comprise the cases reported on SFP, and pre-date the current era of greater acceptance. Indeed, anti-homophobic violence campaigns in Australia evolved long after most of the deaths subject to the SFP review.

## **DIMENSIONS OF THE ISSUE**

Knowledge of the policing of anti-gay bias is dependent on reported and recorded information including police records and reports, coronial investigations and other sources of data including victim surveys, self-reports, hospital and other first responder records and court transcripts, to name the most reliable. The most widely used of these is police records. However, as previously stated, it is acknowledged that police all over the Anglo-American world have had a chequered record with respect to the attribution, investigation – and therefore the consistent and accurate record keeping – of bias crime. Tomsen highlights the problem of the *lacuna* in homicide data:

A conventional wisdom among crime researchers is that records for homicides are the most thorough among all categories of violent crime, but homicide research and the official figures rarely mention the sexuality of a perpetrator or victim and in most places the number of these killings remain unknown (2009: 53).

Argument that the NSWPF have been remiss in this space in the period under review may be found in several scholarly books (Cunneen, Fraser and Tomsen 1997; Mason and Tomsen 1997), an analysis by the AIC (Mouzos and Thompson 2000) and a host of popular media products. For example, the GLBTIQ community newspaper 'Star Observer' ran stories criticising NSWPF responses to gay bashings in the 1980s and 1990s; as did the gay male-interest magazine 'Outrage'. Evidence that the NSWPF has under-enforced anti-gay bias crime has been harder to come by. The most cited is the list of cases (or more accurately *series* of lists) that can be traced to the work of individuals concerned with gay hate related homicidal violence in NSW. The specific cases that SFP reviewed derive from this list. As we will make clear, this list cannot carry the weight of an evaluation of NSWPF record regarding anti-gay bias.

### **i. Unpacking the List**

The following section will account for the manner in which the list of cases that forms the context and the substantive content of the SFP review developed out of the extraordinary efforts of a few individuals.

For the ten year period, 1989-1999, using the indicators used by the police service at the time, NSW Police Force employee Sue Thompson maintained a list of 'possible gay hate murders'. Initially this list 'was conceived to monitor actual deaths' (rather than gay homicide frequency) on the assumption that maintaining such records would assist in alerting authorities to devote adequate resources in their mitigation (Thompson 2017b). Thompson was aided by Detective Sgt McCann who had first-hand knowledge of what was described as a 'massive and invisible problem of unreported bashings' (Thompson 2017a). Thompson stated that they were 'shocked and alarmed' and 'so it began' (Thompson 2017a).

As is the case with most social problems, the question of scale and extent is often dependent on the capacity of measurement, and the interplay between expectations and discoveries of

extensiveness. As Thompson stated in her correspondence to the Parrabell academic review team:

I was not even initially aware that it would become about monitoring frequency until much later when we realised there was indeed a terrible pattern of frequency that needed monitoring and a police and ultimately government response (Thompson 2017a).

Thompson's first list contained 46 identified deaths and another 4 identified by Det. Sgt. McCann (2017b). The data was secured in a registered police file and ring folder that had contained gay hate homicide materials. As the list grew in number over time, various versions of the formal Police 'Possible Anti-Gay/Gay Hate Murders List' found their way to various folders at different times (2017b).

Thompson stated that a list of 88 specific cases did not come from her or her work. The number of alleged murders was, she said, 'publicly stated and reported as up to 80' (2017b). She has stated that various versions of the list were created in the cross-fertilisation of police Working Parties, Conference documents, official submissions and other internal initiatives linked to understanding and combatting gay hate violence.

Over time, people including Professor Stephen Tomsen, other academics, gay rights campaigners, gay and lesbian historians and other interested parties sought to use versions of the 'list' to explore the incidence and character of gay hate violence and homicide during the period of 1980 to 2000 (Tomsen 2002; Tomsen 2009). To complicate the issue, in 2013 'a group of individuals with historical knowledge on the alleged murders quickly gathered and recompiled a list at the request of the *Sydney Morning Herald* and a Member of Parliament' (2017a). Professor Tomsen's list of the initials of 74 murder victims' names (with date of murder) was used for this commission. In this version of the list, some 74 cases (from 1980 to 1999) were identified (2017a). When the *Sydney Morning Herald* published an article devoted to this commissioned research, the newspaper used the phrase 'up to 80' murders (2017a). From 2013 to 2015, further reviews were conducted by the community and academic parties. This group determined that there were 71 possible gay homicides from 1970 to June 1999, with a further 10 needing additional research (2017a).

In her document explaining the work she did to bring the problem of hate crime to the attention of both the police and the public, Thompson says the efforts of those gay community

representatives and interested academics and gay historians was designed to ‘indicate the tenor of the times and crimes’ (2017a). This is an apt phrase. It reminds us that the work of advocates who contributed to the compiling of lists had an honourable motivation. These interested parties wanted to bring a perceived social problem to light.

Their principal goal was to alert the public to a measurement of extent of the problem of homicidal violence in Sydney during approximately 20 years. They sought to capture an elusive truth. Their efforts should be understood as motivated by a concern to find justice for victims of homicide.

88 is a large number. It has captured the attention of the public and focused needed attention on this issue. Whatever its true dimensions, the figure represents much sadness, frustration and alarm. Whatever the number, this review supports the view that anti-gay bias is no longer forgotten, neglected and sequestered to a remote corner of public and police concern.

## **ii. Taking on a life of its own: the problem of the media, mythology and folklore in relation to the ‘lists’ of murders**

The existence and fact of a list of potential gay-hated related homicide cases has seeped into public consciousness in NSW. Its facticity has been aided and abetted by radio, televisual and newspaper media attention (including the *gay press*). Reporting on the basis of this list has been prolific, with successive media reports depending not only on the list, but also anecdotal accounts from some of the most jolting of its cases. Altogether, this has thrust the issue of gay homicides into sharp focus. That this list has come to support the case that there was in NSW *extraordinary* anti-gay bias and *questionable* anti-bias policing is indicated by it receiving a prominent story in the *The New York Times* entitled, ‘When Gangs Killed Gay Men for Sport: Australia Reviews 88 Deaths’ (Innis 2017). The popular media features we are aware of include: an SBS mini-series ‘*Deep Water*’ (Seet 2016); a documentary entitled ‘*Deep Water: the true story*’ (Blue 2016); a true-crime genre book entitled ‘*Getting Away with Murder: up to 80 men murdered 30 unsolved deaths*’ (McNab 2017).

The emotive character of popular cultural work is conveyed, for instance, in an interactive website entitled ‘*The Gay Hate Decades: 30 unsolved deaths*’ which supplemented the SBS *Deep Water* documentary (<http://www.sbs.com.au/gayhatedecades/>). Based on journalist Rick Feneley’s research, the website invites the visitor to vicariously inhabit the role of the detective

to explore cases presented as ‘unsolved’ homicides. The website opens with a panoramic view of Bondi (complete with churning surf) that zooms from a close up to a more distant perspective of this most famous bluff. Capturing some of the most infamous Marks Park and cliff-side cases, this panorama situates the visitor at the ‘scene of the crime’ synonymous with some of the most infamous cases.

The totality of this material circulating in society through media is an amalgam of facts, conjecture and suspicion. This can get overlooked when packaged as stories that circulate under a common moniker that stems from what appears as an underlying empirical fact with fixed properties: the list. As already alluded to, the vehicle of a ‘list’ (irrespective of its precise number) is marshalled as an indicator of the truth of a social problem. So, to the extent that wider community of NSW citizens know about the ‘problem’ of murders in NSW during this two decade period, it is because the trope of the list has helped shape this understanding. Discourse about gay hate murders permeate the wider culture and has been (and continues to be) the subject of speculation both in the GLBTIQ community and the wider community of other citizens of NSW. People talk about the murders at work, at social functions, in pubs, clubs, cafes and restaurants. That speculation about murder occurs is not surprising. Real people died during this period; people with families and friends who grieved and continue to grieve for them. The fear of potential murder strikes at the heart of any person; and all of us ought to be concerned about whether justice falls disproportionately against those who experience or have experienced the targeted animus of an individual, group or whole society.

### **iii. Strike Force Parrabell: mandate and method**

The NSWPF initiated *Strike Force Parrabell* under ‘Co-ordinating Instructions’, a document that sets out the impetus, parameters and instructional guidelines for detectives to follow. These contain two not necessarily compatible mandates. The first, which has been amply noted here and by the NSWPF itself, is by way of acknowledgement, ‘community’s concerns’ that the Force has historically been insufficiently proactive in deterring against anti-gay bias. The second is to conduct ‘a comprehensive review of the relevant cases from a bias crime perspective’ (Co-ordinating Instructions page 2).

The document notes that in 2002 ‘the then NSW Police Gay and Lesbian consultant, Ms. Sue Thompson, identified 88 cases between 1976 and 1999 that potentially involved anti-gay bias’ (Co-ordinating Instructions page 2). Accordingly, the SFP was tasked to conduct a review of the NSWPF holdings in relation to police investigations, conducted in this period, of gay bias crimes resulting in death. However, the mandate was explicitly *not* an investigation of all homicides in that period to determine which may have been anti-gay bias. It was narrower. It was restricted to a systematic review and determination of the incidence of anti-gay bias in 88 cases: those that were proffered in the list of deaths tabled over this period by Sue Thompson, Professor Stephen Tomsen (and other parties that contributed). Thus, the totality of police holdings for each case were re-examined to determine if bias was evident. It should be stressed that SFP’s brief was established to ‘review matters that have *already been investigated* by the NSWPF’ (Co-ordinating Instructions page 3, original emphasis). It was not its intention to re-investigate matters that have already been investigated by the NSWPF:

The proposed bias crime review is different from a homicide investigation as its primary focus will be in determining whether any of the identified deaths were in fact motivated by anti-gay bias, rather than identifying and prosecuting offenders. If during the course of a review, viable suspects or lines of enquiry are identified, that information will be passed on to the Unsolved Homicide Team, Homicide Squad, for further investigation (Co-ordinating Instructions page 3).

Holdings consist of the standard brief items that are collected in a criminal investigation, such as:

- Witness statements
- Crime scene evidence (as recorded in notes)
- Crime Scene photographs
- Records of interviews
- Contemporaneous police notes (hand written and typed)
- Coronial documents
- Other documents determined to be relevant to the case and thus collected by the original investigating detectives.

Many of these items were stored in standard NSW State archive cardboard boxes which were conveyed to Surry Hills so that the detectives could unpack them and begin the painstaking task of examining (in the case of photographs) and reading (in the case of written material) their contents. The time this took varied considerably depending on the number of archive boxes assigned to each case (in some cases 1 or 2 boxes, and in one case approximately 90 boxes). In the course of the review approximately 400 archive boxes were examined.

#### **iv. Scoring the cases**

A team of detectives (which fluctuated in number between six and ten officers throughout the course of the assessment) reviewed and scored each case. The time this took varied greatly depending on the amount of archived material that had to be read, interpreted and scored for 'products'.<sup>19</sup> A reviewing detective shared findings with the head detective. The reviewing detective assessed the case, sought clarification where needed and questioned any issues that seemed pertinent to the review. The head detective finalised the review in light of this feedback process. Approximately once a month, a team of three senior detectives convened a committee to read and review all the accumulated cases. At that meeting, the detectives read and discussed the cases and sought to reach consensus about any classification issues that were proving to be challenging.

Investigators used a 'Bias Crime Indicators Review Form' (BCIRF) to systematically review each relevant case file item. This is a qualitative instrument with four variations in each numbered category [see Appendix B]. It comprised 10 bias indicators:

- 1) Differences
- 2) Comments, Written Statements, Gestures
- 3) Drawings, Markings, Symbols, tattoos, Graffiti
- 4) Organised hate Groups (OHG)
- 5) Previous Existence of Bias Crime Incidents
- 6) Victim/witness Perception
- 7) Motive of Offender/s

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<sup>19</sup> Creating 'products' was simply an internal recording system the police could use to cross reference evidence from the case files and subsequently retrieve or correlate such information.

- 8) Location of Incident
- 9) Lack of Motive
- 10) Level of violence

Indicators 1-9 are derived from a document entitled ‘Responding to hate Crime – A Multidisciplinary Curriculum for Law Enforcement & Victim Assistance Professionals’. This document was published by the National Centre for Hate Crime Prevention, United States Department of Justice Office for Victims of Crime (McLaughlin, Malloy, Brilliant and Lang 2000). This is *not* a Federal Bureau of Investigation (FBI) instrument, as has been widely – but erroneously – reported in the media (e.g. Benny-Morrison 2016). However, as per the NSWPF, the indicators are derived from the ‘National Centre for Hate Crime Prevention’ and are widely used in training law enforcement and victim support officers across the USA.<sup>20</sup> Indicator 10 ‘Level of Violence’ was developed by the NSWPF Bias Crime Unit based on research and cases.<sup>21</sup>

The detectives read and reviewed their holdings with a view to identifying any information that would allow them to tick a particular indicator. For each indicator, the following four findings were available:

**Evidence of Bias Crime** – sufficient evidence/information exists to prove beyond a reasonable doubt that the incident was either wholly or partially motivated by bias towards one of the protected categories and constitutes a criminal offence.

**Suspected Bias Crime** – evidence/information exists that the incident may have been motivated by bias but the incident cannot be proven beyond a reasonable doubt that it was either wholly or partially motivated by bias and constitutes a criminal offence.

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<sup>20</sup> Whilst the NSWPF placed great faith in this instrument, the academic team were surprised to discover that scarcely any academic literature exists that has evaluated or critiqued this instrument. Indeed, our search efforts could not even locate one academic article. Nor could the NSWPF supply such an article when requested to do so. In the face of an apparent dearth of such literature, the academic team are reluctant to endorse these indicators. The academic team are not decreeing they are wholly deficient and needing to be dropped, but we would have liked to garner independent evidence that they are indeed ‘best practice’ for law enforcement. We note here that with few choices available (the UK model is over-inclusive because it pivots on victim perceptions), the NSWPF worked with this instrument despite empirical evidence for its efficacy.

<sup>21</sup> The descriptive meaning and nuances of these ten Indicators will be critiqued in a subsequent section of the report, suffice to say that it is important to briefly note here the categories that the detectives were working with.

**No Evidence of Bias Crime** – the incident has been determined as either not being motivated by bias towards a protected group or although bias motivation is in evidence it does not relate to a protected group.

**Insufficient Information** – insufficient information has been recorded to make a determination in regards to bias motivation. This may be due to a lack of detail recorded by police or a lack of information supplied by victims and/or witnesses.

