



Special Commission of Inquiry into LGBTIQ hate crimes

Volume 1

Commissioner, The Honourable Justice John Sackar
December 2023

ISBN

Print

Volume 1: 978-0-6459850-0-9

Volume 2: 978-0-6459850-2-3

Volume 3: 978-0-6459850-4-7

Volume 4: 978-0-6459850-6-1

Annexures: 978-0-6459850-8-5

Online

Volume 1: 978-0-6459850-1-6

Volume 2: 978-0-6459850-3-0

Volume 3: 978-0-6459850-5-4

Volume 4: 978-0-6459850-7-8

Annexures: 978-0-6459851-1-5

Published December 2023

© State of NSW through the Special Commission of Inquiry into LGBTIQ hate crimes

ACKNOWLEDGEMENT OF COUNTRY

The Special Commission of Inquiry into LGBTIQ hate crimes (the **Inquiry**) acknowledges the Traditional Owners and Custodians of Country throughout Australia.

We pay our respects to Elders past and present.

We recognise Aboriginal and Torres Strait Islander people as the First Peoples of Australia and celebrate their continuing spiritual and cultural connection to land, sea and community.

In particular we acknowledge LGBTIQ Aboriginal and Torres Strait Islander people, their histories and particular experiences of colonialism, and their enduring strength.

CONTENT WARNING

The task of the Inquiry has been to investigate suspected hate crime deaths actuated by LGBTIQ bias.

The nature of this Inquiry involves consideration of a culture of oppression and discrimination against the LGBTIQ community, particularly during the period 1970 to 2010. This includes consideration of specific instances of violence and murder. These topics are explored in detail throughout this Report.

The Inquiry acknowledges that it is important to write about violence, oppression and discrimination, including hate crimes, in a safe and responsible manner, sensitive to the ongoing trauma experienced by victim-survivors, the families, friends and loved ones of victim-survivors, and members of the LGBTIQ community. As such we have taken steps to avoid using offensive or stigmatising language, and gratuitous descriptions of events. We note, however, that offensive language and detailed descriptions of traumatic events are at times necessary for the purposes of a full and accurate account.

Reading this Report may be distressing for some persons. The wellbeing of the public, and especially the LGBTIQ community, has been an important consideration in the preparation of this Report. We encourage anyone who experiences distress to utilise the support services detailed below.

We also wish to advise Aboriginal and Torres Strait Islander readers that information in this Report may have been provided by or refer to Aboriginal and Torres Strait Islander people who are deceased.

Support

ACON, QLife and Lifeline provide counselling services for members of the LGBTIQ community who have experienced violence, as well as the family, friends and loved ones of survivors and victims.

ACON: (02) 9206 2000 – www.acon.org.au/mentalhealth

QLife: 1800 184 527 – [www.qlife.org.au](http://www qlife.org.au)

Lifeline: 13 14 11 – www.lifeline.org.au

13YARN provides 24/7 crisis support for Aboriginal and Torres Strait Islander people.

13YARN: 13 92 76 – <https://www.13yarn.org.au/>



New South Wales

Special Commission of Inquiry into LGBTIQ hate crimes

Her Excellency the Honourable Margaret Beazley AC KC
Governor of New South Wales
Office of the Governor
Macquarie Street
SYDNEY NSW 2000

Your Excellency,

Special Commission of Inquiry into LGBTIQ hate crimes

The Special Commission of Inquiry into the LGBTIQ hate crimes (the **Inquiry**) was established pursuant to the *Special Commissions of Inquiry Act 1983* by Letters Patent issued in Your Excellency's name on 19 April 2022.

In accordance with the Terms of Reference therein the Letters Patent, please find **enclosed** a copy of the Inquiry's Report.

I have provided to you an additional volume of the report which has not been included in the bound Report and which is sealed. Pursuant to s. 10(3) of the *Special Commissions of Inquiry Act 1983*, I recommend that this confidential volume of the Report not be published for a period of 30 years. The reasons for that recommendation are outlined in detail in Chapter 1 of my Report and in the relevant parts of the confidential volume, but relate primarily to preserving the possibility of future criminal investigations and prosecutions. For the same reason, however, I recommend that the confidential volume be provided to the NSW Police Force, the NSW Crime Commission and any other law enforcement or prosecutorial agency who may require it for the purpose of criminal investigations or prosecutions.

With respect to the remaining volumes of the Report and the Annexures, I make a recommendation pursuant to s. 10(3) that they be published at the earliest opportunity, subject to the following exception. At various times, I have applied pseudonyms to names referred to in otherwise public volumes of the Report. The relevant non-publication directions, made pursuant to s. 8 of the *Special Commissions of Inquiry Act 1983*, are annexed to the confidential volume of the Report. I recommend that those names not be disclosed for a period of 30 years, for reasons which are also set out in Chapter 1.

Notwithstanding those recommendations, and after 30 years have elapsed, or if earlier disclosure is contemplated, I further recommend that the NSW Police Force (or its successor) be consulted as to whether parts of the confidential volume, or specific names subject to pseudonyms, should remain confidential for a longer period to avoid an unreasonable impact on the exercise of the investigative functions of that agency.

Special Commission of Inquiry into LGBTIQ hate crimes

As detailed in Chapter 1, there is also some specific information in the confidential volume or protected by pseudonym which I consider should be published only with cautious consideration even after 30 years has elapsed, either because of its particularly sensitive nature or to comply with the requirements of other legislation.

Yours faithfully,



The Honourable Justice John Sackar
Commissioner
Special Commission of Inquiry into LGBTIQ hate crimes

TABLE OF CONTENTS OVERVIEW

Volume 1

1. Terms of Reference and Operation of the Inquiry	47
2. Establishment of the Inquiry	79
3. Community Engagement and Communications Strategy	101
4. Social and Cultural Context of Hate Crime Deaths	113

Volume 2

5. Category A Deaths	201
6. Category B Deaths	1148

Volume 3

7. Cold Cases	1343
8. Investigative Practices Hearing	1369
9. Overview of NSWPF investigations into LGBTIQ hate crimes and Public Hearing 2	1557
10. NSWPF Responses to Hate/Bias Crimes	1592
11. Strike Force Macnamir	1626
12. Strike Force Neiwand	1673
13. Strike Force Parrabell	1778
14. Convergences	2054
15. Response of the NSWPF to the Inquiry	2078
16. Concluding Remarks	2123

Volume 4 (Confidential Volume)

17. Private Hearings and Conferences	2135
--------------------------------------	------

Annexures

TABLE OF CONTENTS VOLUME 1

Table of Common Abbreviations	iii
Terminology	vi
Executive Summary	1
Counsel Assisting and Staff of the Inquiry	37
Recommendations	39
Chapter 1: Terms of Reference and Operation of the Inquiry	47
Introduction	48
Terms of Reference	48
Interpreting the Terms of Reference	49
Standard of proof	65
Admissibility of evidence	68
Confidentiality and non-publication Orders	71
Procedural fairness	75
Chapter 2: Establishment of the Inquiry	79
Historical context	80
Key events	81
Chapter 3: Community Engagement and Communications Strategy	101
Introduction	102
Engagement with the LGBTIQ community	103
Communications strategy	105
Witness support	108
Engagement with the Victorian Commissioner for LGBTIQA+ Communities	111
Chapter 4: Social and Cultural Context of Hate Crime Deaths	113
The Context Hearing	114
Scope and purpose of the Context Hearing	114
Background to the Context Hearing	115
Unknown victims and unreported violence	131
Interactions between the LGBTIQ community and police	132
Speaking Out Against Anti-Trans Violence: A Call For Justice	138
Witnesses at the Context Hearing	139
Concluding remarks	198

TABLE OF COMMON ABBREVIATIONS

Term	Abbreviation
Australian Crime Commission	ACC
Australian Criminal Intelligence Commission	ACIC
Australian Federal Police	AFP
Australian Human Rights Commission	AHRC
Australian Institute of Criminology	AIC
Lesbian and Gay Anti-Violence Project	AVP
Bias Crime Indicators Review Form	BCIF
Bias Crimes Unit	BCU
New South Wales Registry of Births, Deaths and Marriages	BDM
Bureau of Meteorology	BOM
Call Charge Records	CCR
Central Names Index	CNI
NSWPF Computerised Operational Policing System	COPS
Corrective Services New South Wales	CSNSW
Crime Scene Services Branch	CSSB
Division of Analytical Laboratory, NSW Health	DAL
Department of Communities and Justice	DCJ
Department of Forensic Medicine	DOFM
Exhibit Forensics Information Miscellaneous Property System	EFIMS

Term	Abbreviation
Engagement and Hate Crime Unit	EHCU
Engagement and Intervention Unit	EIU
Electronically Recorded Interview of Suspected Person	ERISP
New South Wales Forensic and Analytical Science Service	FASS
Federal Bureau of Investigation	FBI
Forensic Evidence and Technical Services	FETS
NSW Health Pathology - Forensic Medicine	Forensic Medicine
Gay and Lesbian Liaison Officer (now LGBTIQ+ Liaison Officer)	GLLO
Gay and Lesbian Rights Lobby	GLRL
Government Records Repository	GRR
Hate Incident Review Committee	HIRC
Justice Health and Forensic Mental Health Network	JHFMHN
Local Area Command	LAC
Law Enforcement Conduct Commission	LECC
Metropolitan Exhibit and Property Centre	MEPC
Master Index Number	MIN
Media Liaison Officer	MLO
Missing Persons Registry	MPR
New South Wales Police Force	NSWPF
Office of the Director of Public Prosecutions	ODPP

Term	Abbreviation
Office of General Counsel	OGC
Officer in Charge	OIC
Police Area Command	PAC
Post-Operational Assessment	POA
Person of Interest	POI
Queensland Police Service	QPS
Reverse Call Charge Records	RCCR
State Crime Command	SCC
Standard Operating Procedures	SOPs
Sex Workers Outreach Project	SWOP
Unsolved Homicide Team	UHT
Victorian Equal Opportunity and Human Rights Commission	VEOHRC
Witness Support and Counselling Service	WSCS

TERMINOLOGY

Introduction

1. The work of the Inquiry has required consideration of what language is the most respectful and inclusive when discussing the LGBTIQ community and its members.¹
2. The Inquiry is conscious that best practice concerning terminology is the subject of ongoing negotiations within and between members of the LGBTIQ community. Language that was common a decade ago may now be considered anachronistic and offensive, and terms considered appropriate today may well be seen in the same way in years to come. In addition, appropriate language is context dependent. Members of the LGBTIQ community may use language in a way that would not be appropriate for those outside that community.
3. A particular challenge for the Inquiry has been that the Terms of Reference span a large period over which language evolved significantly. In addition, much of the Inquiry's work concerns how people were labelled or perceived by those around them, rather than their identity.
4. The task of the Inquiry has been to investigate potential or suspected hate crime deaths actuated by LGBTIQ bias. In many cases, victims may have been misidentified or referred to pejoratively in material before the Inquiry. The Inquiry has been conscious of the importance of not perpetuating the harm done to the LGBTIQ community through the use of inappropriate language or assumptions made without an understanding of a person's identity.
5. This work has required the Inquiry to educate itself concerning various issues of terminology. The purpose of this section is to explain how language is deployed throughout the Report, and why that language has been chosen, acknowledging the complexity and nuance in this area, and accepting that there are very few definitions that could be said to be the subject of consensus.
6. The Inquiry has taken the position that the individual preferences of an LGBTIQ person, if known, should be the determining factor when addressing the question of appropriate language for referring to that person and their experiences. For reasons set out below, this has not always been straightforward in the context of the deaths considered by the Inquiry.