The detectives scored each case using the indicators on the BCIRF. Thus, for example, if the offender was recorded in police files as associating ‘with persons known to have assaulted young gay men, then the investigator may mark Bias crime Indicator 4 (Organised Hate Group) as being relevant’ (Co-ordinating Instructions page 3). In such an instance, this would be recorded on the BCIRF (in the form of a tick in a box) along with the source of the evidence and a description of how the evidence relates to the indicator. As previously noted, the source of evidence was termed a ‘product’ and a rigorous cross-referencing system meant that that ‘product’ was captured and numbered should it needed to be retrieved.

Although each indicator was scored, the summary conclusion or finding was not determined by counting the number of ‘yes’ or ‘no’ indicators of bias and referencing that number to some sort of table that accorded a finding of bias to a particular *threshold* number (e.g. seven out of ten indicators). Rather, the process was described as intuitive and relied on qualitative data in the form of contextual information derived from analysing each case. That is, having taken notice of the requisite indicators of bias, the detectives would also take into account the ‘Summary of Findings’ section – an amalgam of the ‘general comments’ section that corresponded to all ten indicators. The summary was often rich in detail and – when viewed in concert with the relative indicators – allowed a view of whether bias was involved to emerge.

When the process of review was concluded, the detectives provided the academic team with their findings on the 85 cases. Three cases were not reviewed:

- Case 69 Brennan (is under active investigation with the Unsolved Homicide Team.)
- Case 29 Johnson (because the matter is currently before Coroner for 3rd Inquest.)

- Case 53 Travers (Brian Travers was murdered by Daniel Roetz in Latrobe, Tasmania on the 01 March, 1992, therefore the jurisdiction is not relevant to NSW.)<sup>22</sup>

To avoid any confusion, it should be noted that one case involved a double homicide [Creighton and Mokdad]; these two cases were given separate case numbers (87 and 88 respectively). It should also be stressed that for case 35 (Paynter) the files could not be located,<sup>23</sup> however, based on a previous review by Det. Inspector John Lehmann (Homicide Unit) who deemed it 'not bias related', SFP reviewed his report and classified the case as Insufficient Information. The academic team were supplied this report and they too classified the case as Insufficient Information.

#### **v. The academic review of the cases**

We determined that the list of cases developed by Thompson and Tomsen did not have a known relationship with the actual number of gay bias homicides during the period in which the cases were collected. Possible errors related to the list includes under-recording and uneven or inconsistent application of inclusion criteria, where cases come to attention of investigators by a variety of means. The cases may well represent most of the possible gay-related deaths during this time period, but in our view it was not informed by any one means consistently and this is surmised to result in an uneven and somewhat unpredictable under- and over-recording. Even where the Australian Institute of Criminology report (Mouzos and Thompson 2000) attempted to place the list against a total of relevant homicides, the selection criteria for the list makes it impossible to draw a firm conclusion that the investigation of gay bias homicides and non-gay bias homicides is informed by police bias.

As academics, we commenced our assessment of the SFP review with a query concerning the authorities cited by the police to support the use of the BCIRF instrument. We were informed, as per the description above, that the factors were used as prompts and that there is no necessary correlation between or weighting of any of the factors and a determination of bias. There was no viable reference to witness or victim perception (factor 6), and there were several factors that we preferred to interpret as rightly falling under motive. We also determined that the

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<sup>22</sup> It is not entirely how this case came to be included in the list of potential gay homicides circulating in NSW given this death occurred in Tasmania.

<sup>23</sup> These files were either never returned to the archive or were returned and have subsequently been lost.

BCIRF may have produced a lack of distinction between categories of bias, such as evidence of the character of motivation, that are germane to this investigation. This was the finding upon attempting to use the BCIRF in categorising the cases. This led to the querying of the values or factors and to the definition of bias used by police and by those who developed the original and subsequent lists. Whilst we most often agreed on the result, we were less enthused about the means. For instance, there is often much surmising in relation to the concept of ‘gangs,’ without getting behind the key factors that makes the term ‘gang’ relevant, those key terms being communication and association on a relation of bias. Here and on other factors of the BCIRF, it is the underlying connection with bias that is important.<sup>24</sup> In sum, we were uncertain of the relation between a quantitative scoring of the 10 indicators and the summary conclusions, particularly, we felt that the scoring should be driven from the key elements of bias definition.

In the course of conducting our academic review, we determined that we needed to get behind the BCIRG instrument and re-interpret the summary evidence that was given. As we scanned the summaries, we became aware that we needed to distinguish the direction of the animus, because it appeared that there were many cases in which there was a potential to over-categorise anti-gay bias. We determined that a proper evaluation of the cases required more than a reproduction of the methodology used by the NSWPF and its BCIRF, comprising of an ‘indicative’ list of ten factors. In our re-assessment, we found it necessary to develop a short list of necessary, research-informed factors directly from a definition of bias crime that could then be drawn down to mostly binary categorisations.

## **THE CONCEPT OF BIAS**

### **i. A brief overview of gay-bias/hate literature**

Writing in *The Routledge International Handbook on Hate Crime*, Les Moran asserts ‘violence associated with sexual orientation and gender discrimination is at the heart of lesbian, gay, bisexual and transgender hate crime’ (2015: 266). Whilst the interchangeability of the terms ‘hate’ and ‘bias’ is contested in academic literature devoted to hate crime,<sup>25</sup> this report will

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<sup>24</sup> Any terminology tethered to the concept of ‘gang’ membership is loaded with distracting ambiguity. It is enough to establish association. SFP ticked ‘OHG related’ in Keam (22); Allen (30); Rattanjurathaporn (42) and Johnson (40)].

<sup>25</sup> Hall (2005: 9), for example, notes that ‘in terms of furthering understanding of hate crime, the word hate is distinctly unhelpful’ and less nuanced than desirable. He elaborates: ‘hate crime thus defined isn’t really about

deploy the term gay bias/hate to essentially mean the *same* thing: the violent animosity that Moran highlights in his definition. In the following section we will elucidate some of the key issues that cluster around academic conceptions of hate/bias crime.

All societies depend upon distinctions. Attributes and conduct that are recognised and rewarded are those that are deemed both moral and useful for the purposes of social, cultural and economic reproduction. Cultures or societies, including resident institutions, develop schemata by which to distinguish preferences that are deemed counter-productive to means and values. In this regard, it would be short-sighted to understand the development of cultural or social bias without a view of the wider trends along which cultural or social distinctions are made. That is to say, as Australian society has been cosmopolitanised so has disadvantaging or acting prejudicially against people or groups based on sexual orientation and/or gender identity become offensive and illegal.

To some extent all gay bias/hate literature is concerned with accounting for the behavioural or psycho-social conditions in which individual perpetrators or associated individuals develop an animus that is strong enough to express itself in anti-social (as per the above) or criminal attacks on a vulnerable group. It may be further subdivided, although much of the literature crosses these divides. There is a large body of work that is concerned with the *extent* or *incidence* of bias crime, particularly its underreporting and under recording. This work is directed at reform, and has helped to raise the profile of a social problem. Victimization studies conducted in the United States between the years 1977-1989 showed violence to be widespread and are a useful tool with which to discover the frequency of anti-gay bias.

The frequency of anti-gay bias is reported in victimisation studies (Miller and Humphreys 1980), police reports (Nolan and Akiyama, 1999; Perry, 2001) court records (Tomsen 2009) and by dataset comparisons of regular homicides against anti-gay homicides (Mouzos and Thompson 2000). It has also, to some extent, elaborated the putative empirical basis for legislative changes, law enforcement reforms practices and public awareness campaigns (Tomsen 2002; Mouzos and Thompson 2000). Hate crime laws are reforms that are aimed at engaging in a process of re-moralization (O'Malley, 1999) that seeks to challenge the norms

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*hate*, but about criminal behaviour motivated by *prejudice*, of which hate is just one small and extreme part' (2005: 9; original emphases).

and moral boundaries that sustain racial, religious, sexual and other hierarchies of difference (Mason 2014: 76). Historians of social movements have noted the dependency of social change on the mobilisation of emergent cultural values on demand groups and moral entrepreneurs, so the social value of this group of activists and researchers is well-understood

At the same time, as with all such work, there is a danger that the empirical foundation does not support summary statements about the extent of the phenomenon. In the United States, reports of the extent of anti-gay and anti-GLBTIQ violence has been criticised for being grounded on unreliable official bias crimes data that involve discrepancies in jurisdictional definitions and differences in the workings and practice of police agencies (Nolan and Akiyama, 1999; Perry, 2001), Boyd, Berk, and Hamner, 1996; Haider-Markel, 2002; McDevitt et al., 2000; Nolan and Akiyama, 1999). The empirical foundation is also observed to mask the difficulty of forensic discovery of offender motivation, an assessment that may defy objectivity and reliability (Boyd et al., 1996; Haider-Markel, 2002; Nolan and Akiyama, 1999). Consequently, Jacobs and Henry (1995: 387) have concluded, for example, that ‘the socially constructed claim that hate crime has reached epidemic proportions flies in the face of history’.

It is also possible to see a second group of scholarship that is concerned with hate crime victimology (Barnes and Ephross 1994; Iganski 2008). For this scholarship, the emotive language of hate or bias is less important than that the target is vulnerable (Perry 2001; Chakraborti and Garland 2015; Stanko 2004). For example, it is argued that potentially anyone can be a victim of hate crime, with one important caveat: that this is done within what Mason (2014) calls a ‘politics of justice’ framework, which acknowledges that the concept of hate crime is underpinned by ideas of justice, equality, and the right to live a life free from abuse and harassment. Groups whose actions do not sit comfortably within this (and Mason cites paedophiles as one such group) should not be accorded hate crime victim group status, even if they have been targeted due to hostility against their identity (see also Chakraborti and Garland, 2012, 2015; Garland 2016: 635). As per Christie (1986), this also has issues, as there would appear to be much politicising around which victims are accorded status and protection and which victims are not. As we shall discuss, bias crime may be complicated where non-recognised groups (paedophiles) may be targeted alongside recognised groups (gays).

Another group of researchers is concerned with problematising or understanding the unique or distinct properties and particularly the motivators of anti-gay bias or hate crime (eg. Turpin-

Petrosino 2015). This concentrates on behavioral and transactional dimensions or factors. It can also review masculinity and cultures of violence (Tomsen 2002). Regarding designating the differential properties of hate or bias crime perpetrators, research has supported that they are young males between 15 and 30, that they are more likely (in Anglo-American jurisdictions) to be Caucasian.

Perhaps the most overwhelming view is that gay-bias crimes are those which more than other crimes inflict great harm upon their victims (Iganski, 2001). The intensity of the harm, in both objective and subjective experience of extreme brutality, has been noted in these studies as being greater (Berrill 1990; Campbell 1986; Archer 1994; Garnets, Herek, and Levy, 1990). A study by Miller and Humphreys (1980) found that anti-gay murders are marked by ‘extreme brutality’, in which the victim is ‘more apt to be stabbed a dozen or more times, mutilated and strangled’. The crime is also more likely be carried out by multiple offenders (Martin, 1996; Tomsen, 2009; Van Der Meer, 2003; Janoff 2005).

Studies have also reported on what may be causing anti-gay violence to be more aggressive or brutal, partly because they involve weapons other than firearms (Miller and Humphreys 1980). Janoff (2005), for instance, found that 60% of sexual orientation bias homicide cases involved extraordinary or excessive violence. One of the most frequent explanations is that the perpetrator expresses an extreme overreaction to a perceived infringement against his sexual identity in a ‘homosexual panic’ (Mullins 2006; Lewes 1995; Tomsen 2002). Tomsen (2009, p. 65) speculated that ‘a more hands-on approach’ was needed to increase gratification for some offenders. Instances of ‘overkill’ have also been found to be common in anti-GLBTIQ homicides including excessive beating of victims’ heads and postmortem stabbings and mutilation.

This notion of ‘overkill’ (profoundly excessive violence) is worth dwelling on as it played out in many accused parties raising the issue in a self-serving way at trial. In many of the cases explored by SFP, the so-called Homosexual Advance (or panic) Defence (sometimes referred to as ‘HAD’) was raised at trial to mitigate liability or to have a murder charge reduced to manslaughter. Irrespective of their legal significance in particular trials as exculpatory defences, this review has proceeded with caution and skepticism in relation to the relevance of such claims of provocation. This is because the victim in homicide trials where this defence is raised is dead and not in a position to refute the claims that the accused is offering to explain

their so-called retaliatory violence (Howe 1997; Tomsen 1994; Tomsen 1998; Tomsen 2009). Indeed, to frame the violence as *retaliatory* is problematic because that very logic presupposes that there was some sort of sexual assault or affront that required a response. This is partly why the defence was so controversial and has been abolished in most states.<sup>26</sup> Its existence effectively permits men to tell stories of gay men soliciting sex and being met with justifiable or ‘reasonable’ violence to thwart their desires.

Another feature noted in the literature is that anti-gay bias crimes may be supported by multiple perpetrators or in a context of like-association. Where the violence is by multiple perpetrators and/or for an audience, it is explained as re-establishing male honor in a version of heterosexism. Gruenewald (2012:3604) observes that the actual or perceived challenge to sexual orientation is a threat to masculinity that provokes aggression. As per Harry (1992) and Perry (2001: 106), where that challenge is observed by others, it represents a clear moment to express commitment to masculine heterosexual gender. It has been suggested that bias violence offenders seek, in front of onlookers or peers, the ‘overkill:’ to express their masculine superiority (Perry 2001) and ‘disdain’ (Cotton 1992: 3000) for their victims. Additionally, Kelley and Gruenewald (2015) have observed that some offenders use violence to ‘demonstrate’ their masculinity in some anti-LGBT homicide scenarios.

This is related to scholarship that has reviewed the spatial mapping of anti-gay homicide and assault. Media reports and true crime accounts (McNab 2017) of gay hate crimes have often gone to great lengths to point out that the crime has some sort of association with a beat. In Australia, the term beat is used to refer to ‘spaces where men gather to seek out or arrange casual sexual encounters with other men, irrespective of the sexual identity of participants’ (Dalton 2012: 67). Beat users include homosexual men, bisexual men and heterosexual men who are closeted and/or married. Moore (1995: 328) has documented that beats have existed in Australia for well over one hundred years and that they evolve in parks, secluded hinterlands, beaches, public shower-blocks and the like. However, the most common and notorious beats are those which manifest in public toilet blocks in railways stations, parks and shopping malls. These public sex environments are found in just about every suburb in every city of Australia

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<sup>26</sup> As of March 2017, South Australia is now the only jurisdiction that allows the gay panic defence to be used [as part of the law of provocation in that State].

and many country towns (Swivel 1991: 237). In the USA these spaces are commonly known as ‘tearooms’ and in the UK they are typically referred to as ‘cottages’ (Moran 1996).

Beat spaces have a long history of attracting the attention and animosity of police (Dalton 2012). In Australia, some of the earliest arrests and criminal prosecutions for conduct at beats date back to the 1910s (Wotherspoon 1991:66). Little is known about these matters as scant offence details were preserved in court archives. Various historians of homosexual subculture note that the police were often aware of sexual conduct at beats and this period marks the start of police vigilance to the phenomenon of beats (French 1986; Wotherspoon 1991; Murdoch 2000; Carbery 1992). During the period covered by the Parrabell review, many men assaulted at beats would often not report such crimes to police for fear of being ‘outed’ or being construed as engaging in illegal ‘public’ sexual conduct (and risking prosecution). As Tomsen points out, such men were often perceived by their assailants to be ‘soft targets’ who would not resist or report attacks (2009: 42). That gay men were soft targets that often saw them subjected to robbery is evident in many of the Parrabell case files.

Beat spaces are very complex and have spatial and temporal attributes. They are often ephemeral spaces and only become sites of sexual activity when like-minded men meet. Some beats are popular during the day, whilst others mainly attract men at night. Many of the cases reviewed by SFP make explicit references to beats, and certainly there are innumerable cases where perpetrator(s) have targeted men at beats for bashings that have sometimes proved fatal. Many notorious beats featured in the Parrabell review including Alexandria Park, Moore Park, Marks Park<sup>27</sup> and Centennial Park.

Despite the long and well documented history of bashers targeting gay men [and men perceived to be gay] at beats, the relevance of beats to this review of bias-related violence was complex and nuanced. Whilst beats often featured as a geographical site where extreme violence was perpetrated, or where bashers were drawn to their vicinity to seek out victims, sometimes the existence of a beat did not figure as a significant explanatory feature in relation to interpreting the role of violence in a particular case. For example, in one particular case a man was determined to have died in a public toilet as a result of a drug overdose. In another case, a man

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<sup>27</sup> For a discussion of criticisms of the Marks Park murder investigations and subsequent coronial disapprobation from Deputy State Coroner Milledge see Brown (2009) and the true crime genre account provided by Callaghan (2007).

was stabbed to death in a park in a violent frenzy by a drug addicted assailant. The victim was sitting on a bench near a public toilet that operated as a beat but robbery appears to have been the principal motive for the crime.

So whilst beats were often notorious and profoundly dangerous places during the period of review that Parrabell covered, it would be simplistic to immediately equate the presence of a beat in a case file as being indicative of gay-hate motivated violence. Indeed, given that almost all public toilet beat spaces are architecturally fixed spaces, there is also the attendant problem of misplaced emphasis of their significance in some cases. A public toilet beat exists as a constant presence in the landscape – and may well lure gay men and bashers alike to its location – but its presence does not dictate that a beat must always figure in an offender’s core motivations or reasoning in relation to the commission of a crime.

Tomsen (2009: 124) has challenged the ‘simple view’ that gay bashers may be sexually repressed homosexuals, but acknowledges that a ‘heightened anxiety about sexuality’ attends those who visit gay beats. In our discussions with police and in our own evaluation, we noted that many of the cases involved offenders who were possibly reacting against their perceived vulnerability to a sexual identity challenge or acting on a bias toward their own incipient identity. Bias may be perceived on a continuum that involves more or less reflexivity and supporting gestures, like the involvement of others in the reactive (criminal) action.

## **ii Anti-gay bias violence and police response**

The investigation of crime is ideally free of bias; the rule of law admits of neither fear nor prejudice. In practice, societal fear and prejudice informs the enforcement of the law. Societal groups demand of police that they respond to disorder and transgression with discretion, that they apply the rule of law with sensitivity to community norms, a requisite that compels police to tend to reproduce the conservative bias in societal norms. Whilst it is true that police organisations reflect both progressive and reactionary views, in general police officers tend to identify with more traditional and social conservative ideas about the good society, such that for many police the protection of an ideal of Australian values will tend to tilt slightly more toward the status quo ante. There is no daylight between most police officers and the blind pursuit of justice. However, it is unfortunate that police individually, in pockets and sometimes

in barrels have permitted bias or prejudice to blind them from justice.<sup>28</sup> There is an enormous literature that has explored how a variety of law enforcement agencies and agents have failed to adequately or equally pursue crimes against visible minorities, the poor, intellectually challenged, people with a criminal history and the GLBTIQ community.

With the decriminalisation of homosexuality and the recognition that minority groups including gays experience a disproportionate incidence of violence and bullying, governments have passed legislation that has provided additional penalties to persons who have committed crimes in which a motivating factor is a prejudice or bias against a minority group. A proactive response to bias crime is in accord with the development of several police reforms over the past several decades, including community-based policing, intelligence-led policing and predictive policing. It also features in the focus on trust-building that generated the push for the re-embedding of policing in the community and a more responsive, integrated, multicultural, plural and victim-centered approach that has characterised reform agendas since the 1980s. The victim-centered approach has informed anti-bias policing in the UK, where the definition of bias is based on the subjective interpretation of the victim where, as Hall states ‘anyone can be a victim of hate crime if they believe themselves to be so’ (2005: 11).

Since the period of homicides under review in relation to SFP has passed, there have been notable changes in the area of bias crime policing. In 2007 NSWPF created a dedicated Bias Crimes Unit which has overseen the following initiatives:

- The creation and implementation of Bias Crimes Standing Operating Procedures
- In-house education & training regarding bias motivated crimes, including identification
- Local Area Command & Specialist Command support with investigation and response available
- Monitoring & review of Bias- related-incidents
- Community engagement to raise consciousness about bias crime and solicit community help in both preventing and responding to bias-related incidents
- Analysis and predictive intelligence regarding incidents and events
- Monitoring of hate groups

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<sup>28</sup> Punch (2003) invokes the spatial metaphors of pockets and barrels to explore how some police force cultures and structures foster misconduct.

- A continual focus is on improving the capacity & capability of the NSWPF around bias crimes
- Liaising with other law enforcement agencies (State, Federal and International) to combat bias crime In Australia and abroad

As of the writing of this report, a new 'Fixated Persons Investigation Unit' has been developed which is combined with the 'Bias Crimes Unit' to address social drivers of crime such as mental illness. It is envisaged that, in cooperation with other government agencies, the NSWPF will through this unit identify, at a much earlier stage than has been possible in the past, people who may be pose a threat due to their fixated ideas. This brings the precautionary or preventative orientation of counter-terrorism to the domain of bias.

It bears emphasising that the social landscape in which bias crime policing occurs has radically changed in the past 20 odd years. Whereas homophobic sentiment dominated the 1980s and 1990s in relation to 'bias', the recent rise of the importance of violent extremism – in the context of terrorism – has seen radical hate speech and take prominence in relation to 'bias'. Whilst anti-gay bias has not been wholly eradicated from society, cases (or suspected cases) of gay-bias related homicide appear to have sharply abated in comparison to the era subject to review in SFP.

### **iii. Over-categorising Bias**

This review is concerned directly with measures of anti-gay bias crime. On one hand, there is an argument that the list presented provides evidence that police have been negligent in their prosecution of anti-gay bias in crimes of homicide specifically. On the other hand, there is an argument that whilst this may be true generically of police historically, the commentary on the evidence presented (the list) has exaggerated or even grossly exaggerated the scope of the underlying phenomenon.

As social scientists, we believe that the evidence does matter. Crimes may be both under and over-categorised, and sound public policy is not well-served where there is either an under or an over recording of bias. Where there is an under-recording of bias crime, there may be systemic or institutional bias against a social group that is not being adequately redressed by public resources or that may, as has been suggested, indicate a malfeasance by those public

institutions. Where there is an over-recording of bias crime, the opposite distortion may occur. There will be over-criminalisation and the potential for public or moral panic that will have impact on freedoms. There will also be mis-categorisation, meaning also that other dimensions of an event are not properly recorded and addressed.

Both teams coded a large number of cases as Insufficient Information. This coding does not discount that gay bias *may* have been a factor in a particular death. Many of the deaths under review are due to motives or causes that are uncertain or unknown. They may always be subject to conjecture (unless confessions or arrests are made in the coming years). In the 1980s and 1990s the police did not always ask the sorts of questions that might have better discovered the presence of gay bias in a case from witnesses and suspects alike. That said, in many of the cases that date back to the 1970s, 1980s and 1990s, sexual identity was not easily identifiable. Some victims lived furtive sexual lives that made the task of obtaining ‘direct’ evidence of their sexual orientation very difficult. Some detectives certainly did probe whether the victim may have been gay or bisexual. Indeed, many investigations canvassed the issue of homosexuality, as the detectives were well aware of the Homosexual Advance Defence and wished to mitigate its use and secure a conviction of the accused.

At its inception, SFP undertook a thorough and meticulous review of archival holding linked to individual cases. However, it bears emphasising (and this is no direct criticism of NSW police practices at the time deaths were investigated) that an archive can only yield something that was captured in the first instance (e.g. a witness recalling that they heard someone yell ‘bash the poofter’ in a park late at night). Secondly, homophobic sentiment/reasoning is not always recoverable retrospectively. A cognitive state – animosity towards homosexuality – does not always leave a physical trace. This is all the more pertinent in cases where no suspect was identified. And, of course, in cases involving cliff-fall deaths, the trio of questions: *‘Was he pushed?’* [Murder]; *‘Did he jump?’* [Suicide] or *‘Did he slip/fall?’* [Accident] may never be able to be definitively answered. The very fact that the death of Scott Johnson is subject to a third coronial inquest demonstrates how legal closure around such deaths is often elusive. Many deaths may well be attributable to a fatal assault (e.g. a ‘gay bashing’) but in the absence of evidence or a confession, the detectives and academics had little option but to classify such cases as Insufficient Information.

#### iv. Defining Bias

Bias crime laws are concerned with acts where hostility, bias, prejudice or hatred (animus) is directed at a presumed attribute of the victim upon which the victim is selected, where such animus is thus integral or key in the offender's behavior. Thus, the NSWPF provides a Standard Operating Procedures definition of a bias crime:

A bias crime is a criminal offence motivated against persons, associates of persons, property or society that is motivated, in whole or in part, by an offender's bias against an individual's or group's actual or perceived; race, religion, ethnic/national origin, sex/gender, gender identity, age, disability status, sexual orientation or homeless status ([http://www.police.nsw.gov.au/community\\_issues/bias\\_crimes](http://www.police.nsw.gov.au/community_issues/bias_crimes)).<sup>29</sup>

In conducting their review, the NSWPF detectives also used the following definition of bias crime indicators:

Objective facts, circumstances, or patterns attending a criminal act or acts which, standing alone or in conjunction with other facts or circumstances, suggest that the offender's actions were motivated, in whole, or in part, by any form of bias (*Massachusetts Model - Protocol for Bias Crime Investigation* as referred to in Co-ordinating Instructions page 2).

The academic reviewers largely agree with the NSWPF definition of bias crime, and to a degree, support that a means of identifying bias crime depends upon indicators. However, in order to develop an understanding of the dimensions of the phenomenon, we have undertaken a refinement based on a review of the literature as follows.

According to Boeckmann and Turpin-Petrosino (2002: 208), 'there is no consensus among social scientists or lawmakers on definitional elements that would constitute a global description of hate crime'. Chakraborti and Garland (2015: 3) concur, commenting that it is difficult to overcome the 'subjectivity associated with the notion of hate'. Hall (2012) compares

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<sup>29</sup> This NSWPF definition of bias crime is relatively recent. It must be kept in mind that detectives in the 1970s-1990s could not use it as a working (*in the field* definition) because it did not exist then. Its existence during the period of the Parrabell review no doubt assisted detectives in formulating their findings.

hate crime rates in London and New York to find that the broader official definition in the former construct the ‘reality’ of hate crime in ways that predominantly serve to inflate the official statistics (2012: 79).<sup>30</sup> The Association of Chief Police Officers (ACPO) in the U.K. defines hate crime as ‘any incident perceived *by the victim* to be motivated by hate or prejudice’ (ACPO, 2005, emphasis added). However, victims are often in no better position to determine the motivation for behaviour than is the perpetrator or the bystander. England and Wales have enormous numbers of bias crimes, no doubt due to the over-inclusive definition used to discover the phenomenon. As per Hall (2012), the concept loses meaning where it permits subjective over-inclusion. Altogether, providing an answer to the question ‘*what is a hate crime*’ may seem straightforward; it is – in fact – ‘fraught with difficulties’ (Hall 2005: xvi).

Many researchers make the point that the *perceived affiliation* of the victim is important (Chakraborti and Garland 2015: 3; Mason 2014: 78; Gerstenfeld 2004: 9; Gerstenfeld 2013: 11), which to others may be somewhat synonymous with the concept of *vulnerability*, or vulnerable populations (Chakraborti and Garland 2012; Wolfe and Copeland 1994: 201). Gerstenfeld defines hate crime as ‘illegal acts motivated, at least in part, by the group affiliation of the victim’ (Gerstenfeld, 2004: 9). Perry (2001: 29) says that it is the generic *subordinate identity* of the victim rather than any individual characteristics that must be viewed as key. She (Perry 2001:10) defines hate crime as involving the reassertion of the dominance of the perpetrator’s group over the victim. Important to a conceptualisation of bias is reference to the *relative powerlessness* of vulnerable peoples vis-à-vis a dominant, privileged class of people.

Taking selectively from this, our definition of bias is as follows. Bias crime:

- a. *expresses* a categorical animus (directed at a person or group on the basis of his/her perceived identification with a *vulnerable* group).
- b. produces an act that *intentionally*, by way of criminal predation on the basis of that categorical animus, causes harm to that person or group.

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<sup>30</sup> Tomsen (2009: 38) – drawing on the work of Levin (2007) – notes that ‘the term ‘hate crime (or bias crime) evolved in the 1980s and 1990s to refer to victimisation from assaults, abuse, harassment and attacks on property on the basis of a particular minority group identity’.

- c. 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.

In this definition, we are concerned that to categorise an act as a bias crime, practitioners must be able to perceive a minimum of discrete indicators or factors that relate with one another and directly to the phenomenon in question. The first requirement is that the act *expresses* an animus, and does so by way of some form of *communication* directed at the target and, sometimes, the wider population. This expression might be in the degree of violence or in the utterances, statements, gestures or other communications. As noted in the literature, these acts are meant to communicate an expressive message of *non-identification* or negation. This expression is *directed* at a person or persons on the basis of the perceived identification of that person or persons with a vulnerable group, and as a means of distinguishing the identity of the perpetrator against that group. Indeed, Perry (2001: 10) describes such hate crimes as *message crimes* that send a symbolic message to an entire group: that they are 'different' and they 'don't belong'. There is an insidious aspect to 'message crimes;' they 'extend the impact of hate crimes beyond the actual victim, transmitting a sense of apprehension and vulnerability to other members of that particular community' (Chakraborti and Garland 2015: 13). Like Mouzos and Thompson (2000:2) we excluded intimates 'because by definition it is not a gay-hate related homicide when committed by an intimate partner but rather an intimate partner homicide'.