¹ The Inquiry is aware it may be more accurate to refer to LGBTIQ "communities". For a discussion of that matter and the initialism "LGBTIQ", see [17]– [21] below.

7. The Inquiry is grateful to the LGBTIQ groups and individuals who were consulted in the process of preparing this terminology section, and for the diverse range of views set out during that consultation process. Those groups and people include ACON, Equality Australia, Garry Wotherspoon, and the Gender Centre. The decisions concerning terminology made by the Inquiry and set out in this section were informed by that consultation process, taking into account the context of the Inquiry's work. This section should not, therefore, be understood as reflecting the views of any one of those groups or individuals.

Approach to terminology

8. The terminology used in this Report (set out below) recognises and reflects the following propositions.
9. First, sex, sexuality and gender are matters of individual identity and experience. There is a distinction, for example, between sexual activity and sexuality. The only way to accurately characterise a person's gender, sexuality, and/or sex is by comprehending how they understand and describe themselves. Importantly, this understanding may change over time.
10. In the context of the work of the Inquiry, the question of accurately describing sex, gender and sexuality is made more complicated by the following factors:
 - a. The existence of social pressures which prevented (and prevent) many people from understanding or describing themselves, whether to the world at large, to people in their lives, or to themselves, in terms that reflect their identity. In addition, people may have been out in some aspects of their lives and not others or may have described their identity differently in different contexts.
 - b. Further, irrespective of these pressures, members of the LGBTIQ community may not identify with particular labels because of connotations attached to those labels. It cannot be assumed, for example, that a man who had sexual and/or romantic relationships exclusively with other men would wish to be called "gay", even in the absence of social or other barriers to using that label. Similarly, a woman or a non-binary person may describe themselves exclusively as a "lesbian", "gay" or "queer" (and may not wish to be referred to by another term) or might use those terms interchangeably. One way in which members of the LGBTIQ community have historically been marginalised is through the allocation of labels based on sexual activity without regard for how people understood their own identity and experiences.
 - c. The Inquiry is examining people's deaths, and so cannot ask them how they would describe themselves. There is often very limited material about how people described or understood their own identity.
11. Secondly, while sex, sexuality and gender are matters of individual identity, the legal response to members or perceived members of the LGBTIQ community has largely focussed on the regulation of actions, particularly specified types of sexual activity. Similarly, historical responses to and descriptions of same sex/gender sexual activity or relationships have not reflected modern understandings of sex, gender and sexuality. This is a matter that is explored in individual chapters where relevant.

12. Thirdly, the terminology available to members of the LGBTIQ community to describe their own identity and experiences has evolved over time, including over the time period set out in the Terms of Reference.

Terms of Reference

13. Three key matters of terminology arise in relation to the Terms of Reference.
14. First, the Terms of Reference refer both to deaths that were “potentially motivated by gay hate bias” (Category A) and to “suspected hate crime deaths ... where ... the victim was ... a member of the LGBTIQ community” (Category B).
15. The Inquiry has treated those two verbal formulations as referring to the same concept or criterion. The Inquiry has adopted the language of “LGBTIQ hate crime death” as capturing the essence of this criterion, which it regards as common to both Category A and Category B of the Terms of Reference. As explained below, this concept captures scenarios where a victim was or was perceived to be a member of the LGBTIQ community.
16. Secondly, Category A refers to 88 deaths of “men” that were “considered by Strike Force Parrabell” (whereas Category B refers to the deaths of “victims”). Some of the deaths considered by Strike Force Parrabell were deaths of women. In order to recognise and acknowledge the sex/gender of all those persons considered by Strike Force Parrabell, the Inquiry has interpreted the word “men” in Category A as referring generally to “people”. This is consistent with s. 8 of the *Interpretation Act 1987*.
17. Thirdly, the Terms of Reference refer to the “LGBTIQ community”.
18. Over the period of its work, the Inquiry has become aware that there are a range of initialisms which may be appropriate to describe the communities referred to in the Terms of Reference as the “LGBTIQ community”. The initialism, initially variations on “LGBT”, has evolved over time to specifically recognise a broader range of identities.
19. The Inquiry is aware that formulations such as “LGBTQIA+ community” and “LGBTQ+ community” are commonly used both by that community to describe itself and in various formal contexts by government agencies across Australian and international jurisdictions. Although the Inquiry has identified little uniformity in the initialism used for formal purposes (which might be expected to lag behind discourse within the LGBTIQ community), the Inquiry is aware that at least one Australian jurisdiction has moved to endorse the more broadly inclusive “LGBTQIA+” in government documents.²

² Adam Holmes, “Tasmania is the first state to officially recognise those who identify as asexual, adding the A to LGBTIQ+”, *ABC News* (online, 17 July 2023) <<https://www.abc.net.au/news/2023-07-17/asexual-people-officially-recognised-by-tasmanian-government/102605830>>

20. In addition, as explained below, some members of the LGBTIQ community may prefer “queer community” as an umbrella term, while others may prefer not to use the term “queer” as it has a pejorative history. Further, the Inquiry is aware that it is more accurate to refer to “communities” rather than “community”.
21. Unless referring to specific organisations or quoting other sources, this Report uses the initialism “LGBTIQ community” because that is what is used in the Terms of Reference. However, it is not suggested that the use of “LGBTIQ” in the Terms of Reference was intended to exclude any victim who may have fallen within an alternative initialism such as “LGBTQIA+”.

Conclusions concerning sex/gender and sexuality

22. At the outset, it should be noted that anyone could be a victim of an LGBTIQ hate crime regardless of how they identify or understand their sex, gender, or sexuality, and regardless of whether they engage in sexual activity with people of the same sex/gender.
23. Nonetheless, the Terms of Reference require the Inquiry to engage with two particular questions in relation to any death. The first is whether a victim identified as a member of the LGBTIQ community. The second is whether a victim was or may have been *perceived* to be a member of the LGBTIQ community.
24. In many instances, the second question may be most relevant to the Inquiry’s work. For example, persons may be perceived to be of a certain sexuality because of a locale they visit or are found in (such as a beat), or because of mannerisms or dress associated by others with members of a particular part of the LGBTIQ community. Similarly, persons may be perceived to be trans³ because they have physical characteristics perceived to be atypical of their presumed sex/gender, whether or not that is in fact the case.
25. Further, such perceptions may not draw nuanced distinctions between different LGBTIQ communities – particularly in the period covered by the Inquiry, when even those communities may not have drawn such distinctions.

Terminology

Sex and gender

The language used by the Inquiry

26. This Report refers to the concepts of both sex and gender. This has required the Inquiry to consider what is meant by both terms, and the relationship between them. This is a complicated question on which there is no settled consensus.

³ As discussed below in this Terminology Guide under the subheading “Transgender”, the Inquiry generally uses the short form “trans” to encompass multiple terms used by members of that community to describe themselves.

27. In this Report, the term “sex/gender” is used in preference to “sex” or “gender” to reflect the complexity attaching to both labels. For example, “same sex/gender sexual activity” is preferred to “same sex sexual activity”. References to “men” and to “women” in this Report refer to both cisgender⁴ and trans men and women unless it is necessary to draw a distinction, in which case that will be made apparent.
28. The use of “sex/gender” should not be understood as suggesting that “sex” and “gender” are discrete categories. It has been used to acknowledge the complexity associated with both terms, and to recognise the ongoing discussions and debates in this sphere.

The terms “sex” and “gender”

29. There is no single accepted definition of “sex”. Sex is often defined by reference to “sex characteristics” (e.g., gonads, chromosomes, genitals and hormones). There are a wide range of sex characteristics which exist on a spectrum. A person’s sex characteristics may or may not be exclusively “male” or exclusively “female”.
30. “Sex” may have different meanings in different contexts. For example, for most legal purposes a person’s sex would be taken to be the sex marker assigned on their birth certificate. A person’s sex marker is assigned at birth by reference to natal sex characteristics (though not, usually, the totality of sex characteristics). This legally assigned sex marker may not reflect a complete or accurate picture of a person’s biological sex characteristics and may not accurately reflect their sex/gender.
31. “Gender” is a term commonly used to refer to how a person identifies (e.g., male, female, non-binary, genderqueer, gender fluid). Gender is not a binary concept, and more genders exist than “male” and “female”. There is also a distinction between a person’s gender as an internal understanding of self and the outward, social expression of gender (sometimes described as gender identity versus gender expression).
32. Gender is often distinguished from sex as being based upon identification with social or cultural factors rather than sex characteristics.
33. There are difficulties with treating “sex” and “gender” as separate and distinct in this way.⁵ For example, distinguishing sex and gender in this way can and has been used to diminish the experience of trans and gender diverse people by suggesting that only gender is malleable. Trans and gender diverse people may choose to take steps to alter physical sex characteristics in addition to gender expression.

⁴ “Cisgender” is a term used to describe people whose gender aligns with the sex they were assigned at birth.

⁵ For a detailed discussion of the emergence of gender identity and the complexity of biological sex, see Anne Fausto-Sterling, *Sex/Gender: Biology in a Social World* (Routledge, 2012) particularly Chapter 5, “Am I a Boy or a Girl? – The Emergence of Gender Identity”.

34. Assuming a clear distinction between sex and gender may also elide the significance of the assignment of a sex-marker in an individual's initial and ongoing experiences of sex/gender (including gender dysphoria). Australian jurisdictions are increasingly recognising that sex and gender cannot be treated as wholly distinct from one another.⁶
35. In the course of the consultation process, it was suggested to the Inquiry that, in addressing hate crimes, the focus must be on perceived deviations from social standards around gender norms, rather than individual sex characteristics, and that the focus should accordingly be understood as being on gender, not sex.
36. While such clear distinctions are enticing, the Inquiry has found they do not sit easily with the scenarios it has examined.
37. For example, it may be an oversimplification to regard a hate crime against a trans individual as motivated by perceived deviation in their gender presentation. Physical sex characteristics which do not conform with social expectations might themselves in this context be understood as a matter of "presentation" potentially attracting violence.
38. The Inquiry has also heard views that it would be preferable to choose either "sex" or "gender" and define that term in an encompassing way. That approach has its own merits, but risks misunderstandings with respect to the historical material the Inquiry is dealing with. To say that sex and gender are context-dependent terms with areas of overlapping meaning is not to say they can or have been used interchangeably.
39. As noted, an assumed distinction between those concepts may in fact be relevant to the source of at least some violence against the LGBTIQ community. While the broader debate is beyond the scope of this Inquiry, it is appropriate to acknowledge the ongoing complexity of those discussions without presuming to dismiss or define important questions of identity out of existence.
40. In addition, as understandings of both sex and gender have developed, different members of the LGBTIQ community have taken different approaches to how they label and understand themselves. It is to be expected that language will continue to evolve over time as the identities and experiences of members of the LGBTIQ community become better understood.
41. For these reasons, the Inquiry has generally used the term "sex/gender" unless context has required an alternative, in which case that is explained.

⁶ See, e.g., Premier of Victoria, 'Fairer Birth Certificates for Trans and Gender Diverse Victorians' (Media Release, 18 June 2019) <<https://www.premier.vic.gov.au/fairer-birth-certificates-for-trans-and-gender-diverse-victorians-0>>; *Births, Deaths and Marriages Registration Act 1996* (Vic) s. 4. Pt 4A.