The second factor permits a review of the intentionality of harm. Criminal acts require some degree of intentionality, and some acts are planned and calculated to do harm against a specific target whilst others are more reactive, defensive, and opportunistic or can claim some provocation. This matters when assessing anti-gay bias. A person who seeks out a gay person against whom to do harm because of a perceived vulnerability is arguably more of a threat to the community than a person who reacts violently against an unanticipated gesture or sexual advance. In addition, if the victim is chosen exclusively to express an animus toward an identity group this is the kind of intention that is more solidly a bias crime. Where the victim is chosen for another crime (robbery, for example), because he is an easy target, the *strength of the prejudice motivation* in the causal link, as Hall (2004: 12) notes, between the prejudice and the offending behavior, may be relatively weak.

Lastly, the definition makes reference to the *associations* of the perpetrator. We are more likely to be confident in a designation of bias where there is some evidence that the perpetrator has had an association with others who share the offender's presumed antipathy to a vulnerable group. It is those who associate with others *on the basis of a common bias* or prejudice against a vulnerable group and who then take an action either individually or collectively intended to cause harm to that target group that are justifiably the most concerning to public policy.

#### **v. Anti-gay versus anti-paedophile bias**

This investigation is concerned explicitly with *anti-gay* bias. However, in our preliminary assessment of the cases we found that there were many instances where it was at least unclear whether the bias was anti-gay as opposed to anti-gay paedophile. Many of the cases (N= 7) involved young men of between 15-25 who killed older men aged 45 years or older.<sup>31</sup> This represents seven of the solved cases in which there was sufficient information to positively score a bias or 26%. The mean age of offenders was 20 and the mean age of victims was 43. In many of these cases, the perpetrator's sexual identity was unclear and the victim was accused of having committed sex crimes against under-age men. Some of the perpetrators themselves had had liaisons with older men and it appears that a few of them may have been trading sex for drugs or other goods. It seemed apparent or at least more than plausible that the animus that was present was directed at men who were accused or perceived to have been sexually exploiting boys, whatever the facts. In some cases it also appeared as though a strong animus against homosexual paedophiles may have developed from historical sexual abuse. It is not clear to us that the bias expressed in these cases was motivated against homosexuality per se as against homosexual men that were assumed, rightly or wrongly, to be paedophiles.

It is important that readers of this report do not misinterpret what we mean when we deploy the term anti-paedophile bias. We are not purporting that paedophilia is in any way synonymous with gay male sexuality. Rather, we are merely pointing that anti-paedophile animus is evident where men are subjected to violence by other men on the basis of *perceived* or *interpreted* interest in boys or under-age males. We deploy this term to refer to a (greater

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<sup>31</sup> See 'Other Observations' section of this report for further elaboration.

than usual or vigilante) anti-paedophile animus toward *homosexually* attracted paedophiles.<sup>32</sup> It helps if one thinks of anti-paedophile animus as sitting on a continuum of gay hate bias.

For many perpetrators, anti-paedophile bias is conflated with a pre-existing anti-gay bias. One animates the other and disentanglement is not straightforward. For these perpetrators, the pejorative terms ‘poofter’ and ‘rock spider’<sup>33</sup> were interchangeable; in their minds they were one-in-the-same sexual identity category.

Nevertheless, it is helpful to distinguish anti-gay and anti-paedophile as distinct types of animus despite the way they sometimes get conflated in the minds of perpetrators. Of course, it also bears emphasising that collective social animosity to paedophilia is arguably more potent than the relative level of anti-homosexual animosity. So anti-paedophile sentiment coalesces with anti-gay sentiment to produce a particularly potent form of animus.

A perpetrator animated by anti-paedophile animus may well believe he has some tacit social approval in subjecting a man he perceives to be a paedophile to a violent assault. To the extent that Tomsen (2009: 54) has documented what he terms ‘a wider ‘respectable’ hostility towards homosexuality’ that prevailed in the 1980s and 1990s, one needs to appreciate that every ‘respectable’ citizen during this era was presumed, without question, to despise paedophilia. Therefore, it is not hard to imagine that this collective social disavowal helped underwrite the *symbolic* and *actual* violence occasioned when a perpetrator would seek to punish a man he perceived to embody paedophilic desire.

We reasoned is that it is not sound public policy to conflate an animus towards homosexual paedophilia and an animus towards homosexuals. There are not too many social analysts who would want to support the historical slander that gays and paedophiles can be understood under a common moniker. Failing to distinguish the direction of animus and, as a consequence, over-including anti-paedophile animus under a straightforward anti-gay animus would be to lend inadvertent support to this historical slander. Mason (2013) argues that paedophiles should not be accorded hate crime victim group status even if they have been targeted due to hostility

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<sup>32</sup> In only one of the cases we examined (Green 59), was animus was expressed toward heterosexually attracted paedophiles (e.g. men sexually attracted to underage girls). This was further complicated by the incestuous nature of this alleged desire.

<sup>33</sup> In Australia the term ‘rock spider’ is prison slang for a paedophile/child molester. The term has been adopted more widely than prison such that most people are familiar with it.

against their identity (see also Chakraborti and Garland, 2012, 2015; Garland 2016: 635). Mason defends her position in the following terms:

Adults who sexually assault children are the targets of vigilantism, violence and social demonization. While a legal response is necessary, hate crime statutes are not the appropriate mechanism to do this (2013: 175).

Whatever the normative argument, it is clear that whilst sound public policy aims to support gays as a vulnerable minority group, public policy does not afford the same protective support to paedophiles, and nor would it be sensible, just or proper to conflate them. In short, we opted to distinguish these cases because we believe as a matter of public policy it is important to distinguish the primary animus from what may be a secondary animus that sets up a different public policy response. So whilst most statutes (in the UK, Australia and the USA) *do not* account for paedophiles as legitimate victims of hate crime, we never-the-less have sought to distinguish the material fact that anti-paedophile animus initiated many of the crimes we examined in the Parrabell case files. Exclusion from statutory protection aside, we could not dismiss the prevalence and relevance of anti-paedophile bias as it played out in the case narratives. That said, we have used the term ‘bias’ to denote a hate crime against perceived homosexuals and the more neutral term ‘animus’ to denote a crime against paedophiles.

#### **vi. Incipient or conflicted identity bias**

A second issue we encountered, which can be related, is that we found that many, if not the majority, of the cases involved offenders who had a bias toward their own *incipient identity*. These offenders may have been reacting violently against a perceived vulnerability to a sexual identity challenge. The challenge may have aroused a version of male honour, often leading to provocation being argued in court (for a discussion of this phenomenon see Tomsen 2003; and Tomsen and Crofts 2012).

To help the reader of this report understand this challenging idea of an individual who has a bias towards their own incipient identity, consider the hypothetical example of a young man who thinks of himself as being heterosexual or ‘straight’ in the common vernacular (attracted to women). He may nevertheless (perhaps unconsciously) seek out the company of other men. His sexual attraction to other men may be something that is formative (still latent) and not yet

fully realised or expressed by behaviour. To further complicate matters, his homosexual desire might be so deeply suppressed that he is not even aware that he is 'closeted'. Here Mason notes that personal anxiety about being 'visible' or 'out' as a same-sex attracted man can be a factor that promotes a closeted state of being (2001). Perhaps such a person is – in fact – bisexual or just experimenting with their sexuality. Either way, their sense of possessing a stable or fixed heterosexual identity gives way to a psychic conflict when it is threatened. This typically plays out in the following manner. Such a young man finds himself in a social situation (often in a private space like a living room or a bedroom; and often whilst intoxicated or affected by drugs) where an *alleged* sexual advance is made by another male. This could constitute a touch or a suggestion from the other man present that sex could take place. The young man in question is so affronted by this situation that he seeks to shore up his heterosexual identity by resorting to physical violence. This masculine response (avowed by society as heteronormative – see Meyer 2014) resolves the temporary [*in the moment*] psychic crisis by giving him something stable to cling to: a heterosexual identity. So here, the paradox at play is that anti-gay bias is – in a very real sense – directed not just *at the victim* but also symbolically *at the part of the self* that the assailant finds so threatening. Of course, a further complication is that such an account may just be fabricated as an explanation to exculpate an individual when a matter goes to court. In any event, as Tomsen has astutely noted:

These various perpetrators are not closet homosexuals but are better understood as failing heterosexuals in a culture that generally collapses heterosexuality and masculinity together (2009: 125).

Whilst identity confusion and the quest to re-affirm a sense of stable masculinity (Tomsen 2009) may well be the bedrock for all bias, it may be perceived on a continuum that involves more or less reflexivity and supporting gestures (like the involvement of others in the reactive criminal action). This leads to an implication from this investigation which we will discuss later in the report.

In dividing the cohort into two types of bias, we wish to reflect our observation that there is a meaningful distinction in these types of bias, and that the latter bias (anti-homosexual paedophile) needs more examination by research for reasons of public policy referred to above.

## **vii. Proactive and associative bias**

These are difficult concepts so we will try and explain them through the following illustration. In terms of the level of predation or animus (proactive, reactive), *proactive* was taken to mean that the offender(s) actively set out to locate and assault a victim. *Reactive*, on the other hand, referred to the sort of scenario where a person did not set out to be violent *per se*, but rather responded with violence when allegedly subject to a sexually solicitous suggestion or some form of physical touch that was construed by them as unwanted. Here the violence was allegedly a reaction (sometimes presented in court as a form of self-defence). A more basic way of understanding this distinction is to ask ‘Did the offender(s) set out to locate a victim to subject him to violence?’ or ‘Did the violence originate and escalate in the moment of an encounter without any pre-meditation?’

We also scored cases on whether we could find that the bias involved an association with others. Broadly speaking, we were looking for evidence that the crime involved a communication to another perpetrator or to other potential perpetrators. We looked for evidence of *denunciatory non-identification* with the vulnerable group. Concomitantly, was there a context of offender support and/or was the event relatively organised? This is understood in legal terms as mitigating and aggravating circumstance. There were numerous cases involving multiple perpetrators, and many of these, but not all, we categorised as associative, in this sense.

Altogether, the academics subcategorised the cases into clusters in terms of the identification of the victim with a target of bias (gay, paedophile, no bias, Insufficient Information), level of predation or animus (proactive, reactive), and the offender’s denunciatory non-identifications with the vulnerable group (which provides a context of offender support as an isolated or organised event) as aggravating or mitigating. To simplify our coding, we allocated the cases according to the type of categorical animus (anti-gay, anti-gay paedophile), the predictive motivation behind the bias (proactive versus reactive) and associative denunciatory non-identification with the targeted person or persons (associative/non-associative). Accordingly, for the purpose of public policy, the most serious kind of bias is proactive and associative, and we term this a Type A Bias Crime:

- *Type A Bias Crime denotes events which have two features. First, offenders proactively seek out opportunities in which to brutally express their animus. Second, they communicate and associate with others on the basis of this animus.*

These are the bias crimes against which *Strike Force Taradale* was struck. They include the most notorious instances of anti-gay bias murder. For example, the case of Johnson (40) where 8 youths fatally assaulted the victim in a park in Alexandria. Another example is the murder of schoolteacher Wayne Tonks who was suffocated after being tightly bound by adhesive tape to his ankles and knees by two youths.

- *Type B Bias Crime denotes events in which offenders proactively seek out opportunities to brutally express their animus, but do so furtively or in isolation from others, and act individually against victims.*

An example of this type of bias crime is presented in Dempsey (67). Stephen Dempsey was murdered at a beat by a lone assailant armed with a crossbow.

- *Type C Bias Crime denotes an event in which an offender is reacting with criminal violence on the basis of the victim's perceived identity in an included category, usually as an over-reaction to a perceived slight against his identity.*

Type C incorporates what formerly was the defence of provocation. It excludes the associative dimension and those offenders who proactively seek a situation against which to claim a reaction. An example of this type of bias crime is that of Marsh (case 60) where a 64 year old bisexual male allegedly made a sexual advance to a 17 year old youth who retaliated by bludgeoning the victim's head with a garden gnome ornament.

This produces a checklist:

Type	Motivation	Indicators
A	<i>Associative and proactive</i> The offender has gone out of his way to place himself in a situation in which he can subordinate a person on the basis of his/her perceived identity <b>AND</b>	<ul style="list-style-type: none"> <li>• Witness statements, comments</li> <li>• Formalised hate associations</li> <li>• Previous existence of hate crime incidents</li> <li>• Location of incident [proximity to a 'beat' may be significant]</li> </ul>
	The offender has engaged in bias <i>communications</i> in the course of carrying out a harmful act or activity against a person identified by that bias, (eg. anti-gay) <b>and/or</b> the offender <i>associates</i> with others on the basis of a shared bias	
B	<i>Proactive, non-associative</i> A non-associative offender has gone out of his way to place himself in a situation in which he can subordinate a person on the basis of his/her perceived identity	
C	<i>Reactive</i> An offender has reacted to a situation in a manner that suggests that an animus towards a vulnerable group contributed to the motivation for the crime	

For further elaboration on the thinking process that the academics used to classify cases see the schematic in Appendix C.

The academic team scored the cases based on the indicators in the flowchart diagram [above].

### viii. Concordance coding

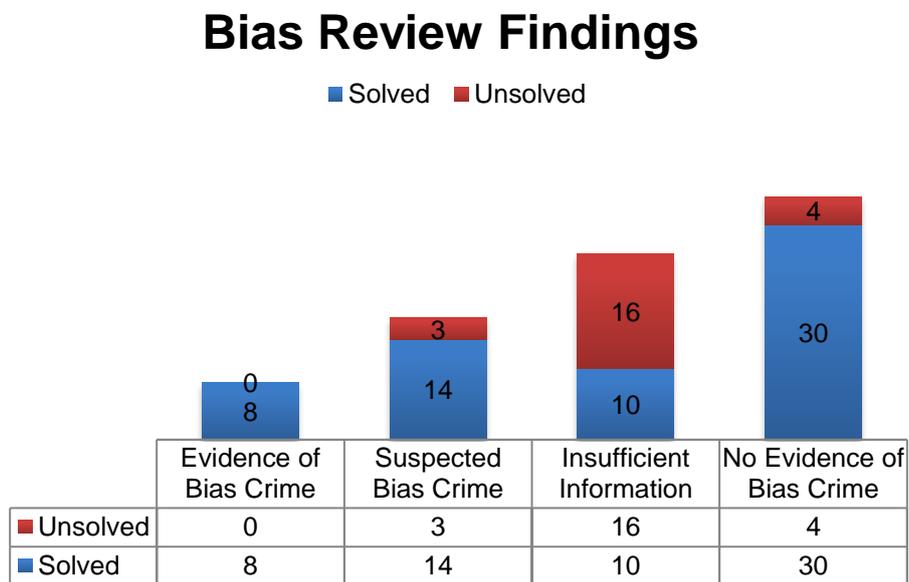
As a team, we decided that in order to maximise the reliability of an admittedly less than ideal measurement, we would independently code the cases and then review our independent scoring in an effort to reach consensus as a team. Our initial scoring led to the discussion of the nature of the bias we were coding and to a decision to clearly distinguish those that were anti-gay bias only from those that were anti-gay paedophile animus. The subsequent independent coding on the revised instrument also required a concordance consultation that resulted in the final scores. We had some initial disagreements regarding three or four of the cases, however, further discussion of these cases resulted in a consensus.

There is a distinction in coding that was identified in discussions with police concerning the understanding of the term 'evidence'. Police team members of Parrabell have categorised as

Suspected Bias Crime [SBC] cases where there is evidence that may support a court case that the crime was a bias crime. In contrast, we have coded as Insufficient Information [II] cases where the evidence that may support a court case is ambiguous and requires further probing (to provide further information that the file or file summary is unable to provide).

## FINDINGS

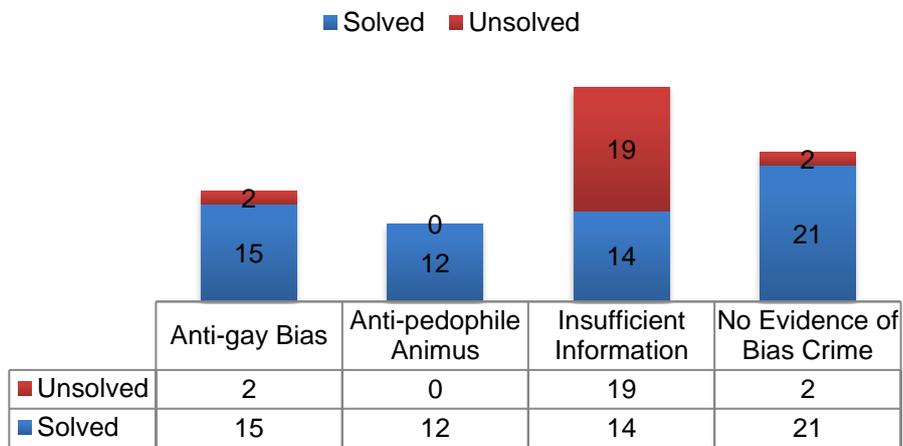
In making the following findings about these cases, we wish stress the point that we cannot conclude that significant incidence anti-gay violence did not exist in the time period covered by the cases. *Strike Force Taradale* indicated possible links between several murders against homosexual males who had associations with beats in the greater Sydney region, with the common link involving groups of youths targeting homosexual males at Bondi and Alexandria. The cases in SFT are represented in SFP. The subsequent coronial findings of the [then] Deputy State Coroner Jacqueline Milledge found that gang violence and threats to throw men off cliff faces ‘was a Modus Operandi of some gay hate assailants’ [quoted directly from Case 36 John Russell]. SFP found the following in their review of the cases:



**Figure 1: SFP Bias Review Findings**

The academic team found the following:

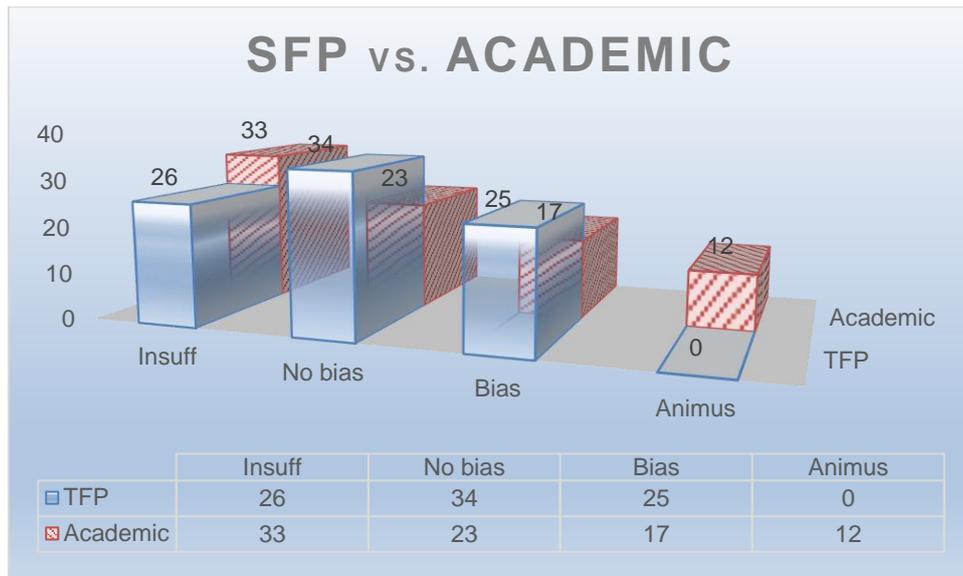
## Review Findings by Bias Subcategory



**Figure 2: Review Findings by Bias Subcategory**

In comparison:

- SFP recorded more anti-gay bias crime {inclusive of suspected bias and evidence of bias} (N=25) than the academic team (N=17).
- The academic team recorded total serious (Type A, Type B) animus crime (inclusive of anti-gay bias and anti-paedophile animus) (N=20).
- Including its anti-paedophile category in all Types, the academic review recorded more total animus (N= 29).
  - Taking solved cases as the denominator (62), a little less than half were positively deemed to be bias or animus crime (N=27) by the academic review team. Excluding 13 cases in which there is insufficient information, this is 55%.
- Taking the total cases as the denominator (N=85), the academic team found (N=29) as deemed to be bias or animus crime, or 34%.
- The SFP team designated more cases as No Evidence of Bias (N=34); the academic team found only (N=23) as the academic team were more likely to place doubtful cases in the Insufficient Information category.
- A large percentage of crimes that may involve anti-gay bias remain unresolved. The academic team found (N=33) and the SFP team found (N=26) as II and therefore *could be bias crimes of some kind*.



Note: TFP Bias figure combines Evidence of bias crime plus SBC.

**Figure 3: Strike Force Parrabell vs Academic Findings**

Based on our definition and our review of the literature, the academic team is able to comment on the character of those cases where bias is suspected, according to three tiers of factors in two categories.

***Type A Bias Crime (Proactive, associative)***

Type A Bias Crime, in which there is both proactivity and association, was found by our team in 11 of the 62 solved cases (and in 13 of the cases overall). If cases of insufficient information are excluded, this increases to 13/49, or 27%.

Given that these are arguably the most serious of crimes and that they are the ones that best represent the kind of animus against which a robust law enforcement response must be made to represent a public rebuke of bias, it is important that the number reported neither deflates or inflates their significance. This report cannot conclude on the significance of this number. However, it is not anywhere near the *total cases* of the original (88) or review (85) list.

***Type B Bias Crime (Proactive, non-associative)***

We found that there were 7 proactive non-associative cases. These are ‘lone wolf’ cases in which it appears that despite the lack of communication or association, it could be found that

the perpetrator was purposeful in selecting or targeting the victim on the basis of bias prior to the event eventuating in homicide.

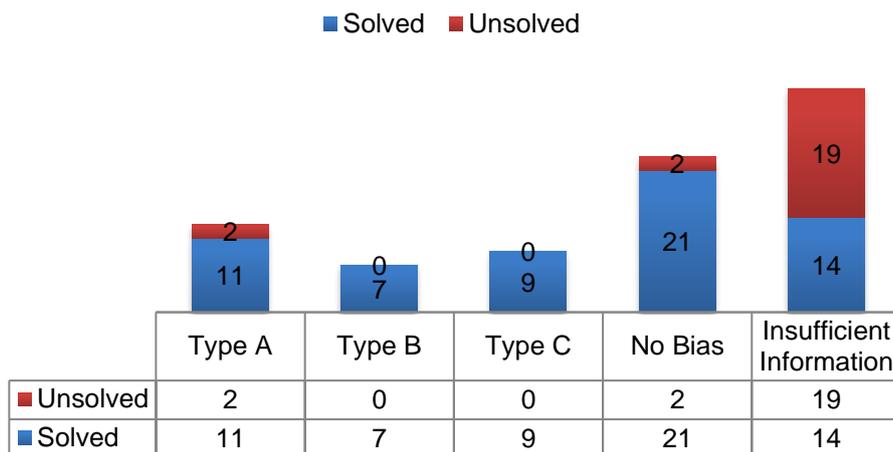
This represents about 14% of the solved cases for which there was sufficient information. In the cases as a whole (including unsolved) the percentage decreases (7/85) to about 8 percent.

***Type C Bias Crime (Reactive, non-associative)***

The third category is arguably the least ‘serious’. These are crimes that are non-associative reactive. There were nine such cases. About 18 percent of the solved cases for which there was sufficient information were coded as reactive (9/49). In the cases as a whole (including unsolved) for which there was sufficient information, the percentage decreases (9/53) to 17 percent.

We found in this category there were no associative reactive cases, because the concepts are mutually excluding. An association on the basis of a bias is going to be deemed proactive when that bias is expressed.

### Review Findings by Crime Bias Type [A,B,C, No Bias or II]



**Figure 4: Review Findings by Crime Bias Type [A, B, C, No Bias or II]**

### Total Cases by Bias Type

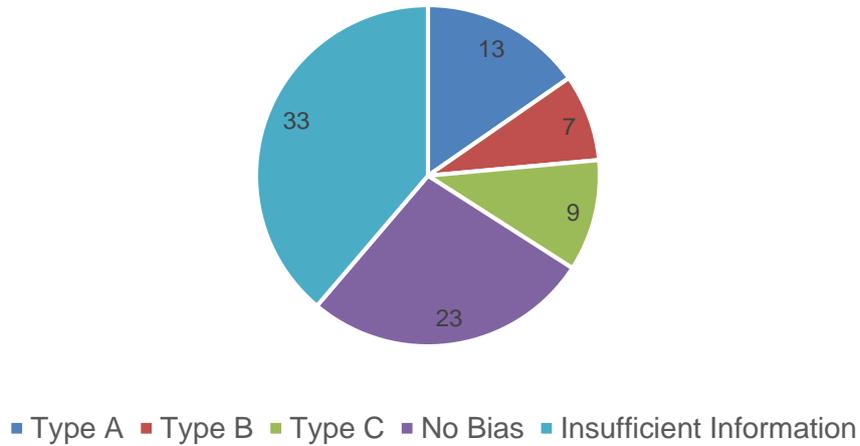


Figure 5: Total cases by Bias Type

### Total Cases by Bias Type and Category

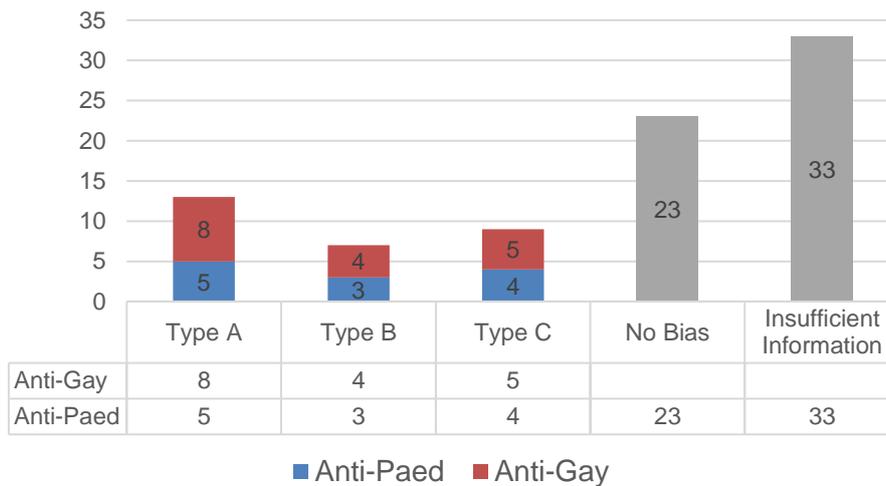


Figure 6: Total Cases by Bias Type and Category

There are a few common characteristic cases.

In the first type of cases – Type A offences – two typical scenarios prevailed:

- A male in his 40s is killed with excessive brutality (10/13 in this category) by a male aged in his mid-twenties by two (all but one in this category – although two are unknown) or more others.
- A male in his mid-twenties is killed without extra brutality by youths in or near a beat.

In the two types of cases with Type B offences, a 50+ year old male is killed by a teenage youth out of vengeance, or a male in his mid-twenties is sought out and killed upon a perceived identity insult.

In the case of most Type C offences, a young man with a possible sexual identity conflict lashes out with excessive violence at a slightly older man despite arguably having appeared to send off mixed signals regarding his purpose for their interaction.

### *Clearances*

One way that police are held accountable for the efficacy of their investigations is by reference to clearance rates. Clearance rates may give an indication that certain types of investigations are subject to a prejudicial inattention to procedure. Research has found that clearance rates vary based on victim and event characteristics, with higher rates of clearance for homicides involving weapons other than firearms and lower rates for homicides involving strangers and older victims (Reidel 2008). It is also known that unsolved homicides are more likely to occur during other crimes (AIC, 2001). In a study (Wellford and Cronin 1999) comparing clearance rates across 20 of the largest U.S. cities, 37 of the 51 characteristics related to arrest clearance were associated with police practices. This includes how quickly homicide detectives are sent to secure the crime scene to begin the collection of evidence. According to research by Peterson and Hagan (1984) and Puckett and Lundman (2003) police are not willing to treat all victims the same.

Homicides are resolved either by deeming that no crime took place (the homicide is a suicide or accidental death) or by the charging of a suspect.<sup>34</sup> A clearance rate is a percentage that is derived by dividing the annual number of arrests by the number of homicides and multiplying by 100. The percent of cases that are solved and cleared will vary quite dramatically between jurisdictions and over time. The number of unsolved cases is worth comparing to overall and national and international homicide clearance rates. In the United States, police may solve as few as 26 percent of a city's homicides [e.g. Chicago, 2015] or as many as 100% of a state's [e.g. New Hampshire, 2014] (Murder Accountability Project, 2017). For the year 1999-2000,

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<sup>34</sup> There are also exceptional clearances, by which a case is considered solved but no offender is arrested. The rate refers to the number of offences for which a charge is made, rather than the number of offenders arrested.