The term “beat”

42. The Inquiry has received evidence that the term “beat” is used to describe places where men go to have consensual, non-commercial sex with other men. As will be canvassed in this Report, known beats included North Head, Marks Park near Bondi, Rushcutters Bay Park and Alexandria Park. While men who wished to have sex with other men were the predominant users of beats, it is important to acknowledge that not all users of beats were men.

The family of members of the LGBTIQ community

43. Not all members of the LGBTIQ community found—or find—love and acceptance within their biological family. That may include some (but certainly not all) of the persons whose deaths are considered by this Inquiry.
44. Many LGBTIQ people find family outside the family they were born into. When this Report refers to “family”, it should be understood as including the people who a person counted as their family, irrespective of their blood relationship.

LGBTIQ Terminology

45. The terms described below are those that are widely used and relevant to the work of the Inquiry. They do not represent a comprehensive overview of labels used in the LGBTIQ community.

Aromantic

46. The “A” in some forms of the LGBTIQ initialism is usually understood to refer to the asexual and aromantic communities.
47. An aromantic person experiences little or no romantic attraction to other people. Some aromantic people are also asexual (see below), but this is not necessarily the case. The distinction between sexual and romantic attraction is not unique to asexuality and aromanticism. For example, a person might be asexual and biromantic (i.e., they experience romantic attraction to people of more than one sex/gender).

Asexual

48. An asexual person experiences little or no sexual attraction to other people. Asexuality encompasses a range of identities (e.g., asexual, demisexual, greysexual).

Bisexual

49. A bisexual person is attracted to people of more than one sex/gender.

Gay

50. Generally, a gay person is romantically and/or sexually attracted to people of the same sex/gender as themselves. This term is often used to describe men who are attracted to other men, but some women and gender diverse people may describe themselves as gay. Like the term “lesbian” (see below), while many gay people may be exclusively attracted to persons of the same sex/gender, that is not necessarily the case (for example, some gay men may also be attracted to non-binary people).

Gender Diverse

51. Gender diverse is a general term used to describe gender identities outside the binary framework of being exclusively a man or a woman. It may be used synonymously with “non-binary”, or is sometimes used as an umbrella term to include both non-binary and trans people. There are many terms used by gender diverse people to describe themselves. Language in this space is dynamic, particularly among young people, who are more likely to describe themselves as non-binary. This Inquiry will use distinct terms for the trans and gender diverse communities, while acknowledging common overlaps in their experiences.

Heterosexual

52. Typically, the term “heterosexual” or “straight” has been used to describe a man who is attracted exclusively to women or a woman who is attracted exclusively to men. However, for the reasons set out above, this may not be an accurate encapsulation of the experience of attraction for people who consider themselves straight having regard to the non-binary nature of sex/gender.

Intersex

53. A person with intersex characteristics is born with natural variations to physical or biological sex characteristics such as variations in chromosomes, hormones or anatomy. Intersex traits (which include over 40 identified traits) are a natural part of human bodily diversity and should be understood in the context of a biological/physical spectrum of sex or sex attributes/characteristics. Not all people with intersex traits use the term intersex or identify as intersex. The fact that a person has intersex traits should not be conflated with their gender or sexuality.

Lesbian

54. Historically, “lesbian” has been used to describe women who are romantically and/or sexually attracted to other women. However, both women and gender diverse people may use the term “lesbian”, and women who are lesbians may not be exclusively attracted to other women.

Non-binary

55. “Non-binary” is used as an umbrella term for a range of gender identities that may sit within, outside of, across or between the spectrum of the male and female binary. Some non-binary people would not accept that gender exists on a binary “spectrum” between male and female. A non-binary person may identify in many ways, including as gender fluid, genderqueer, trans masculine, trans feminine, agender or bigender.

Pansexual

56. A pansexual person is sexually attracted to people of all genders or regardless of gender.

Queer

57. Queer is often used as an umbrella term for diverse genders or sexualities. Some people, particularly younger members of the LGBTIQ community, may use queer to describe their own gender and/or sexuality, or may prefer to use “queer” as a general and inclusive term for the LGBTIQ community.
58. The term “queer” was historically used as a derogatory term for members of the LGBTIQ community, particularly men. In the 1990s, the term began to be reclaimed and used by members of the LGBTIQ community to describe their own gender or sexuality. For some people, especially older LGBTIQ people, “queer” has negative connotations because in the past it was used as a derogatory term.

Questioning

59. The ‘Q’ in LGBTIQA+ in some contexts includes “queer and questioning”. “Questioning” encompasses all those who are uncertain about whether they are LGBTIQA+ but are considering or exploring that possibility.

Transgender

60. A transgender person (often shortened to “trans”) is someone whose sex/gender does not align with the sex they were assigned at birth. References to “men” and “women” in this Report should be understood as referring to both cisgender and trans men and women.
61. During the period covered by the Inquiry’s Terms of Reference the term “transsexual” was in common usage. The Inquiry uses the word “trans” to refer inclusively to transgender people, some of whom may historically have described themselves as “transsexual”, or who prefer that term.

+

62. The + sign is used to represent sexualities and gender identities that are not included within the letters used in variations of the LGBTIQ initialism.



Executive Summary

PREFACE

1. For many years, both Special Commissions of Inquiry and Royal Commissions have been used as a tool for Executive government to examine and reflect upon matters of public importance. Commonly such exercises involve fact finding as to the past and the making of recommendations as to the future.
2. The task set for this Inquiry was confronting. The victims entrusted to the oversight of this Inquiry each died a premature and tragic death. Each death was suspected to be a homicide. Each homicide was suspected of being motivated, at least in part, by hatred for a person simply because of their identity.
3. This Inquiry was tasked with finding answers where all the investigative resources of the NSW Police Force (**NSWPF**) have failed, in some cases for more than 40 years. This was a challenge of some enormity. It was of little use to be able to summons documents where no documents existed or could be found. The power to call and question witnesses sometimes seemed futile indeed when those witnesses were deceased or had no recollection of now distant events. This Inquiry has engaged in intense efforts to discover the truth surrounding these deaths.
4. That task, as I have said, was confronting. It was confronting for family, friends and loved ones of victims, who were forced to relive tragedy for the sake of what may be the final effort to find closure for many of these deaths. It was confronting for members of the LGBTIQ community, who may see in these historical injustices the reflections of hatred and violence. It was confronting, it seemed, for the NSWPF, which faces the task of rebuilding trust with the LGBTIQ community. It was—and is—confronting to face the reality that, despite all efforts, many of these deaths remain unsolved.
5. All of the deaths with which the Inquiry is concerned, many of them lonely and terrifying, were of people whose lives were cut tragically short. Many had suffered discrimination, throughout their lives. Institutional and community responses to these deaths was lacking. The lives of every one of these people mattered, and their deaths matter as well.
6. In many cases, the immediate effect of violence was compounded by responses from the NSWPF, and from some of its members, who were indifferent, negligent, dismissive or hostile. There is no doubt that the response to the deaths of those who were perceived to be members of the LGBTIQ community frequently reflected the shameful homophobia, transphobia and prejudice that existed both in society broadly, and within the NSWPF.
7. As will be seen, the NSWPF, and in particular the Unsolved Homicide Team (**UHT**), have much to reflect on with respect to their attitudes to hate crimes against the LGBTIQ community and their capacity to solve cold cases more generally. I hope that the comments and recommendations I make in that respect will be endorsed and acted upon, so that I and the public of NSW can feel confident in returning these cases to their attention.
8. All that this Inquiry has been able to achieve is detailed in this Report. I have recommended to the Governor that the vast majority of that Report be made

public as soon as possible. Some limited parts of the Report I have recommended remain confidential for the foreseeable future. I have regarded it as necessary in the public interest to do so. I do not make such recommendations lightly. I have done so in the hope that other investigative agencies may yet have the tools and time the Inquiry lacked to find more answers for some of these deaths.

9. Before describing the contents of this Report, I wish to raise two matters.
10. First, the narrative of recent years, in which this Inquiry has its genesis, has perhaps inadvertently become focused on describing hatred against the LGBTIQ community as merely a question of numbers. It has described the history of hate crimes in NSW in terms of the classification of deaths, as a percentage of the total number of unsolved homicides in NSW.
11. Statistics are illustrative, but at times crude. Hatred and discrimination against the LGBTIQ community manifests in many ways, and not all are visible in the available records. Hatred of an identity, or even a perceived identity, is something which is very difficult to track through typed pages and forensic photographs, especially when the authors or photographers did not think to look for it. For example, the Inquiry has heard from the trans and gender diverse community how violence against that section of the community may have been masked in official records. I acknowledge there is a real possibility that there are LGBTIQ hate crime deaths that this Inquiry may have missed because no thought was given, at the time of the original investigation, to recording relevant indicators in police or coronial files.
12. Many members of the LGBTIQ community continue to live with the enduring trauma of violence, prejudice and bigotry. I wish to commence this Report by acknowledging the profound impact hate crime has had on the LGBTIQ community, and on the families, friends and loved ones of the victims of such crimes. Many of the cases investigated by the Inquiry are shocking in their senselessness and brutality.
13. I have sought to emphasise throughout this Inquiry that the existence of a hate crime is not simply a matter to be assessed with a checklist of indicators after the fact. Those investigating homicides must always keep an open mind to that case theory. Such a process should always be driven by curiosity. I trust that this observation will be well received by those who must heed it.
14. Secondly, I wish to make a statement of gratitude. The Inquiry has been aided immeasurably by the contributions of the loved ones of victims. To every one of those parents, siblings, children and grandchildren, partners and friends, the Inquiry extends its sincere condolences. I also acknowledge, with gratitude, the contributions of LGBTIQ community members and organisations whose networks, knowledge and experience have guided this Inquiry throughout its work. The LGBTIQ community in NSW is ever evolving and expanding and is a vital and thriving part of the community of this State. It will always rise to meet the challenges of bigotry and hatred and it must not be left to face those challenges alone.

EXECUTIVE SUMMARY

15. This Executive Summary will address:
- a. The **purpose** of this Inquiry, with a brief summation of its context;
 - b. The **scope** of this Inquiry, including the four key subject areas addressed by this Report;
 - c. The **powers** available to this Inquiry, and their limits;
 - d. The **operation** of this Inquiry, by way of a summary of its resources and its approach to its task;
 - e. The **challenges** faced by the Inquiry; and
 - f. The **structure** of this Report, by way of a detailed guide to its substantive volumes.

Purpose of the Inquiry

16. Between 2018 and 2021, the Standing Committee on Social Issues in the NSW Legislative Council (the **Standing Committee**) conducted an inquiry into gay and trans hate crimes in the period from 1970 to 2010. It tabled an interim report on 26 February 2019 (**Standing Committee Interim Report**)⁷ and a final report on 4 May 2021 (**Standing Committee Final Report**).⁸
17. The impetus for this Inquiry stems from a recommendation in the Standing Committee Final Report. Its first recommendation was the establishment of a judicial or other form of expert inquiry to inquire into unsolved suspected “gay and transgender hate crime deaths”.
18. As a prelude to its first recommendation the Standing Committee made three findings, as follows:⁹

Finding 1

That victims of gay and transgender hate crime often carry enduring physical, mental and emotional trauma as a result of their experiences;

⁷ Exhibit 1, Tab 3, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Interim Report, Report 52, February 2019) (SCOI.02290).