Australia had a national homicide clearance rate of 86 percent (Mouzos and Muller 2001). The AIC's National Homicide Monitoring Report (Bryant and Cussen 2015) reported that in 2010-11 NSW solved 69/77 homicides and improved that to 67/71 in 2011-2012, or about 92%. A 2012 Auditor General Report (New South Wales 2012: 20) found that NSWPF homicides were finalised within 30 days in 2011 in 61.4% of cases (compared to national average of 68%).

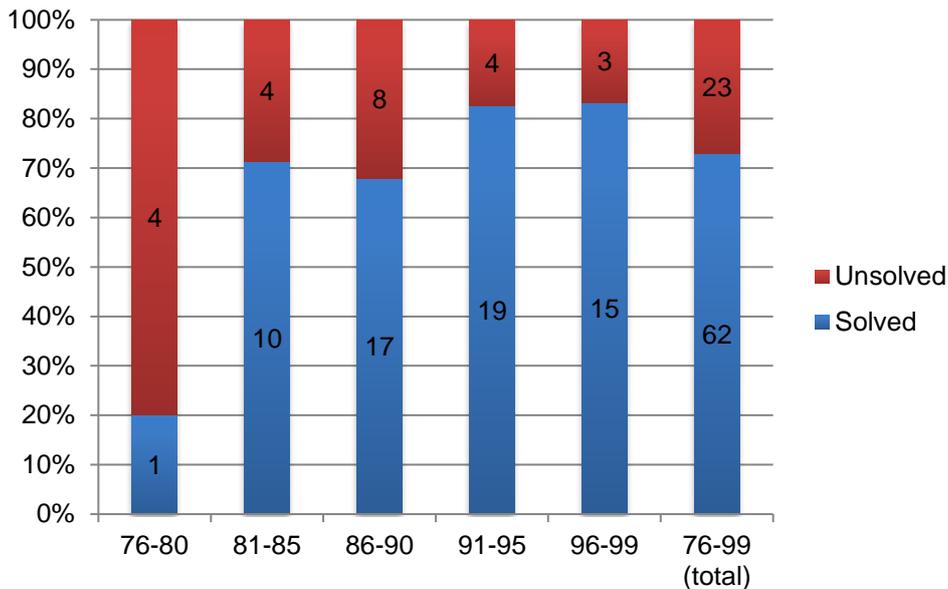
In this review, 23 of 85 cases are unsolved, for a homicide clearance of 73%.<sup>35</sup> This is more or less equivalent with the analysis of Mouzos and Thompson (2000: 2), by which it is noted that in 78% of gay-hate related homicide cases, an offender was charged. Considering an overlap of a portion of the data, the similarity is not so surprising.<sup>36</sup> There is no significant increase in the unsolved cases in the peak period of activity between the years 1986-1995. However, there is a very low clearance or percentage solved (20%) in the first five cases (1976-1980).

At the same time, we do not find support for Mouzos and Thompson (2000) in their finding of 37 victims of gay hate homicide in the period between 1 July 1989 and 30 June 1999. We found 7 *gay bias* homicides in this period, another 12 anti-paedophile animus homicides or 19 cases of animus-related homicides, with another 19 for which there is insufficient information to make a determination. We positively determined 29 cases of *gay-related* homicide over a period of 25 years, with another 33 for which there is insufficient information to make a determination.

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<sup>35</sup> This rather increases the time period normally permitted in calculating a rate – here the calculations are over five year periods and (for the total) over 20 years.

<sup>36</sup> Whatever the artefact of the selection methodology, and setting aside for the moment our objection to this finding, or perhaps providing an explanation for it, our list of 85 (from the original 88) finds more or less the same number, one that may not be unusual or extraordinary



**Figure 7: Clearance of 85 cases by 5 Year Segments 76-99**

***Other observations***

This sample reflects many of the characteristics that have been found in gay-related and anti-gay bias homicides. There is a significant age difference between the victims and offenders. As previously touched upon in this report, many of the cases (N= 7) involved young men of between the ages of 15-25 who killed older men aged 45 or older. This represents seven of the solved cases in which there was sufficient information to positively score a bias or 26%. As previously noted, the mean age of offenders was 20 (as far as our information was able to determine) and the mean age of victims was 43. Many of the solved cases involved multiple offenders. Eleven of the 27 cases (41%) for which a bias was determined involved multiple offenders; however this is not the majority found by Mouzos and Thompson (2000: 3). Restricted to the solved cases, 42/63 were found to have involved excessive force or extreme brutality.<sup>37</sup>

<sup>37</sup> Gauging whether a case involved excessive force or extreme brutality was not an easy task, particularly where many of the deaths appeared – on the face of it – extremely brutal. Many other [non Bias related] murder contexts (e.g. domestic violence) can be associated with ‘extreme’ or ‘excessive’ violence. To avoid any subjective judgments (exacerbated by the emotional toll of reading these disquieting case files), the academics were swayed by expert medical opinion in the case files. Forensic pathologists who conducted autopsies on the victims deployed phrases like ‘greater level of violence required to stop unwanted sexual advance’, ‘prolonged strangulation was excessive for a crime of this type’, ‘excessive amount of force’, ‘level of violence and injuries sustained was far greater than expected if just self-defence’ and ‘level of violence was extreme’ (to provide a few examples). When remarks like this were recorded, we were persuaded to categorise such cases as demonstrating excessive brutality. Conversely, if a forensic pathologist stated that the ‘violence was

## *No Bias Cases*

Our review found no evidence of bias in 23 of 85 cases reviewed. The types of case where the academic team (and police) found no bias is worth reflecting on. In general, we were greatly influenced by coronial findings of suicide or misadventure.

Homicides occurring in close proximity to a beat are often gay-bias related, but sometimes this proximity has no direct bearing on the case. In the case of D’Rozario (14), the homicide occurred at a beat in Rushcutters Bay, however robbery was the principal motivation for the crime and no determination of a bias motive was provided in the evidence. Similarly, Campbell (case 77) was murdered in a frenzied attack by a knife-wielding assailant where robbery was deemed the sole motivation for the crime. In the case of Currie (37) a death occurred at a toilet block beat in North Manly, but the cause of death was attributed to a poly-drug overdose.

In other cases – some of which were close to beats, but in the absence of any indicators that bias was involved – suicide was determined to be the most likely cause of death. For example, friends reported that Raye (case 32) had been in a very fragile mental state and had expressed suicide ideation before she died. Wark (case 39) had a history of depression which was deemed likely to have led to the deceased committing suicide at ‘The Gap’. The sexuality of these victims may well have led to them being accounted for as possible gay-hate related homicides in ‘the list’.

Other striking ‘No Bias’ cases include that of Flores (case 49) who died in a park (beat) in Woolloomooloo. The victim was gay and the perpetrator was bisexual. After having consensual sex, the victim allegedly declared that he was HIV positive and this caused the other man to react with lethal violence.

Financial gain was often identified as the principal motivation for a crime (in the case of Mills (66) this was the chief motivation). Similarly, in the case of Solness (25), the murder was chiefly coordinated in connection to drug dealing and a drug debt.

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proportionate to threat he felt’ then the academics did not categorise such a case as demonstrating excessive brutality. Sometimes the violence was excessive based on the *context*. For example, in Johnson (case 27) it was observed that it was ‘excessive’ to shoot someone for teasing.

In the case of Johnson (27), a 20 year old man was murdered by his co-worker, Muscat, on a road gang. Johnson would mercilessly tease Muscat – touching him and making simulated sexual advances towards him. Muscat would get riled and very upset but the teasing did not abate. In a profoundly serious over-reaction to the persistent teasing, Muscat shot Johnson once at close range. This case may well have been collected on ‘the list’ due to the (homo)sexual nature of the teasing.

In Payne (31), the victim appears to have been responsible for his own death by inserting a steel object into his urethra, resulting in fatal septicaemia. In the case of Mokdad (88) and Creighton (89), the victims were gay, but their sexuality had no bearing on their murder. It was prompted when the two men allegedly made threats to the perpetrator and his family in relation to a pending criminal court case. He overreacted to these threats and shot both men with a pistol.<sup>38</sup> And in a case that has generated much media attention (Swaczak 38), a gay youth was heavily sedated by two men who commonly sedated male youths for sexual purposes. No evidence of any bias was evident in the case file.

The inclusion of cases like Payne (31) and Travers (53) in the original list of suspected gay hate homicides in circulation in NSW is something of an enigma. Their embracement goes some way to speak to the inappropriateness of this list (given that one case was not a homicide and the other occurred in a different State jurisdiction).

### *Difficult to code cases*

It bears emphasising that even when using a carefully defined instrument to categorise cases, there was often difficulty applying it to complex case details. For example, the distinction between ‘proactive’ and ‘reactive’ can be hard to determine, even where a great deal of forensic evidence and witness testimony may be available, which in most cases it is not. For instance, in some cases the perpetrator *actively* visited or sought out contact with a person, but the resulting death from this social interaction was linked to an alleged unwanted sexual advance. In these cases one might conclude that the case is ‘proactive’, but we sought to restrict this

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<sup>38</sup> In the case file one of the victims was referred to as a ‘poof with a bad haircut’ but in the context of the matter this was not construed as evidence of bias that inspired the commission of the crime. The two men were murdered because of threats levelled at their killer.

classification to cases where animus and an intention to cause harm underwrote the initial social contact.

A case that illustrates the difficulty of coding 'reactive' or 'proactive' (as though they are pure and mutually exclusive categories) is presented by that of Tuckey (61). The killer, Dunn, initially encountered Tuckey on a cycle path and violently assaulted him, supposedly because Tuckey accosted him and knocked him off his bicycle. At this stage one may have classified the killing as 'reactive' but the killer left the scene of the altercation and returned several hours later. The academic team saw this time lapse and the return as significant and classified the case as 'proactive'.

Similarly, the involvement of two people present in a crime does not necessarily mean that we construed that crime as 'Associative'. In some cases a second person privy to a crime was either not directly involved in the crime or predominantly a witness to an event that they could not or did not anticipate. Consistent with the meaning of 'association' in the literature and our model, we coded these as 'Non-associative'. To class a crime as 'Associative' we wanted to see evidence of two or more people conspiring on a shared prejudice to cause harm.

In some cases, drawing a distinction between anti-paedophile and anti-gay was profoundly difficult. For example, in the case of Walsh (47), the deceased had a criminal conviction for sexual assault against a male minor and a reputation for paying young aboriginal youths for sexual favours. However, the perpetrator *cannot* be presumed to know these 'facts'. Indeed, the only antipathy he expressed to the victim (as accounted for in the case file) was couched in the homophobic term 'faggot'. For the academics, the *motivation* of the offender is crucial to coding the cases, rather than the *characteristics* of the offender. So in this case – despite the victim's ostensible paedophile sexuality, we classed the perpetrator's motivation as anti-gay (because he expressed it as such). This may seem like an incongruity (given the paedophile background revealed by the detectives) but the question of motivation really has to pivot on what is going through the perpetrator's mind in the ensuing criminal act. This was the logic we took to all case analysis.

In the case of Richards (23) the principal motivation for the murder was knowledge that the victim supposedly had thousands of dollars in his possession. This was complicated by the intended victim's perceived vulnerability. One of the killers said he was 'scared of him' and a

‘child molester’ (as quoted in the case file). For the police, this crime was motivated by greed; a robbery. For the academics, the way the perpetrators conceived of the victim as a vulnerable, scared paedophile swayed our classificatory decision. We classified this case as anti-paedophile.

Robbery was an extremely problematic facet in some of the cases we looked at. In those cases where it appeared to be a principal organising factor behind a crime, it was profoundly challenging to accommodate how the notion of anti-gay bias played out; if at all. Questions – that often went unanswered by the case file data – taunted the academic evaluation process:

- Were men (perceived to be gay) being targeted for assault due to their presumed wealth?
- Were men (perceived to be gay) imagined to be weak, stereotypically feminine subjects who *could not*, or *would not*, retaliate?
- Were men (perceived to be gay) imagined as reluctant to report such a crime, particularly if it occurred at a beat in or in an era where gay men believed police might treat them with hostility if they reported the crime at a police station (e.g. in the 1980s)?
- How – if robbery was indeed the prime motive – could these cases escalate in such a manner that death would result? [the history of homicide tells us that the ‘*robbery gone wrong*’ scenario is not a novel concept]

Often the academic team was left to speculate. If gay men were targeted due to their *perceived vulnerability* and a concomitant logic that they had cash or possessions worth stealing, this begs the question whether this is factual anti-gay bias, or merely the sorts of expedient, target choices that perpetrators make when selecting potential victims. We don’t imagine that criminals target rich people because they necessarily hate them or subject them to antipathy, but rather because they see them as lucrative targets who will yield a benefit for their efforts. Of course, a person targeting a gay person for robbery *might* also happen to hate gays.

The academic literature relating to robbery to hate crime is more conclusive. In terms of understanding robbery as it might relate to bias, Jacobs and Potter (1998) provide the real life example of Dontay Carter, a black American man who always targeted white men for robbery

because he believed them to be rich.<sup>39</sup> He did not target them because he had any prejudice against their skin colour. Analysing this example, Hall observed:

Therefore his prejudice was based upon the perception of white men's financial status and not their ethnic group *per se*. Thus the causal link between his prejudice and his offending behaviour was strong, but his prejudice in terms of 'hating' his victims was not' (2005: 17).

In classifying the cases, the academics were informed by *both* the literature about robbery [as it relates to hate crime] and the notion (often unfathomable) of what might reside behind the victim targeting logic of perpetrators. In any event, other factors present in the police case files often swayed our classificatory decisions. Robbery is certainly a vexatious factor in hate crime theory and argument about the extent to which victim targeting is underpinned by bias (of any nature) is likely to endure long after this report is published.

Whilst many cases were difficult to classify with our instrument, perhaps the case below best exemplifies how challenging some cases proved to be for the academics.

The homicide of Don Gillies (59) is a notorious crime that saw the Homosexual Advance Defence enshrined in Australian Law by the High Court in the Appeal case of *Green v. R.* [1997 148 ALR 659]. The case has been subject to sustained academic scrutiny (e.g. Statham 1998; Howe 1998; Meure 2001; De Pasquale 2002; Golder 2004; Mack 2013) which cannot be taken out of the context in which the academic team evaluated it. In this case 22 year old Malcolm Green punched his friend, 36 year old Real Estate Agent Don Gillies approximately 20-30 times in the face before stabbing him with a pair of scissors approximately 10 times. Green alleged that Gillies sexually propositioned him and that *this* proposition – in his own words – 'forced me to open more than I could bear' (as quoted directly from the High Court judgement by Golder 2004, p. 53). Here, Green was referring to the memory of his father *allegedly* sexually abusing his four sisters. This was a profoundly challenging case to code. Whilst bias was certainly at play, it was difficult to pinpoint the animus with clarity. Certainly

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<sup>39</sup> Jacobs and Potter (1998) also provide the hypothetical situation of a neo-Nazi figure who shoplifts from a shop owned by a Jew. Here, they point out, the primary motive is to acquire stolen goods, rather than target Jews. Their logic is that this is not, on the face of it, a hate [bias] crime. As Hall elaborates on their scenario: 'In the strictest sense such offences would not, and indeed should not, be hate [bias] crimes because they are not motivated by prejudice, but by some other motive, for example economics or hunger' (2005: 16-17).