⁸ Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Final Report, Report 58, May 2021) (SCOI.02291).

⁹ Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Final Report, Report 58, May 2021), 11 (SCOI.02291).

Finding 2

That historically the NSW Police Force failed in its responsibility to properly investigate cases of historical gay and transgender hate crime and this has undermined the confidence of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) communities in the NSWPF and the criminal justice system more broadly;

Finding 3

That for many victims of [LGBTIQ] hate crimes and their families, the acknowledgment of past wrongs by those who failed to protect and deliver justice for LGBTIQ people is necessary and significant step towards healing.

19. As can be seen, the basis for the recommendation for a judicial inquiry was an acknowledgment that an independent and transparent review of these unsolved deaths was necessary, notwithstanding the Standing Committee's findings. Implicit in that recommendation was an intention to ensure that the judicial inquiry take such opportunities as may exist to understand how each death occurred and, if at all possible, apportion responsibility.
20. Such an exercise presents an opportunity to provide catharsis to and finality for some families, friends and loved ones who have for years, sometimes decades, sought answers. Whilst the focus of the Inquiry may be limited, it provides an opportunity to discover better information about the death or presumed death of a family member or loved one.
21. It is also appropriate here to acknowledge limitations. As will become clear, the Inquiry has not been able to solve many of the deaths it has examined. Indeed, the Inquiry has met impassable obstacles in a frustratingly large number of those deaths, most often due to the absence of records, exhibits, witnesses or initiative on the part of earlier investigations. In some cases, the Inquiry has also been constrained from pursuing every investigative avenue it may have wished to by the limits of its statutory powers, resources and timeframes.
22. As I have acknowledged, there may be hate crime victims who have not been identified in the course of this Inquiry, simply because there was nothing in the extant records to draw that aspect of their deaths to the Inquiry's attention.
23. Despite this unsatisfactory and troubling reality, it is my hope that this Report will provide some solace in the form of institutional accountability and recommendations that may shape future attitudes and responses to the investigation of hate crimes against the LGBTIQ community.

Scope of the Inquiry

24. At the core of this Inquiry is a large number of unsolved deaths, between 1970 and 2010, in which LGBTIQ bias was or may have been a factor.
25. In the deaths examined by the Inquiry, many of the witnesses, police officers and persons of interest, as well as many family members, friends and loved ones, are deceased, in failing health, or no longer able to be found. It has also gradually become disappointingly clear, over the course of the work of the Inquiry, that many of the original exhibits and documentary records have been lost.
26. It was always possible that not all, perhaps even not many, of the deaths under consideration in this Inquiry would be able to be “solved”, in the sense of identifying the perpetrators and bringing them belatedly to justice.
27. Nevertheless, in some of its reviews the Inquiry may fairly be regarded as having made breakthroughs. In a number of other deaths, significant progress has also been made, and lines of possible future investigation revealed. In those instances, it is hoped the NSWPF and other investigative agencies may yet be able to build on the work of the Inquiry.
28. In every single death which the Inquiry has considered, every possible attempt has been made to bring to the surface all that can be ascertained about the death of that person and about the efforts made in the past to investigate that death. In all those ways the community can be satisfied that the Inquiry has indeed “shone a light on everything that is known and can be found out about what happened”.¹⁰
29. It would be a mistake, however, to draw the boundaries of this Inquiry at ascertaining the manner and cause of death, as though it were simply a police investigation or coronial inquest on a grander scale. Those deaths occurred in an environment of hatred and discrimination. Many were investigated poorly, and their chance for resolution continues to suffer as a result of investigative shortfalls and historical harmful attitudes within the NSWPF.
30. It would be inappropriate and inadequate for me to inquire into those deaths without acknowledging the environment in which they occurred and examining the reasons that they have not already been solved. That includes seeking out the truth about what happened after a death: in the original investigations many years ago; at the inquests (where there was one); in subsequent reviews and investigations (where there have been any); in the storing, organising and testing of exhibits and documentary records; and in a number of strike forces (as recently as the last ten years) directed at various aspects of the phenomenon of LGBTIQ hate crime in NSW. In that way, this Inquiry can offer not only to shed light on the past but also to make recommendations for improving the future.

¹⁰ Transcript of the Inquiry, 2 November 2022, T120.40–43 (TRA.00003.00001); Transcript of the Inquiry, 14 November 2023, T6934.6–9 (TRA.00101.00001).

31. It should also be remarked that no Inquiry can regard its course as written in stone. As it progresses, the best laid plans may founder on unexpected obstacles, intriguing opportunities will present themselves, and important themes will begin to emerge. Each step along the road may take an Inquiry in new directions or require it to refocus its limited time and resources. So it has been with this Inquiry.
32. With that in mind, this Report will address four broad subject areas.
33. **First** is the examination of the deaths which lie at the core of this Inquiry. The Terms of Reference direct me to ascertain (if possible) the manner and cause of death of suspected unsolved LGBTIQ hate crime deaths in NSW between 1970 and 2010. The Inquiry has done so to the best of its ability within the limits posed by the previous investigations, records, exhibits and witnesses that remain available.
34. Some of the steps this Inquiry has taken are by necessity confidential, to preserve future investigative prospects. Those steps are canvassed in a volume of this Report which I have recommended remain confidential for the time being. However, most of this Inquiry’s analysis and conclusions in relation to the relevant deaths are addressed publicly. I have made recommendations as to publication on the basis that as much as possible should be published while protecting other important interests.
35. **Secondly**, in the course of those inquiries, it has become apparent that there are recurring themes in both the historical investigations and more modern reviews of those deaths that bear on the reason they remain “unsolved”. Inadequate investigations, misplaced records, insufficient resourcing and lost opportunities emerged as such common themes from the Inquiry’s investigations that it became essential for me to address those questions more broadly and holistically. A second significant component of this Report therefore addresses the investigative practices and procedures of the NSWPF and others in relation to homicides over time, including more modern reviews of these deaths by the UHT.
36. **Thirdly**, the Terms of Reference also direct me to have regard to the findings of previous inquiries and reports, most notably the report of Strike Force Parrabell published by the NSWPF in June 2018 (the **Parrabell Report**). In that report, the NSWPF responded to growing public interest in historical LGBTIQ hate crimes by reviewing a list of 88 suspected hate crime deaths to establish whether that designation was appropriate and to draw statistical conclusions about the historical prominence of hate crimes against the LGBTIQ community. In reviewing that report and the material upon which it was based, I quickly became aware of significant institutional issues in how the NSWPF understands, assesses and responds to suspected hate crimes.
37. It became apparent to me that the investigation of the deaths within the Inquiry’s Terms of Reference had to be considered in the context of the NSWPF’s evolving approaches and institutional attitudes to the investigation of LGBTIQ hate crimes. That context included the relatively recent conduct of two strike forces, in addition to Strike Force Parrabell, which were established to reinvestigate specific suspected LGBTIQ hate crimes—namely, Strike Forces Neiwand and Macnamir.

38. The third significant component of this Report explains this Inquiry's attempts to bring to light the full extent of the NSWPF's approach to the identification, investigation and recording of LGBTIQ hate crimes during the period of the Terms of Reference. To this end, it was also instructive to examine some matters post-dating the period in the Terms of Reference, and current practices. It is hoped that addressing and acknowledging shortcomings in the historical approach to LGBTIQ hate crimes can contribute to ensuring the mistakes of the past are not repeated, and to restoring the LGBTIQ community's trust and confidence in the NSWPF.
39. **Fourthly**, I consider it appropriate to address the relationship that this Inquiry has had with the NSWPF since the commencement of the Inquiry in May 2022. It was obvious at the commencement of the Inquiry's work, to both the Inquiry and the NSWPF, that the NSWPF would be the primary source of information for this Inquiry.
40. The process of obtaining investigative files and other material from the NSWPF was not straightforward. The primary reason for this was the historical legacy of poor record and exhibit management practices concerning unsolved homicides. In addition, I consider that the response of the NSWPF to the Inquiry was, at times, defensive and unhelpful.
41. Those four subject areas are expanded upon below.
42. Before I do so, it is apposite to make a few remarks about the NSWPF more generally, particularly given the strong language expressed in the course of some of the Inquiry's public hearings into the second and third topics above, and the implications of the fourth.
43. This Report is not intended to be an assault on the institution of the NSWPF, or law enforcement agencies more generally. An expert, highly disciplined police force made up of persons of the utmost integrity is necessary to the public interest. But the Australian public is diverse. In performing their functions, police must be seen as legitimate and as such they must be perceived as trustworthy and unbiased.
44. I acknowledge that the NSWPF has made significant efforts since the 1990s to reassess and improve the ways in which it relates to the LGBTIQ community, and responds to LGBTIQ concerns. Such improvements include the introduction and development of the LGBTIQ+ Liaison Officer program and the establishment of the role of "Corporate Sponsor for Sexuality, Gender Diversity and Intersex". I refer in **Chapter 15** to a letter received by the Inquiry from the NSWPF dated 7 November 2023,¹¹ which correctly observes that my Terms of Reference do not permit me to explore all of the positive ways in which the NSWPF has sought to foster positive relationships with the LGBTIQ community and support members of that community among its own staff. In saying that the NSWPF has some distance to go, I do not mean to imply it has not begun the journey.

¹¹ Exhibit 67, Tab 23, Letter from Katherine Garaty to Enzo Camporeale, 7 November 2023, 1 (SCOI.86612),

45. I also acknowledge the difficulty of the work done by the NSWPF, particularly those involved in the often brutal homicides examined by the UHT and this Inquiry. This Inquiry spoke to many Officers in Charge (**OICs**) of those investigations, and the toll of repeated trauma on several of those officers or former officers was obvious from those interactions. I do not for a moment question the stresses on officers responsible for investigating and reviewing homicides, and the courage and resilience required to take on that burden.
46. However, in acknowledging the above I must also state that those matters cannot—must not—be permitted to excuse shortcuts in the performance of those duties. If homicides are left unsolved because of institutional or individual failures or prejudice in the conduct of homicide investigations and reviews, it renders that vital role, and that burden of trauma, completely futile.

Suspected historical LGBTIQ hate crime deaths

47. The central pillar of this Inquiry has been its efforts to determine the manner and cause of death of suspected LGBTIQ hate crime homicides in NSW between 1970 and 2010.
48. The Terms of Reference set that task before the Inquiry in two categories.
49. The first category (**Category A**) specifically referred to 88 deaths or suspected deaths which had been reviewed by Strike Force Parrabell. These deaths were said to have been “potentially motivated” by what the Terms of Reference refer to as “gay hate bias”. Two significant limitations were placed upon the Inquiry with respect to public consideration of the deaths in this list. First, the Inquiry was only to investigate those of the 88 deaths that remained “unsolved”. Secondly, the Terms of Reference require the Inquiry to operate in a way that avoids prejudice to criminal investigations and current or future prosecutions.
50. Having regard to both those limitations, this Report publicly addresses 28 deaths falling within Category A. These deaths are discussed in **Chapter 5** of this Report.
51. Two further deaths which also fall within Category A—those of Cyril Olsen and Michael Swaczak—are addressed by this Report in its confidential volume. Several of the publicly reported deaths also have components in the confidential volume. This Report does not address the deaths of Raymond Keam or Scott Johnson, as those deaths were the subject of ongoing criminal proceedings during the course of the Inquiry.
52. The second category of deaths (**Category B**) was not defined by specifically identified deaths, but instead required the Inquiry to examine all “unsolved suspected hate crime deaths” involving members of the LGBTIQ community, in the 40 year period between 1970 and 2010 that had previously been investigated by the NSWPF. Unfortunately, the NSWPF (apart from simply providing the total number of unsolved deaths and missing persons in the relevant period) was unable to provide any assistance in terms of identifying which of those homicides and disappearances may have been hate crimes. To that end, the Inquiry was obliged to and did devise its own methodology for acquiring and analysing information about the very large number of unsolved homicides (more than 700) and missing

persons (more than 550) referable to that 40 year period, in order to make decisions about which deaths needed to be investigated by the Inquiry. Those methods, and the four deaths this Inquiry ultimately found to be clearly within the scope of this category, are examined in **Chapter 6**. As with Category A, this Report does not address deaths which, but for ongoing investigations or criminal proceedings, would have fallen within Category B.

53. While simple in principle, this Inquiry has found that the directive given by the above two categories was attended by no small number of complexities and nuances. For example, how should the Inquiry understand “unsolved”? What distinction, if any, is intended between deaths motivated by “gay hate bias” (Category A) and “hate crime deaths” (Category B), and when is such a motive “suspected”? How is this Inquiry to assess whether deceased persons were members of the LGBTIQ community, and to what extent is it appropriate or necessary for it do so, especially where bias and hatred lie in the perceptions of the perpetrator?
54. To the extent possible, those questions are addressed in **Chapter 1** of this Report, although I foreshadow some of the particular challenges relating to Category B below. Not all permit clear or satisfactory answers, and some invite complex questions of criminology or sociology that it is simply not possible or appropriate for this Inquiry to answer. Instead, and in general, this Inquiry has adopted a flexible approach to the scope of those two categories, so as to allow for as many deaths to be examined as possible.
55. As to outcomes, as foreshadowed above, it will be readily apparent that the mere passage of time in and of itself has made the task of solving many of these deaths more difficult, if not impossible. Key witnesses and suspects may be long since deceased, and memories frayed by the passing of decades. As will be seen, the task of the Inquiry was further hampered by alarming gaps in the available documentary records.
56. Physical exhibits have often offered the clearest investigative pathway, with newer mechanisms for better and more sensitive forensic testing emerging even during the course of this Inquiry. The loss of such exhibits in some matters by the NSWPF has therefore been particularly frustrating. As will be seen, those deficiencies are not unique to the LGBTIQ deaths reviewed by this Inquiry, but arise from systemic record-keeping failures by the NSWPF in relation to unsolved homicides generally.
57. In each and every death, the Inquiry has taken every opportunity available to advance the investigation and provide as much finality to families, friends and loved ones as possible.
58. Even where the Inquiry has not been able to identify perpetrators, I have assessed whether there is objectively reason to suspect that a death was a homicide and that actual or assumed membership in the LGBTIQ community was a factor in the commission of the crime (see further **Chapter 1**). Of the 32 deaths addressed publicly in this Report, I have formed the view that there is reason to suspect that LGBTIQ bias was a factor in 25 of those deaths.

59. Some few matters warrant further introductory comment. At the outset, it is significant that the Terms of Reference of this Inquiry depart from the Standing Committee's language of "gay and transgender" hate crimes, instead recognising that hate crimes can and have affected all sections of the LGBTIQ community or, more accurately, communities. The Inquiry recognises that those communities are many-faceted, and that the language used in the Terms of Reference may still appear insufficient to embrace them completely. The way this Inquiry has understood and interpreted these concepts is addressed in detail in the introductory **Terminology** guide to this Report, but it suffices to say here that it has not adopted a technical or exclusive approach.
60. It is also important to acknowledge that this Inquiry deals particularly with deaths reflecting homophobic attitudes to gay men in the period covered by the Terms of Reference. The majority of the deaths considered by the Inquiry are deaths of cisgender men. In many of those deaths, the victims were out as gay, or it appears likely that they were perceived to be gay.
61. This Report explores, in detail, the social and cultural context which led to violence against that particular section of the LGBTIQ community in the period under examination. Recognising that, however, is by no means to suggest that historical violence against other sections of the LGBTIQ community did not exist, or was in any way less significant or harmful.
62. That violence may have taken forms that are less likely or able to be identifiable in the records available to modern observers, perhaps because membership in the LGBTIQ community was not recognised or recorded as a trigger for violence, because it was intentionally downplayed or obfuscated in formal records, or because hatred was differently interpreted or more easily hidden by other plausible or readily inferred motives.¹²
63. It is an unfortunate truth, as I acknowledged at the outset of this Executive Summary, that this Inquiry cannot be confident it has identified every unsolved hate crime against members of the LGBTIQ community in NSW in the relevant time period. In fact, I am confident that it has not done so. However, it has cast its net as widely as possible.
64. Finally, it is important to acknowledge that hatred against the LGBTIQ community has taken, and continues to take, many forms. Even where it does not incite lethal violence, it may nevertheless indirectly contribute to deaths in that community by creating environments of discrimination, disadvantage and despair. While this Inquiry has been constrained to the examination of historical suspected homicides, it is my hope that this Report will help shine a light on the ongoing dangers of hatred to the LGBTIQ community in all of its aspects.

¹² For example, the submission received by the Inquiry on behalf of The Gender Centre and the Sex Workers Outreach Project, "Speaking Out Against Anti-Trans Violence: A Call for Justice", provides further insights into hidden violence against the trans community in this period. The report (authored by Professor Noah Riseman) can be found on the Inquiry's website at the following link: <https://lgbtiq.specialcommission.nsw.gov.au/community-engagement/>

The investigative practices and procedures of the NSWPF

65. The existence of contemporaneous records will, obviously, immeasurably assist the reinvestigation of any cold case. The state and quality of those records is of crucial importance, especially where witnesses may have died or are impossible to locate. Even where witnesses can be found, they will rarely be able to improve (credibly) on their historic recollection. Physical exhibits are often of much greater significance, particularly as forensic methods and opportunities improve.
66. As it commenced its review into the Category A and B deaths the Inquiry immediately encountered difficulties with the investigative materials and documentary records produced by the NSWPF. The Inquiry discerned a pattern of idiosyncratic and inconsistent record-keeping processes.
67. In some cases, entire sections of investigative files appeared to be missing, with limited evidence from which to discern whether records had been lost or never made. Significant exhibits had often been lost or destroyed. As is explained in **Chapter 8**, it became apparent that there were long-standing problems with exhibit and documentary record management within the NSWPF.
68. Where records did exist, the submissions of Counsel Assisting on a number of deaths also raised what appeared to be deficiencies in NSWPF investigations, including failures to secure crime scenes (see the matter of James Meek), to prevent crime scenes being cleaned prior to a forensic examination (see the matter of William Rooney), to search a victim's clothing properly for evidence (see the bloodstained note found during this Inquiry in the pocket of Crispin Dye's clothing) or to retain exhibits of obvious forensic significance (such as the hairs on John Russell's hand).
69. In light of such matters, the Inquiry determined to hold what came to be known as the "Investigative Practices Hearing" (Public Hearing 13) to discover and confront holistically the extent of those issues and their impact on the Inquiry's ability to solve the Category A and B deaths.
70. That exercise proceeded in three stages. First, from March 2023 onwards, the Inquiry made several requests of the NSWPF for statements, including in relation to the UHT and the Homicide Squad (the section of the NSWPF which investigates homicides in their immediate aftermath). The Inquiry also prepared two schedules for the NSWPF, one setting out matters in which documentary or exhibit material had been lost or destroyed, and one identifying matters of concern to the Inquiry in relation to the investigations of individual deaths. The Inquiry asked that these matters be addressed by appropriate NSWPF officers. Five statements were accordingly provided to the Inquiry by senior NSWPF staff.
71. Secondly, the Inquiry held two tranches of public hearings. In the first tranche, between 4 and 7 July 2023, the Inquiry received oral evidence from the NSWPF officers who had provided statements. In the second tranche, on 15 August 2023, the Inquiry received evidence from a representative of the NSW Forensic & Analytical Science Service (**FASS**) addressing its exhibit management processes and forensic testing capabilities, as well as from Dr Cheryl Allsop, an academic specialising in major crimes investigations.

72. Thirdly, Counsel Assisting and the NSWPF made written submissions to me addressing the following matters arising from the written and oral evidence:
- a. Homicide investigations, both in the period covered by the Terms of Reference and (where appropriate) current practices and procedure, including the role of the Homicide Squad, the education and training of homicide detectives, and the risks of unconscious bias;
 - b. Forensic techniques available to the NSWPF to assist in homicide investigations, including the evolution of forensic testing and the use of DNA databases in NSW;
 - c. The UHT, including its establishment and operation, and its screening, triage and review processes;
 - d. The NSWPF's management of exhibits and documentary records; and
 - e. Document and exhibit management, and investigative practices, in the context of individual deaths being considered by the Inquiry.
73. The outcomes of the Investigative Practices Hearing are detailed in **Chapters 7 and 8** of this Report, with matters pertaining to individual deaths addressed in the relevant sections of **Chapters 5 and 6**. The following outcomes deserve special foreshadowing:
- a. Many of the investigative steps highlighted by the Inquiry, as well as actions taken (or not taken) in relation to the preservation of records and exhibits, were not in compliance with proper police practice at the relevant times;
 - b. The problems with locating records and exhibits in unsolved homicides were long-standing and well-known within the NSWPF; and
 - c. The UHT is processing unsolved homicides too slowly and not reviewing them with sufficient frequency, with one internal NSWPF document suggesting it would take 900 years for the UHT to resolve its current backlog.
74. As will be seen below, I make several recommendations relating to the improvement of the processes of the UHT and NSWPF exhibit management. Those recommendations arise in the context of the deaths reviewed by this Inquiry, but aim to improve the future review and reinvestigation of all unsolved homicides in NSW.

The attitude of the NSWPF towards LGBTIQ hate crimes

75. The procedural and record-keeping deficiencies identified above are not unique to suspected LGBTIQ hate crimes. However, it has also been necessary to consider whether the investigation of Category A and B deaths has been informed by certain institutional attitudes and practices within the NSWPF with respect to the identification, investigation and recording of “bias crime” and “hate crime” generally, and LGBTIQ hate crimes in particular.
76. To that end, the Inquiry convened its second public hearing (**Public Hearing 2**) in December 2022. Public Hearing 2 ultimately ran for a total of 32 hearing days

across multiple tranches, concluding in October 2023. Twenty volumes of documentary evidence were received, and twenty witnesses gave oral evidence. **Chapter 9** provides an overview of the procedural history of Public Hearing 2.

77. Public Hearing 2 addressed four main topics:
- a. The way in which the NSWPF has approached issues relating to bias and/or hate crimes over the years from 1970 to the present (see **Chapter 10**);
 - b. Strike Force Macnamir, established in February 2013 to reinvestigate the death of Scott Johnson at North Head in 1988 (see **Chapter 11**);
 - c. Strike Force Neiwand, which was established in October 2015 and continued until late 2017 to review of three deaths near Bondi in the 1980s; those of Gilles Mattaini in 1985, and of Ross Warren and John Russell in 1989 (see **Chapter 12**); and
 - d. Strike Force Parrabell, which was established in about August 2015 to review the list of 88 deaths referred to in Category A, and the final report for which was this Inquiry has been directed to consider in its Terms of Reference (see **Chapter 13**).
78. The work of all three of those Strike Forces proceeded largely simultaneously, until about late 2017.