Green expressed anti-gay bias when he admitted to killing Gillies by explaining his actions in the following way: ‘Yeah, I killed him but he did worse to me’. When asked *why* he did it, he replied ‘Because he tried to root me’<sup>40</sup> (as quoted from the Police case file). Confronted with a variety of animuses at play, the academic team were persuaded to classify this crime as Anti-paedophile bias. We were swayed by the age of the perpetrator (22) and the bizarre logic that the supposedly solicitous touch of a homosexual [gay] man (Gillies) somehow triggered in Green a memory of his father incestuously touching his sisters.<sup>41</sup> This categorisation may well appear slightly flawed in its logic, but the academic team wanted to capture the element of paedophile hatred captured in this most complex case.

One could argue that the academic team should have classified Gillies as that of *double bias* [anti-paedophile *and* anti-gay], but this would have produced a statistical discordance, so ultimately the academic team preferred to make the difficult decision of agreeing that there was a bias at play, but only one bias. Similarly, in Marsh (60) both anti-paedophile *and* anti-gay sentiment was at play. The anti-paedophile sentiment was somewhat *implicit* (reference to the murder victim as someone who would ‘come onto young blokes’ – as cited in the case file), but ultimately it was decided that the anti-gay sentiment overshadowed the anti-paedophile sentiment. So ultimately the academic team classified the case of Marsh as anti-gay. Double bias was initially prevalent in approximately three other cases, but ultimately a careful revision of the case file enabled a single category of bias [either anti-paedophile or anti-gay) to be assigned. We provide this explanation in the interests of transparency and to illustrate how complex the process of assigning a category of animus could be.

Another challenging case was that of Crombie (26). The victim – a soldier – allegedly called two men he met in a park ‘poofers’ and a violent scuffle unfolded, exacerbated by all three men being highly intoxicated. Despite later referring to the park as ‘Poofter’s Park’ – the term the assailants used seemed to be the colloquial term locals used for the park rather than their idiosyncratic pejorative naming of the space. Robbery also took place. The police coded this case as NBC. The academics wondered whether being accused of being ‘poofers’ (by the eventual victim) so riled the two drunken men that they reacted violently (as though the

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<sup>40</sup> The term ‘root’ is Australian slang for sexual intercourse.

<sup>41</sup> Notwithstanding the fact that many commentators have suggested that this so-called memory may well have been a ‘phantasy of abuse’ or a self-serving story to aid in pleading provocation (Young 2001: 3008), the academic team had to take it at face value when reading the case file.

homophobic slur imputed their reputation). So the academics coded this case as II. It was a curious case to code because normally the direction of the expressed [spoken] animus flowed from the perpetrator(s) to the victim, rather than the other way around.

### ***An observation about how nuance is lost in the process of categorising cases***

Our brief in this report was to categorise SFP cases according to evidence of bias. Arguably these cases demand even more layers of categorisation than we gave them. It should be stressed that when one ‘pushes’ cases into a few categories, we do damage to their uniqueness and variation. This is an unfortunate and unpreventable reality we wish to acknowledge. For example, in the case of Tuckey (61), the victim was killed because a young man who encountered him on a bike path was so enraged and angered by his cross-dressing that he assaulted Tuckey. As Tomsen (2002: 53) notes ‘Some killings reflect disgust and anger with the breach of gender norms implied by public displays of effeminacy, especially through clothing and grooming’. This sort of detail – animosity towards breaches of gender norms – is precisely the sort of minutiae or nuance that gets lost when a crime is categorised (in this case as Anti-paedophile because the killer used the terms ‘poofster’ *and* ‘rock spider’ to describe the victim).<sup>42</sup> Other nuances that got ‘lost’ at the point of classification included factors like race and ethnicity, class, religious beliefs, social privilege/status (or *lack* thereof), addiction, and states of physical and mental health.<sup>43</sup>

## **SUMMARY/ IMPLICATIONS**

The cases we have reviewed in this list have been proffered to police attended by the questions: Was there a significant increase in anti-gay homicide in the period under review and did the NSWPF fail to adequately categorise and investigate these crimes in the attempt to clear them?

An allegation by families and partners of those whose deaths are still unsolved along with researchers, journalists and advocacy groups such as ACON has been made that there has been

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<sup>42</sup> Some commentators have described this case as having a ritual humiliation aspect to it because the victim was found with a stocking tied to his penis. It is unclear whether this is indeed the case because our reading of the case file cannot preclude that the victim presented (to his eventual murderer) with the stocking already tied to his penis.

<sup>43</sup> The factors were obviously taken into account when reading the case files, but they get evacuated at the point of classification.

insufficient attention by police to homicides that may have been gay-related. The NSWPF have undertaken reforms including the establishment of a Bias Crime Unit and also in a comprehensive review of all the cases on the list of 88 (reduced to 85) that have been proffered in support of the allegation. In addition, the NSWPF commissioned this research to review their evaluation of those cases. We cannot find support for the claim in the analysis of these cases as they currently stand. As above, we can find no evidence of unusual clearance of these cases. Whilst we find a slightly higher proportion of the cases as indicating the presence of bias crime, a breakdown of the bias indicates a more complex picture that involves categories and types of bias that stem from a variety of motivations.

Our review of these cases suggests that identity conflict is an important dimension of anti-gay bias crime and appears to be under-represented in the literature. We were struck by how many cases involved perpetrators who appeared to be uncertain of their sexuality and appeared to be challenged to better define it. We derive this out of the description offered by the SFP team. If this is a finding replicated in other studies of suspected anti-gay bias homicide, then it has implications concerning the nature of anti-gay bias.

Our review also has implications for public policy that is reactive to what is properly called a moral panic as opposed to that which is based on social science. In this case, we can do a proper anatomy of that moral panic, having been given a yardstick by which to measure the extent to which panic rather than evidence has informed the reaction to anti-gay bias crime. Our evaluation suggests that whatever the true dimensions of police investigations of cases that may have involved anti-gay bias, the indicator that may be provided by the existence of the list is not clearly evident of the absence of investigative diligence. On the contrary, in all cases that we have been able to evaluate, where police have found evidence of an anti-bias crime they have also been proactive in investigation.

Mason *et al* (2017) argue that in the modern era, successful hate crime policing involves clearer communication between police and communities so that misunderstandings between both parties might be minimised. In reviewing their recent book *Policing Hate Crime: understanding communities and prejudice*, Professor John Garland notes:

The history of the relationships between the police and hate crime victim communities ... have often been fractured by poor communication and breakdowns in trust and confidences (back cover book review, Mason *et al* 2017).

Herein lies a factor that is vitally important. To the extent that NSWPF has fostered open and reciprocal communication with groups like ACON and the wider GLBTIQ community over a 20 odd year period, it should continue to do so in a genuine spirit of transparency and cooperation. As Chakraborti and Garland assert (2015: 123) ‘Eliciting the support and trust of the public is a priority for contemporary policing’. For such relationships of trust and active lines of communication are the building blocks of mutual trust. And trust – in the modern world – is integral to the sharing of information which itself produces tangible justice outcomes like the disclosure of information pertinent to an investigation, arrests, convictions and safer communities. This, of course, is not just applicable in relation to gay-bias crime contexts, but any bias crime where the community might hold the key to solving or preventing a particular crime.

### **Recommendations for future of policing, community engagement, training and development of bias crime indicators/processes**

These recommendations strike us as flowing out of this evaluation:

- NSWPF should continue to foster reciprocal relationships of trust with organisations like ACON and the wider GLBTIQ community as they are vitally important for effective policing and building a safer community.
- Better precision is needed regarding the discovery, assessment and recording of bias crime.
- NSWPF will need to develop a protocol for bias discovery that is prudent and grounded on evidence-based research.
  - Police will need to be cautious about over, under and mis-categorisation of bias crime.
  - The BCIRF instrument used by NSWPF is supported by practice-based rather than evidence-based adoption in a number of jurisdictions. As such, it requires empirical support that, thus far, is not evident.

- To arrive at a good measure of reliability and validity for this, or any such instrument, requires a methodologically rigorous evaluation. In any case, it would be prudent to consult widely for diverse expertise on the development of such an instrument. The development will also benefit from community engagement.
- Community engagement on bias crime is an opportunity not only to develop or improve a protocol, but also to educate community leaders on the necessity of policing bias from evidence.
- Training on bias should be sensitive to the negative outcomes where there is over, under and mis-categorisation.
- That the NSWPF keep in mind that bias is a dynamic and fluid concept. Whilst the anti-gay and anti-paedophile bias explored in this review prevailed in the 1980 and 1990s, police should be vigilant to new forms of bias yet to be identified at the time this report is published. Such vigilance will ensure that police respond to *emerging* categories of bias (as yet unidentified).

## Coda

The lamentable legacies of the past (chiefly NSWPF indifference to gay bashings coupled with a tacit social tolerance of violence directed at gay men) appears to be largely relegated to the past. The Sydney media no longer disseminate fear in the GLBTIQ community with reference to gangs with monikers such as the ‘Alexandria 8’, the ‘Bondi Boys’, the ‘Parkside Killers’ and the ‘Prime Time Kings’. Indeed, the Sydney media has been silent about recent teenage gang involvement in gay homicides or violence; the existence of such gangs now relegated to the pages of history of a more violent time. This, of course, is not to say that anti-homosexual sentiment cannot emerge under the right confluence of events, time and place to underwrite bias-related violence. The NSWPF should remain vigilant to the complexities and nuance of bias as it relates to sexuality and/or gender identity (including violence directed at transgender people) (see Moran and Sharpe 2004; Chakraborti and Garland 2015: chapter 5) and be poised to better combat it. The high water mark of such violence was certainly the period captured in this review. And given that some cases subject to review under SFP are still unsolved, a final, concluding recommendation is that – subject to best practice standards for reviewing ‘cold cases’ and in the interests of justice for the deceased and their families – any future leads or

fresh clues that might lead to convictions be vigorously pursued by the NSWPF. The fact that one case was excised from this review because it is under ‘active review’ by the Unsolved Homicide squad demonstrates that NSWPF are still pursuing justice for the unsolved cases in this review (where this is feasible). The academic team does not recommend that – on the face of it – any cases it reviewed should get re-investigated or re-opened. Such an appraisal is beyond our expertise, suffice it to say that no cases we reviewed stood out as having any obvious hallmarks of being inadequately investigated in the first place.

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## APPENDIX A

### ACON data

Midway through this review, ACON supplied 41 complete and 8 incomplete dossiers. The dossiers are a compilation of media accounts of the crimes (chiefly newspaper articles) and some material extracted from reported and unreported court judgements, coronial documents, journal articles (mainly those of Stephen Tomsen and Sue Thompson) and library databases. The dossiers were compiled over many years and were recently vetted by teams of volunteers. The dossiers contained the following subheadings:

- Summary
- Details of person's life
- Details of person's death/disappearance
- Details of the police investigation
- Queries raised/significance
- Correspondence with family.

The NSW police read the ACON dossiers and determined that – in terms of their factual evidence [holdings] based review – the dossiers did not offer any additional information that they did not have access to previously. Thus the NSW police did not alter any of their findings.

In terms of the academic review, the ACON dossiers were read with a view to reveal if they had captured any new or fresh material that was not in the individual police case files. This was a very challenging and time consuming task because one had to move backwards & forwards between each dossier and its relevant police case review form. The process of looking to identify new material in each dossier required painstaking attention to detail. Additionally, the ACON dossiers didn't have any definitive classification system. They just contained ideas (some of which were speculative) under the heading "Queries raised/significance" This also made evaluating the data very challenging. The academic team cannot guarantee that something significant might have got overlooked, such was the complexity of the process of reconciling the two data sets [Police case review forms and ACON data].

To further complicate this process, the documents often contained similar ideas albeit expressed in slightly different language. It should be stressed that the ACON dossiers were much smaller than the individual case review forms that the NSWPF used. It was also noted that some key dates and spelling of names were incorrect in the ACON dossiers. And in some dossiers the 'facts' presented were also incorrect (e.g. in one dossier it was claimed that the murder weapon was a shot gun, when in fact it was a .22 rifle). Such discrepancies make sense when one considers that ACON did not have access to the rich, factual data that the police possess. It should be noted that the section 'Details of the police investigation' was often either blank or provided criticisms of police that were not substantiated. It struck the academic review

team as curious that ACON would seek to evaluate the sufficiency of a police investigation without being privy to any substantive data that would permit such an evaluation to be made.

The academic team also determined that the ACON data did not provide any significant points of difference to the more substantive NSW police review forms. Indeed, ACON's reliance on ideas gleaned from media reports or unattributed sources was considered quite problematic for the academic team. To provide one example to illustrate this point, in the ACON Olsen dossier (case 56) it was stated that a prisoner confessed to the crime but that this confession was subsequently denied. The academic team cannot attribute weight to something that is ultimately denied or retracted. Furthermore, the academic team had no investigative powers or way of ascertaining if such a confession ever did take place and so had to discount this factor. Additionally, it should be noted that accounts of crime by journalists can be embellished (to help sensationalise a case and sell newspapers) and are not wholly reliable as 'facts'. So whilst the ACON dossiers were prepared with the most noble of intentions – a genuine desire to cast some light on the cases concerned – they proved to be a resource that did not ultimately provide any compelling reasons for the academic team to reclassify any cases.<sup>44</sup>

## **APPENDIX B**

### **Blank Copy of 'Bias Crime Indicators Review Form' [BCIRF]**

**SEE NEXT PAGE**

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<sup>44</sup> The ACON data may have a wider social value outside the parameters of this review. Its blend of media reports and court judgements illuminates the way that these deaths were reported in the press and adjudicated in the courts during the decades in question. Such a resource is profoundly valuable for other purposes [e.g. compiling social history] and the academic team thanks ACON for cooperating and sharing their dossiers with us. That the data ultimately did not prove helpful to the academic reviewers is not a reflection on the good will that saw this data collated in the first place.