The NSWPF response to hate/bias crimes

79. Within Public Hearing 2, the Inquiry examined the approach adopted by the NSWPF towards hate and/or bias crimes since the mid-1990s. Among the matters canvassed were the evolution in the NSWPF's capabilities for identifying and investigating suspected bias crimes, including the formation and evolution of a Bias Crimes Unit (**BCU**) and the changes to the structure, personnel, and resourcing of that unit.
80. As I will explain further in **Chapter 10**, I have found that the area of bias crimes has not historically been an area of sustained focus within the NSWPF. The BCU and its predecessors have suffered from a lack of resources and personnel, which is apparent, notwithstanding that I am not in any position to conduct a comprehensive analysis of the resourcing constraints faced by the NSWPF. Additionally, the number of times that the BCU has been restructured or moved reflects a lack of strategic direction in the area of bias crimes and little understanding of what a better-resourced version of the unit could potentially offer to the NSWPF and its investigative capabilities.

Strike Force Macnamir

81. Strike Force Macnamir, which commenced in February 2013, was a reinvestigation into the death of Scott Johnson at North Head in December 1988. The Inquiry examined the reasons for the establishment of Strike Force Macnamir, and whether and why it persisted in favouring the view that Scott Johnson's death was likely to have been suicide. In the course of so doing, it considered the circumstances surrounding the participation of Pamela Young, the officer with primary responsibility for Strike Force Macnamir, in a televised studio interview

with journalist Emma Alberici on the ABC's *Lateline* program on 13 April 2015, during which she made comments critical of the Minister for Police's involvement in the creation of Strike Force Macnamir.

82. Strike Force Macnamir is addressed in **Chapter 11** of this Report. As I there conclude, its lead investigator, Ms Young, held a strong view that no further investigation into Scott Johnson's death was warranted; that Scott Johnson's death was most likely a suicide; and that the Johnson family were using their political influence and extensive resources to "jump the queue" and receive priority treatment over other families of homicide victims. I also find that Ms Young's supervisor, the then Homicide Commander Michael Willing, shared the view that Strike Force Macnamir was not necessary and would not produce any different result. I observe that these matters are suggestive of the institutional defensiveness on the part of the NSWPF which I have commented on in other parts of this Report (see especially **Chapter 15**).

Strike Force Neiwand

83. The Inquiry also identified Strike Force Neiwand as relevant to the question of the manner in which the NSWPF has responded to suspected LGBTIQ bias or hate crimes during the relevant period. The Inquiry examined the reasons for the establishment of Strike Force Neiwand, its methodology, its conclusions, and the dissemination of those conclusions.
84. Strike Force Neiwand was conducted between October 2015 and January 2018, nominally as a reinvestigation of the deaths of John Russell, Ross Warren and Gilles Mattaini, whose deaths near Bondi in the 1980s fall within Category A of the Inquiry's Terms of Reference.
85. The deaths of Mr Russell, Mr Warren and Mr Mattaini had been the subject of Operation Taradale between 2000 and 2002 and a subsequent inquest between 2003 and 2005. At the conclusion of that inquest, Senior Deputy State Coroner (**Coroner**) Jacqueline Milledge determined that the deaths of both Mr Warren and Mr Russell were homicides that the evidence strongly supported the probability that they both met their deaths at the hands of "gay hate assailants" and that there was a "strong possibility" that Mr Mattaini had died in similar circumstances to the other two men.¹³
86. Strike Force Neiwand is considered in **Chapter 12** of this Report, while the Inquiry's investigations into the deaths of Mr Russell, Mr Warren and Mr Mattaini are detailed in **Chapter 5**. As I observe in **Chapter 12**, while the documented objective of Strike Force Neiwand was to reinvestigate the three deaths, in reality the activities of the strike force were directed to rebutting the work of Operation Taradale and the findings of Senior Deputy State Coroner Milledge.
87. Although some 116 persons of interest had been identified by Operation Taradale in the early 2000s, at the outset, Strike Force Neiwand did not investigate any of them, and instead overwhelmingly pursued lines of inquiry which supported a

¹³ Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquests into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 14 (SCOI.02751.00021).

finding of suicide and/or misadventure rather than homicide. Strike Force Neiwand was highly critical of Operation Taradale and its commander Detective Sergeant Stephen Page, and proposed findings as to the manner and cause of the three deaths which were radically different from the findings of Senior Deputy State Coroner Milledge. However, neither the State Coroner nor Mr Page was notified of these contrary findings.

88. Ultimately, I conclude that Strike Force Neiwand was a wholly secretive and inadequate attempt, by those who conducted and supervised it, to avoid or negate the consequences of the Taradale Inquest and findings, including by mounting an unjustified and unfair attack on Mr Page.

Strike Force Parrabell

89. The Inquiry's consideration of Strike Force Parrabell is set out in **Chapter 13** of this Report. Strike Force Parrabell was established in around August 2015 to review the 88 deaths between 1976 and 1999 which had been the subject of considerable media publicity as possible "gay hate deaths". Its work was largely completed by late 2017. It published its results, along with the academic review of the Strike Force, in the Parrabell Report of June 2018, referred to in Paragraph C of the Terms of Reference.
90. The Parrabell Report included figures for 86 of the 88 deaths (two were not reviewed). Of those 86, eight were categorised as "Evidence of Bias Crime", 19 as "Suspected Bias Crime", 34 as "No Evidence of Bias Crime" and 25 as "Insufficient Information".
91. Twenty-three of the 86 deaths were categorised as "unsolved". Of those 23, none were categorised as "Evidence of Bias Crime", 5 were categorised as "Suspected Bias Crime", 4 as "No Evidence of Bias Crime" and 14 as "Insufficient Information".
92. The Inquiry examined the reasons for the establishment of Strike Force Parrabell, and its methodology. It also examined the selection of, and methodology used by, the team of academics which was engaged by the NSWPF to review the work of the Strike Force.
93. I conclude that Strike Force Parrabell had been established for a number of reasons, including to refute the suggestion that there had been a significant number of LGBTIQ hate-motivated homicides in the relevant period, to show that the number of unsolved LGBTIQ hate-motivated homicides was lower than reported in the media, and to refute the suggestion that NSWPF had not adequately investigated LGBTIQ hate-motivated crimes.
94. I conclude that the Bias Crimes Indicators Review Form (**BCIF**), which was the particular review form created and used by Strike Force Parrabell, was an entirely inappropriate document and that only limited weight can be attributed to the conclusions reached by its use. I also conclude that there was a significant degree of collaboration between the Strike Force Parrabell team and the academics engaged to review their findings, resulting in an academic review that was not conducted at arm's length or in a manner which inspires confidence in its rigour and independence.

Conclusions on the attitude of the NSWPF to hate crimes

95. As identified by Senior Counsel Assisting in his closing address to this Inquiry, there are some noticeable resonances among the three Strike Forces considered in Public Hearing 2: Strike Forces Macnamir, Neiwand and Parrabell.¹⁴
96. All three were directed, at the same time, within the last 5 to 10 years, at aspects of possible LGBTIQ bias-related homicide. All three arose in the context of, and to greater or lesser extent as a response to, media publicity about “gay hate murders”. All three arrived at outcomes, at virtually the same time in about 2016-17, that were remarkably consistent:
- Strike Force Macnamir maintained—“absurdly”, in the view of the judge who sentenced Scott Johnson’s killer earlier this year—that the death of Scott Johnson at North Head in 1988 was unlikely to be a homicide at all, and much more likely to be suicide;
 - Strike Force Neiwand maintained that the deaths of the three men near Bondi in the 1980s, contrary to the explicit findings by Senior Deputy State Coroner Milledge in 2005 after a lengthy inquest, may well not have been hate crime murders; and
 - Strike Force Parrabell maintained that of the 23 deaths that it regarded as unsolved (of the 88 it considered), not one met the threshold for “evidence of bias crime” and only five were even “suspected” bias crimes.
97. In all three Strike Forces, all of which were still under way as recently as six years ago, there was a convergence on outcomes that had the effect of indicating that the extent of LGBTIQ bias, as a possible factor in all these heavily publicised deaths of LGBTIQ people, was far less than had been suggested by LGBTIQ activists or the media.
98. I conclude in **Chapter 14** that there appears to have been a resistance in the NSWPF, even very recently, to acknowledging the extent of the hostility experienced by LGBTIQ people in the 40-year period under examination in this Inquiry.

The attitude of the NSWPF to the Inquiry and the impact of the NSWPF response to the Inquiry

99. In many respects the NSWPF has given substantial assistance to the Inquiry. The number of documents produced to the Inquiry by the NSWPF alone is in excess of 100,000. The NSWPF also, at the request of the Inquiry, prepared some 56 witness statements for police officers and other police personnel, in relation to various aspects of the public and private hearings. That has no doubt required the deployment of considerable police resources, and the hard work of many police officers and many police lawyers. The Inquiry acknowledges the extent of these efforts on the part of the NSWPF and its lawyers, without which the work of this Inquiry could not have been accomplished.

¹⁴ Transcript of the Inquiry, 14 November 2023, T6965.47–6966.3 (TRA.00101.00001).

100. Against that background, however, there are two matters in respect of the NSWPF response to the Inquiry that I consider call for comment at this point in the Report. They are explored in detail in **Chapter 15**. They are, first, the way in which the response of the NSWPF to the Inquiry affected the work of the Inquiry, and, second, the attitude of the NSWPF to the Inquiry.
101. The work of the Inquiry was, in large part, reliant on three things. First, the quality of the original police investigation into a death. Secondly, whether the NSWPF had retained documentary and exhibit material. Thirdly, whether the NSWPF was able to produce the totality of that material at all, and in a timely way.
102. A problem at any of these stages affected the ability of the Inquiry to form a complete evidentiary picture in relation to any given death. This, in turn, affected the investigative steps and factual findings available to the Inquiry.
103. As I observe in **Chapter 15**, real difficulties for the work of the Inquiry were created by the NSWPF belatedly requesting extensions, and by the failure by the NSWPF to recognise and candidly acknowledge, at the commencement of the Inquiry's work, the legacy of historical record keeping and exhibit management.
104. The consequences of failures to retain documentary and exhibit material are, unfortunately, visible throughout this Report.
105. The NSWPF were always going to be the principal repository of relevant documents and exhibits for the deaths being reviewed by the Inquiry. Regrettably, the process of obtaining material from the NSWPF was not straightforward. It appears that, at least initially, the NSWPF underestimated the nature and extent of the Inquiry and the tasks that would necessarily be required of them. In addition, there was initially a failure by the NSWPF to appreciate, and then to communicate to the Inquiry, the impact of past deficiencies in record keeping and exhibit management practices.
106. **Chapter 15** addresses the responsibility for resourcing the NSWPF's response to the Inquiry; difficulties in the process for locating material for production, the communication of that issue and the resulting delays for the Inquiry; the obligation of NSWPF to draw factual matters to the attention of the Inquiry; the compliance of the NSWPF with the Practice Guidelines and timeframes set by the Inquiry; and a chronology of major issues arising from the engagement of the NSWPF with the Inquiry since May 2022.
107. The second matter I wish to remark upon is the attitude of the NSWPF towards the Inquiry. It was my expectation that the NSWPF would fully cooperate in order to assist the Inquiry efficiently and in a timely fashion, particularly given the limited timeframes placed on the Inquiry to get to the relevant factual material. This was certainly the position publicly taken by the NSWPF.
108. The overall impression emerging from **Chapter 15** is that the NSWPF has, in significant respects, engaged with this Inquiry in a way that was adversarial or unnecessarily defensive. **Chapter 15** will address this defensiveness and the impact of the approach taken by the NSWPF to this Inquiry.