# STRIKE FORCE PARRABELL

## Bias Crimes Indicators Review Form

<b>Investigation No:</b>	
<b>Victim/Deceased:</b>	
<b>Date of death:</b>	
<b>Investigation Status:</b>	
<b>Offender/s:</b>	
<b>Investigative Unit:</b>	
<b>Description:</b>	

1. Differences	
Prompts	Comment
<ul style="list-style-type: none"> <li>• <i>Immutable characteristic differences between victim and POI's sexual orientation</i></li> </ul>	
<ul style="list-style-type: none"> <li>• <i>Victim is a member of a group which is outnumbered by members of another group in the area where the incident occurred</i></li> </ul>	

<ul style="list-style-type: none"> <li>• <i>Victim was engaged in activities promoting his/her group</i></li> </ul>	
<ul style="list-style-type: none"> <li>• <i>Incident coincided with a holiday or date of particular significance to the victim or POI's group</i></li> </ul>	
<ul style="list-style-type: none"> <li>• <i>Victim, although not a member of the targeted group is a member a member of an advocacy group that supports the victim, or the victim was in company of a member of the targeted group</i></li> </ul>	
<ul style="list-style-type: none"> <li>• <i>Historical animosity exists between the victim's group and the POI's group</i></li> </ul>	
<b>Indicators</b>	<b>(y/n)</b>
Evidence of Bias Crime – sufficient evidence/information exists to prove beyond a reasonable doubt that the incident was either wholly or partially motivated by bias towards one of the protected categories and constitutes a criminal offence.	
Suspected Bias Crime – evidence/information exists that the incident may have been motivated by bias but the incident cannot be proven beyond a reasonable doubt that it was either wholly or partially motivated by bias and constitutes a criminal offence.	
No Evidence of Bias Crime – the incident has been determined as either not being motivated by bias towards a protected group or although bias motivation is in evidence it does not relate to a protected group.	
Insufficient Information – insufficient information has been recorded to make a determination in regards to bias motivation. This may be due to a lack of detail recorded by police or a lack of information supplied by victim's and/or witnesses.	
<b>GENERAL COMMENT</b>	
<b>2. Comments, Written Statements, Gestures</b>	
<b>Prompts</b>	<b>Comment</b>
<ul style="list-style-type: none"> <li>• <i>Bias related comments, written statements or gestures were made by the POI</i></li> </ul>	
<ul style="list-style-type: none"> <li>• <i>Comments and gestures can occur before, during and after the incident</i></li> </ul>	

<ul style="list-style-type: none"> <li>• <i>Victims may not be aware of the significance of gestures made</i></li> </ul>	
<b>Indicators</b>	<b>(y/n)</b>
Evidence of Bias Crime – sufficient evidence/information exists to prove beyond a reasonable doubt that the incident was either wholly or partially motivated by bias towards one of the protected categories and constitutes a criminal offence.	
Suspected Bias Crime – evidence/information exists that the incident may have been motivated by bias but the incident cannot be proven beyond a reasonable doubt that it was either wholly or partially motivated by bias and constitutes a criminal offence.	
No Evidence of Bias Crime – the incident has been determined as either not being motivated by bias towards a protected group or although bias motivation is in evidence it does not relate to a protected group.	
Insufficient Information – insufficient information has been recorded to make a determination in regards to bias motivation. This may be due to a lack of detail recorded by police or a lack of information supplied by victim's and/or witnesses.	
<b>GENERAL COMMENT</b>	
<b>3. Drawings, Markings, Symbols, Tattoos, Graffiti</b>	
<b>Prompts</b>	<b>Comment</b>
<ul style="list-style-type: none"> <li>• <i>Bias related drawings, markings, symbols or graffiti were left at the scene or were seen on the POI</i></li> </ul>	
<ul style="list-style-type: none"> <li>• <i>Before discounting symbols, ensure that you understand the meaning of the symbol</i></li> </ul>	
<b>Indicators</b>	<b>(y/n)</b>

Evidence of Bias Crime – sufficient evidence/information exists to prove beyond a reasonable doubt that the incident was either wholly or partially motivated by bias towards one of the protected categories and constitutes a criminal offence.	
Suspected Bias Crime – evidence/information exists that the incident may have been motivated by bias but the incident cannot be proven beyond a reasonable doubt that it was either wholly or partially motivated by bias and constitutes a criminal offence.	
No Evidence of Bias Crime – the incident has been determined as either not being motivated by bias towards a protected group or although bias motivation is in evidence it does not relate to a protected group.	
Insufficient Information – insufficient information has been recorded to make a determination in regards to bias motivation. This may be due to a lack of detail recorded by police or a lack of information supplied by victim's and/or witnesses.	

## GENERAL COMMENT

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## 4. Organised Hate Groups (OHG)

Prompts	Comment
<ul style="list-style-type: none"> <li><i>Objects or items that represent the work of an OHG were left at the scene, e.g. business cards, flyers, burning cross</i></li> </ul>	
<ul style="list-style-type: none"> <li><i>An OHG claimed responsibility</i></li> </ul>	
<ul style="list-style-type: none"> <li><i>There are indications that an OHG was involved or active in the area</i></li> </ul>	
<ul style="list-style-type: none"> <li><i>MO is similar to known MO of an OHG</i></li> </ul>	
Indicators	(y/n)
Evidence of Bias Crime – sufficient evidence/information exists to prove beyond a	

reasonable doubt that the incident was either wholly or partially motivated by bias towards one of the protected categories and constitutes a criminal offence.	
Suspected Bias Crime – evidence/information exists that the incident may have been motivated by bias but the incident cannot be proven beyond a reasonable doubt that it was either wholly or partially motivated by bias and constitutes a criminal offence.	
No Evidence of Bias Crime – the incident has been determined as either not being motivated by bias towards a protected group or although bias motivation is in evidence it does not relate to a protected group.	
Insufficient Information – insufficient information has been recorded to make a determination in regards to bias motivation. This may be due to a lack of detail recorded by police or a lack of information supplied by victim's and/or witnesses.	

## GENERAL COMMENT

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## 5. Previous existence of Bias Crime Incidents

Prompts	Comment
<ul style="list-style-type: none"> <li>Victim was visiting a location where previous bias crimes had been committed against members of the victim's group</li> </ul>	
<ul style="list-style-type: none"> <li>Several incidents occurred in the same area and the victims were members of the same group</li> </ul>	
<ul style="list-style-type: none"> <li>Victim has received previous harassing mail, email, social media posts or phone calls or has been the victim of verbal abuse (anti-gay) based on his/her affiliation with a targeted group</li> </ul>	
<ul style="list-style-type: none"> <li>Recent bias incidents or crimes may have sparked retaliatory bias crime</li> </ul>	

Indicators	(y/n)
Evidence of Bias Crime – sufficient evidence/information exists to prove beyond a reasonable doubt that the incident was either wholly or partially motivated by bias towards one of the protected categories and constitutes a criminal offence.	
Suspected Bias Crime – evidence/information exists that the incident may have been motivated by bias but the incident cannot be proven beyond a reasonable doubt that it was either wholly or partially motivated by bias and constitutes a criminal offence.	
No Evidence of Bias Crime – the incident has been determined as either not being motivated by bias towards a protected group or although bias motivation is in evidence it does not relate to a protected group.	
Insufficient Information – insufficient information has been recorded to make a determination in regards to bias motivation. This may be due to a lack of detail recorded by police or a lack of information supplied by victim's and/or witnesses.	

## GENERAL COMMENT

## 6. Victim/Witness Perception

Prompts	Comment
<ul style="list-style-type: none"> <li><i>Witnesses (actual) perceive that the incident was motivated by bias</i></li> </ul>	
Indicators	(y/n)
Evidence of Bias Crime – sufficient evidence/information exists to prove beyond a reasonable doubt that the incident was either wholly or partially motivated by bias towards one of the protected categories and constitutes a criminal offence.	
Suspected Bias Crime – evidence/information exists that the incident may have been motivated by bias but the incident cannot be proven beyond a reasonable	

doubt that it was either wholly or partially motivated by bias and constitutes a criminal offence.	
No Evidence of Bias Crime – the incident has been determined as either not being motivated by bias towards a protected group or although bias motivation is in evidence it does not relate to a protected group.	
Insufficient Information – insufficient information has been recorded to make a determination in regards to bias motivation. This may be due to a lack of detail recorded by police or a lack of information supplied by victim’s and/or witnesses.	
<b>GENERAL COMMENT</b>	
<b>7. Motive of Offender/s</b>	
<b>Prompts</b>	<b>Comment</b>
<ul style="list-style-type: none"> <li>• <i>POI was previously involved in similar incident or is a member/associates with members of an OHG</i></li> </ul>	
<ul style="list-style-type: none"> <li>• <i>The victim was in company of a member of the targeted group</i></li> </ul>	
<ul style="list-style-type: none"> <li>• <i>The victim was perceived to be breaking from traditional conventions or working non-traditional employment</i></li> </ul>	
<ul style="list-style-type: none"> <li>• <i>The POI has a history of previous crimes with similar MO and involving other victims of the same group</i></li> </ul>	
<b>Indicators</b>	<b>(y/n)</b>
Evidence of Bias Crime – sufficient evidence/information exists to prove beyond a reasonable doubt that the incident was either wholly or partially motivated by bias towards one of the protected categories and constitutes a criminal offence.	

Suspected Bias Crime – evidence/information exists that the incident may have been motivated by bias but the incident cannot be proven beyond a reasonable doubt that it was either wholly or partially motivated by bias and constitutes a criminal offence.	
No Evidence of Bias Crime – the incident has been determined as either not being motivated by bias towards a protected group or although bias motivation is in evidence it does not relate to a protected group.	
Insufficient Information – insufficient information has been recorded to make a determination in regards to bias motivation. This may be due to a lack of detail recorded by police or a lack of information supplied by victim's and/or witnesses.	
<b>GENERAL COMMENT</b>	
<b>8. Location of Incident</b>	
<b>Prompts</b>	<b>Comment</b>
<ul style="list-style-type: none"> <li><i>The victim was in or near an area or place commonly associated with or frequented by members of a particular group e.g. beat</i></li> </ul>	
<ul style="list-style-type: none"> <li><i>The location of an incident has specific significance to the victim or POI group e.g. cemetery, religious building, historical landmark, etc</i></li> </ul>	
<b>Indicators</b>	<b>(y/n)</b>
Evidence of Bias Crime – sufficient evidence/information exists to prove beyond a reasonable doubt that the incident was either wholly or partially motivated by bias towards one of the protected categories and constitutes a criminal offence.	
Suspected Bias Crime – evidence/information exists that the incident may have been motivated by bias but the incident cannot be proven beyond a reasonable	

doubt that it was either wholly or partially motivated by bias and constitutes a criminal offence.	
No Evidence of Bias Crime – the incident has been determined as either not being motivated by bias towards a protected group or although bias motivation is in evidence it does not relate to a protected group.	
Insufficient Information – insufficient information has been recorded to make a determination in regards to bias motivation. This may be due to a lack of detail recorded by police or a lack of information supplied by victim’s and/or witnesses.	

**GENERAL COMMENT**

**9. Lack of Motive**

Prompts	Comment
<ul style="list-style-type: none"> <li><i>No clear economic or other motive for the incident exists</i></li> </ul>	
Indicators	(y/n)
Evidence of Bias Crime – sufficient evidence/information exists to prove beyond a reasonable doubt that the incident was either wholly or partially motivated by bias towards one of the protected categories and constitutes a criminal offence.	
Suspected Bias Crime – evidence/information exists that the incident may have been motivated by bias but the incident cannot be proven beyond a reasonable doubt that it was either wholly or partially motivated by bias and constitutes a criminal offence.	
No Evidence of Bias Crime – the incident has been determined as either not being motivated by bias towards a protected group or although bias motivation is in evidence it does not relate to a protected group.	
Insufficient Information – insufficient information has been recorded to make a determination in regards to	

bias motivation. This may be due to a lack of detail recorded by police or a lack of information supplied by victim's and/or witnesses.	
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**GENERAL COMMENT**

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**10. Level of Violence**

Prompts	Comment
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<ul style="list-style-type: none"> <li><i>The level of violence and injuries sustained by the victim/s is greater than would be expected for a crime of that type</i></li> </ul>	
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<ul style="list-style-type: none"> <li><i>Weapons of opportunity are used in the incident</i></li> </ul>	
--	--

<ul style="list-style-type: none"> <li><i>The number of POI's is greater than the number of victims and all POI's take an active role in the assault</i></li> </ul>	
---	--

Indicators	(y/n)
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Evidence of Bias Crime – sufficient evidence/information exists to prove beyond a reasonable doubt that the incident was either wholly or partially motivated by bias towards one of the protected categories and constitutes a criminal offence.	
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Suspected Bias Crime – evidence/information exists that the incident may have been motivated by bias but the incident cannot be proven beyond a reasonable doubt that it was either wholly or partially motivated by bias and constitutes a criminal offence.	
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No Evidence of Bias Crime – the incident has been determined as either not being motivated by bias towards a protected group or although bias motivation is in evidence it does not relate to a protected group.	
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Insufficient Information – insufficient information has been recorded to make a determination in regards to bias motivation. This may be due to a lack of detail recorded by police or a lack of information supplied by victim's and/or witnesses.	
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**GENERAL COMMENT**

<b>SUMMARY OF FINDINGS</b>
<b>Indicator:</b>
<b>Comment:</b>



## APPENDIX C

The arrows indicate the way we disaggregated cases and the staggered organisation (and colour coding) will help the reader follow – as best as such an impoverished flow chart captures – the process of deduction the academics employed.

Categorical animus (gay – gay paedophile-revenge)<sup>45</sup>

Level of intentionality of harm (proactive - reactive)

Association (denunciatory - not found)

- a. Yes – anti-gay bias
  - i. High - Proactive
    - 1. Yes-aggravating  
Indicators may involve two or three offenders acting together linked by bias, likely not isolated occurrence
    - 2. No-mitigating  
Indicators may show solitary offender, possibly isolated occurrence.
  - ii. Low - Reactive
    - 1. Yes-aggravating  
Indicators suggestive of conflict of motives
    - 2. No-mitigating  
Provocation is possible
- b. Yes- anti-gay paedophile-revenge animus
  - i. High - Proactive
    - 1. Yes-aggravating  
Indicators may involve two or three offenders acting together linked by bias, likely not isolated occurrence
    - 2. No-mitigating  
Indicator of PTSD likely present, other trigger
  - ii. Low - Reactive
    - 1. Yes-aggravating  
Suggest possibly stimulated by complex motives
    - 2. No-mitigating  
Provocation is possible
- c. No = no bias or categorical animus
- d. Insufficient information

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<sup>45</sup> We use the term ‘revenge’ here because some of the cases where anti-paedophile sentiment was at play related to revenge for an alleged past sexual assault. For example in the case of Coulter (79), a 15 year old boy murdered Coulter with a fire arm because he claimed he was raped by the victim when he was 13 years old.