109. The NSWPF dedicated efforts to asserting to the Inquiry, after the fact, that it (the Inquiry) asked the wrong questions of the wrong people. Such efforts could have been far more productively directed to propounding or suggesting what the NSWPF regarded as the right ones. The NSWPF appears to have taken the view that it was appropriate to force the Inquiry, via multiple summonses and hearings, and in excruciating detail, to acquire information which the NSWPF could have readily and voluntarily provided had it made simple, proactive internal inquiries. Much time and expense could have been saved by a conciliatory and cooperative attitude, and the courtesy of greater advance notice of any substantive obstacles and concerns.
110. The NSWPF also chose to raise critical challenges to the scope of this Inquiry in its submissions only after evidence on the affected topic had been completed. Even if those challenges had been well-founded (and I have found that they were not), this approach was not a constructive one.
111. In short, I regard the NSWPF as having fallen short of what I expected of it as a model litigant, as detailed in **Chapter 15**. In saying this, I recognise the hard work and professionalism of counsel, solicitors and others tasked with representing the NSWPF in this Inquiry and make no criticism of them individually.
112. A combination of the matters foreshadowed above is one of the reasons that it has been necessary for this Inquiry to extend its intended duration by nearly an additional six months.
113. It can provide scant comfort to the LGBTIQ community in NSW that the NSWPF continues to treat the review of LGBTIQ hate crimes as an adversarial issue. The problematic history of the NSWPF's approach to homicides that may have been hate crimes, and associated investigative failures, should not be treated by the NSWPF as a matter of reputational risk, to be managed through tactics appropriate to conventional litigation.
114. An Inquiry of this kind may hold public hearings, but it is not necessarily (and should not have been, in relation to the NSWPF at least) a litigious process. The Inquiry presented the NSWPF with an opportunity to acknowledge and reflect on the legacy of its approach to homicides that may have been hate crimes. Unfortunately, that opportunity was to a considerable extent resisted. This Report now provides a further opportunity for the NSWPF to acknowledge a history, including recent history, that has harmed the LGBTIQ community, and to enshrine a commitment to redressing this history through improvement.

Powers of the Inquiry

115. The powers granted to me as Commissioner to carry out my task are significant, but specific. They are found entirely within the *Special Commissions of Inquiry Act 1983 (SCOI Act)*.
116. As this Inquiry has found, the wording of that legislation is not free from ambiguity, particularly where it interacts with other legislative schemes. Nor are its limits as well explored and defined as those of (for example) the various State and

federal statutes providing for Royal Commissions. Nevertheless, the fundamental powers available to me (and their limitations) are readily understandable. They are addressed briefly below.

Reporting to the Governor

117. I am empowered and obliged under ss. 4(1) and 10(1) of the *SCOI Act* to report to the Governor on the subject matter of the Inquiry. I do so in this Report.
118. Importantly, s. 10(1) also obliges me to report “as to whether there is or was any evidence or sufficient evidence warranting the prosecution of a specified person for a specified offence”. That provision has reasonably clear application where a Special Commission of Inquiry is, for example, constituted to examine the recent conduct of a particular person or persons. In the context of multiple historical homicide investigations, the obligation is far more vexed.
119. While it is my duty to report where I think the evidence rises so high as to warrant or have warranted a prosecution, in the context of historical homicides, with incomplete records and deceased or missing witnesses, such conclusions are naturally attended by great difficulty. I discuss those issues further in **Chapter 1**.

Compelling witnesses and documents

120. My primary significant investigative power is that provided by s. 14 of the *SCOI Act*. Section 14 empowers me to summons any persons to attend the Inquiry to give evidence and/or to produce any books, documents or writings in that person’s custody and control. The penalties for failing to comply, providing false information, or otherwise attempting to subvert a summons are harsh, and in many cases amount to a criminal offence (see Part 4 of the *SCOI Act*).
121. My power to compel witnesses and documents is broad and flexible, and has allowed the Inquiry to obtain the extensive material and oral evidence addressed by this Report.
122. That power is also formidable. Unlike in many adversarial contexts, a witness is not excused from producing a document or answering a question on the basis that the answer will incriminate them, or that it would normally be protected by privilege (see s. 23 of the *SCOI Act*). It is supplemented by my powers, rights and privileges as a Judge of the Supreme Court with respect to compelling attendance, answers and production of documents, as well the punishment of contempt of any order or summons, as conferred by s. 24 of the *SCOI Act*.
123. While answers and documents given unwillingly cannot be used in most civil or criminal proceedings against a witness (see s. 23(2) and (3)), the compulsion of documents and answers is a necessarily intrusive power which I have wielded with care.
124. On the other hand, it is important to observe the limits of that power. The Terms of Reference of this Inquiry, in essence, require it to investigate a non-exhaustive list of unsolved deaths. This Inquiry is not, however, an investigative agency, with the wide-ranging powers and extensive investigative experience of bodies such as State and Commonwealth police forces, or even law enforcement bodies with targeted

powers directed towards uncovering certain kinds of criminal activity. For example, this Inquiry has no direct statutory powers to implement covert surveillance by which either to obtain evidence or to test the veracity of other evidence.

125. Moreover, it has been of vital importance for this Inquiry to maintain a level of formal independence from the NSWPF given the nature of some of the subject matter of this Report. A necessary consequence has been to limit cooperation with the NSWPF to strictly formal channels during the course of this Inquiry. That is appropriate—this Inquiry is not merely a supplementary resource for NSWPF cold case investigations, particularly having regard to my conclusions concerning the UHT addressed in **Chapter 8**. It does, however, impose some further limits on the investigative capacity of this Inquiry with regard to unsolved deaths.
126. The Inquiry has ameliorated these difficulties with the close cooperation of several other key government agencies, as well as by employing experienced investigators to guide its approach (see s. 13 of the *SCOI Act*). However, the above limitations should be borne in mind when considering the steps able to be taken by this Inquiry to advance its understanding of the deaths falling within its ambit.

Holding public and private hearings

127. Section 7 of the *SCOI Act* allows me to hold hearings in connection with the Inquiry. Those hearings were in public, unless I was satisfied that the confidential nature of the evidence or another reason justified that they take place in private. Where a hearing was held in private, I gave directions to those in attendance, including to preserve the confidentiality of proceedings. At times I found it necessary to direct that parts of an otherwise public hearing proceed briefly in private, to preserve the confidentiality of sensitive information inadvertently disclosed in the course of oral evidence, including in support of non-publication orders that I have made.
128. I have used the power to hold private hearings where I have considered it appropriate to do so. Even where the Inquiry has not itself been able to solve an unsolved death, it does not always follow that the Inquiry's work in relation to that death should be publicised in full. Investigative prospects may remain, particularly for agencies with access to other and different investigative powers. Accordingly, I have taken great care, when witnesses and persons of interest have been questioned, to avoid the publication of information which might undermine future investigations and/or prosecutions.

Non-publication orders and confidential reporting

129. Section 8 of the *SCOI Act* empowers me to make directions preventing or restricting the publication of evidence received orally or contained in documents before me. I have done so by way of a series of non-publication “orders”, which are annexed to the confidential volume of this Report. Most often, those orders are made to preserve the prospects of future investigations and prosecutions. As a result of those non-publication orders, various names in the public volumes of this Report have been substituted with pseudonyms. The manner in which the Inquiry has approached confidentiality and non-publication orders is addressed in more detail in **Chapter 1**.

130. Relatedly, s. 10(3) of the *SCOI Act* allows me to deliver this Report to the Governor with such recommendations as to publication as I think proper. I have recommended that the confidential volume of this Report, and the names to which pseudonyms have been applied in the public volumes, should remain confidential for the foreseeable future. I further discuss the basis for my recommendations in **Chapter 1**.

Operation of the Inquiry

131. Broadly speaking, the work of the Inquiry proceeded in six overlapping phases:
- a. In the first phase, from May 2022, the Inquiry gathered vast quantities of documents to begin its review of the deaths which may fall within Category A, including in terms of investigative prospects, and its assessment of which deaths may fall into Category B.
 - b. In the second phase, the Inquiry began a more intensive case review and investigation of deaths which may fall within Category A, as well as those which it appeared might fall within Category B. The Inquiry issued more targeted summonses, in addition to which witnesses and families were identified and contacted in consultation with the Inquiry's investigations team. Around this time, the Inquiry also commenced its public hearings, beginning with the opening hearing on 2 November 2023, and followed that month with an initial hearing exploring the context of hate crimes against the LGBTIQ community.
 - c. In the third phase, in the latter part of 2022, the Inquiry began to delve into the complex documents and decision-making that grounded Strike Force Parrabell. This in turn highlighted broader institutional issues to the approach of the NSWPF to LGBTIQ hate crimes in earlier Strike Forces, including Strike Force Neiwand and Strike Force Macnamir. In order to bring the full extent of those issues to light, "Public Hearing 2", as it was known, eventually extended to multiple tranches of hearings in December 2022, and February, March, April, May, June, September and October 2023.
 - d. In the fourth phase, the Inquiry began public hearings into the Category A and B deaths it had reviewed, commencing in February 2023, through to October 2023. A public hearing did not necessarily indicate a matter had been finalised, and most matters were still being advanced through further investigative steps and supplementary submissions well into the year, in some cases up to November 2023. This was also the period in which issues relating to the sporadic and delayed production of documents by the NSWPF stalled some of the Inquiry's more complex hearings.
 - e. In the fifth phase, the consistent picture of incomplete documentary records and lost exhibits emerging from the Inquiry's public hearing eventually warranted attention. The "Investigative Practices Hearing", held in two tranches in July and August 2023, holistically explored those issues in the context of the past and current practices of the UHT, exposing various institutional issues with the procedures of that branch of the NSWPF.
 - f. In the final phase, the Inquiry concentrated on the production of this Report.

132. From late 2022 and until the final months of the Inquiry, I also held private hearings with various witnesses as required in relation to various deaths under review.

Statistics

133. I have explained above the powers available to me. By way of illustration of the scale of the task faced by the Inquiry, I set out below the manner in which I used those powers to compel the extensive production of documents and to compel numerous witnesses to give evidence in the course of the Inquiry.

Summonses and other requests for documents

134. The Inquiry issued a total of 200 summonses to the NSWPF to produce documents.
135. A further 283 summonses to produce documents were issued, to more than 80 other institutions, agencies, and other entities, both in NSW and interstate.
136. There were also 51 requests to the Coroners Court, other Courts throughout NSW, and other agencies and organisations.
137. There were 121 summonses issued to persons requiring them to attend to give evidence, some in public hearings and some in private hearings.
138. A full list of summonses issued in relation to matters dealt with publicly by the Inquiry can be found at **Annexures 6 and 7**. A list of requests to the Coroners Court and other Courts can be found at **Annexure 8**.

Documents

139. More than 150,000 separate documents—many of those very lengthy and some of them running to hundreds of pages each—have been received and reviewed by this Inquiry. Much of that material, especially from the NSWPF, was in hard copy, in hundreds of boxes. A vast amount of material was also received in digital form.
140. The number of documents produced by the NSWPF alone was in excess of 100,000.

Public hearings

141. There were 17 separate public hearings. That number belies the reality; the Inquiry has in fact held 66 sitting days of public hearings, with some public hearings bridging multiple days or weeks and even involving multiple tranches of hearings across the Inquiry. Over the course of those hearings, the Inquiry received into evidence 71 documentary exhibits, many comprised of several hundred documents.
142. Thirteen of those hearings, over a total of 22 days, were for the presentation of evidence and submissions relating to 32 of the 34 individual deaths which had been closely considered by the Inquiry (noting again that two were dealt with confidentially). Counsel Assisting formally presented, by way of a tender bundle of material, the evidence which had been assembled, selected and analysed by the Inquiry, along with detailed written and oral submissions. The NSWPF made written submissions in reply in all those deaths.

143. The other four public hearings were:
- a. Public Hearing 1, over five days, concerned the social and political contexts referable to the 40-year period under review;
 - b. Public Hearing 2, over 32 hearing days, principally concerned three strike forces, namely Strike Forces Parrabell, Macnamir and Neiwand;
 - c. Public Hearing 13, over five hearing days, concerned investigative practices in relation to unsolved homicides, primarily those of the NSWPF; and
 - d. Public Hearing 15 concerned delays and problems in relation to the production of NSWPF records.
144. Overall, a total of 38 witnesses gave oral evidence at the Inquiry's public hearings.
145. For every public hearing of the Inquiry, the majority of documents tendered were published on the Inquiry's website, subject to certain redactions and pseudonyms required by non-publication orders I made in consultation (but not always agreement) with the NSWPF. The Inquiry has also published transcripts and video recordings of each of its public hearings.
146. The NSWPF was represented at all the public hearings of the Inquiry, with standing leave to question witnesses and make submissions addressing those of Counsel Assisting. At various times, other witnesses and stakeholders, most frequently individual NSWPF employees or former employees, have been separately represented in public hearings with leave to question witnesses and make appropriate submissions. A full schedule of public hearings, including represented parties and witnesses in attendance, is included in **Annexure 1**. The full list of parties with leave to appear can be found in **Annexure 2**.

Private hearings

147. In addition to those 17 public hearings, there have also been 48 private hearings. Many of those related to particular deaths under investigation; others related to aspects of NSWPF investigative practices, including confidential methodology.
148. The Inquiry received oral evidence in private from 45 witnesses, as well as 175 documentary exhibits tendered in private.
149. For all of those witnesses who gave evidence in private hearings, including persons of interest, the Inquiry offered *pro bono* legal representation. Most of those witnesses availed themselves of that offer.
150. As noted above, the evidence from private hearings is the subject of a confidential volume of the Report. A great deal of the evidence received in private involved Counsel Assisting examining either persons of interest, or other witnesses who were thought likely to have information, about one or more of the individual deaths under investigation. Those witnesses needed to be examined privately so as to both preserve the integrity of the Inquiry's investigations, and to avoid prejudice to future criminal investigations or prosecutions.

151. Similarly, the majority of evidence and information received privately from police or other law enforcement sources has also been kept private, to avoid disclosing sensitive matters such as police methodology or the possible content of current or future police investigations.
152. Those private hearings and investigations have shed considerable additional light on several of the deaths under review by the Inquiry, including various possible new lines of investigation for follow-up by the NSWPF.
153. By way of example, the subject matter in respect of which evidence was received in private included:
 - a. Deaths, and also other non-fatal assaults, in the relevant period, in areas that were known or suspected beats, including (among others) Moore Park, Alexandria Park and Marks Park near Bondi;
 - b. The death of William Rooney in Wollongong in 1986; and
 - c. The death of James Meek in Surry Hills in 1995.
154. As noted above, the evidence from private hearings is the subject of a confidential volume of the Report. It includes my assessments and opinions of the witnesses examined and evidence gathered in private, and as to possible future lines of inquiry, and also confidential recommendations flowing from the private hearings.

Community engagement

155. As detailed in **Chapter 3**, from the outset the Inquiry has taken care to engage with members of the LGBTIQ community and LGBTIQ community organisations, for the purposes of information gathering and to consult on broader issues underlying historical hate crimes against the community in NSW.
156. The Inquiry has also made careful use of media to ensure its purpose, progress and calls for information were publicised as widely as possible to those with relevant information or simply interested in remaining informed about the Inquiry's work.

Assistance from the public

157. The Inquiry has had a public online contact form, a public email address and a voicemail service from its earliest months, through which to receive information from members of the public. All communications received by the Inquiry were considered by its investigators, who in many cases subsequently contacted prospective witnesses to discuss promising information. In addition, Inquiry staff engaged in conferences, telephone calls and correspondence with family and friends of the deceased persons.
158. In total, the Inquiry received and reviewed information provided by more than 130 members of the public.

Challenges for the Inquiry

159. As will be apparent from the above, this Inquiry has faced significant and unexpected challenges with respect to both the availability of records and its relationship with the NSWPF. Those challenges are addressed in detail in **Chapters 8 and 15**.
160. Those matters, however, are not the only challenges worthy of introductory comment. I set out some of the other major issues faced by this Inquiry below.

Scope and nature of the task

161. It is readily apparent from the Terms of Reference that this is not a narrow, targeted Inquiry. I and my team of counsel, solicitors, investigators and other support staff were asked to find answers for an unclosed category of deaths where all the investigative resources of the NSWPF have previously failed, in many cases for between 30 and 50 years. Beyond that, as I have said, it is also incumbent on me as Commissioner to identify broader themes and make recommendations to improve the future investigation of hate crimes against the LGBTIQ community.
162. That task was always a daunting one. Many of the persons who were involved in those matters are now deceased, and the memories of those who are not have necessarily faded. Even identifying and locating relevant witnesses might pose an operational challenge given the time elapsed. Further, notwithstanding the recordkeeping issues referred to above, the total number of documents to be reviewed for so many unsolved deaths was imposing, as were the number of places where other relevant records might be sought in each individual matter.
163. In many cases, I have advanced matters as far as I am able and return them to the NSWPF and other investigative bodies in the hope that the progress made by this Inquiry might reinvigorate their investigative prospects.
164. The task of solving many of these matters remains an ongoing one. It is my sincerest hope that this Report will not be the final effort of the State of NSW to provide closure to loved ones for those deaths that remain unsolved despite the attention of this Inquiry.

Identifying Category B deaths

165. As noted, the Terms of Reference did not place a closed list of deaths before me. Category B of the Terms of Reference required me to identify and review all unsolved suspected “hate crime deaths” involving bias against the LGBTIQ community in the 40 year period from 1970 to 2010. **Chapter 1** explains precisely how I have interpreted that category, and the process adopted by this Inquiry to identify those deaths is explained further in the introduction to **Chapter 6**.
166. At present, it suffices to say that the task of identifying those matters was plagued with complexity. In a number of instances very little assistance was obtained from the records of the NSWPF, in terms of identifying factors that may suggest a bias element in a death. As a consequence, this Inquiry has been required to assess, in some degree, almost every recorded unsolved death or disappearance in NSW

- between 1970 and 2010. That review has necessarily been a staged process moving from very high level to more concentrated reviews, balancing the likelihood that a death would ultimately be regarded as falling within Category B against the time and resources available to the Inquiry.
167. It is possible, even probable, that some deaths have been missed. This Inquiry could obviously not review, in detail, every investigative or coronial file for every death or disappearance in NSW in the relevant period. In the initial stages, this Inquiry had to rely on records such as UHT summaries to consider likely Category B deaths. Those documents are subject to the omissions, biases and outdated historical perspectives of the original investigations, and perhaps those of the reviewer who compiled them.
168. Putting aside the sociocultural complexity, or even appropriateness, of attempting to assess the actual membership of victims in the LGBTIQ community, the details which suggest that perceived membership in that community may have been a factor in a person's death will not necessarily have been recorded in those documents. In short, it is possible this Inquiry has missed deaths which would fall within Category B, simply because nothing which would suggest those deaths could be hate crimes (however that standard is framed) has survived in the records reviewed.
169. Category B also poses a paradoxical question. LGBTIQ bias can rarely be identified with absolute certainty in unsolved matters, particularly at a glance. At what stage in the above review process, then, have I formed a "suspicion" that a death is a hate crime falling within Category B? If I so determine but, on further review of the matter, the suspicion falls away or becomes less persuasive, does the matter again fall outside of Category B? Should the Inquiry still attempt to solve the matter, or address it in this Report? This Inquiry's Terms of Reference by necessity require me to undertake sometimes extensive reviews of matters which I might ultimately find fall outside the scope of Category B. That in turn raises difficult questions as to where resources should be allocated, which families and witnesses should be contacted and what it is appropriate for me to publish in this Report, even confidentially.
170. I have explained in **Chapter 1** the standard I have applied in assessing whether a matter is a "suspected hate crime death". That standard is deliberately a broader one than seems to have been applied by the NSWPF, and reflects the importance of keeping that possibility in mind when assessing suspected homicides. Even so, it does not allow for bright line decisions in every case on the information before me. In some matters, possible motives for a homicide may be entirely unknowable or speculative.
171. As will be seen, the number of deaths that I have found to fall within Category B is limited to those which I considered clearly warranted consideration under that Category. I do not wish to suggest there were no other matters I reviewed where that case theory was open on the evidence before me. Given the number of deaths already before me in Category A, I have sometimes made the difficult determination that there is simply not enough positive evidence pointing to LGBTIQ bias being a factor in a death to warrant further time and resources being spent investigating that case theory. The Inquiry has at times been assisted by

members of the public and LGBTIQ community organisations, who have drawn my attention to matters that they, perhaps with personal or unique knowledge, suspect to be hate crimes. Although I have not always been able to positively conclude that these deaths fall within the Inquiry's Terms of Reference, I thank those members of the public who came forward to assist this Inquiry. It is important to say, as I do in **Chapter 6**, that a conclusion that a death is not within the Inquiry's Terms of Reference is not a positive finding that a death was not an LGBTIQ bias crime, or that a person was not a member of the LGBTIQ community. It merely means that I could not be affirmatively satisfied, on the evidence before me, that the death was within the Inquiry's Terms of Reference.

Procedural fairness

172. As will become apparent, I do not shy from making adverse comments in this Report where I regard them as appropriate.
173. Some such adverse comments, of course, relate to the involvement of named persons in the deaths I have reviewed. I do not express those opinions lightly but nor can I safely avoid them where I consider the evidence warrants me identifying a person in reaching conclusions as to manner and cause of death.
174. Many more observations, however, relate to named persons whose shortfalls have impacted the investigation of the deaths I have reviewed, both historically and on an ongoing basis. They include comments addressing the failures and errors of certain named police OICs in conducting initial investigations into these deaths (although as I explain in **Chapter 8**, many of my adverse comments about investigations do not involve criticism of any particular officer), as well as some of those officers responsible for conducting subsequent reviews or who contributed to the flawed exercises in Strike Forces Macnamir, Neiwand and Parrabell. At times I have been called upon to assess the credibility of witnesses who appeared before me in both public and private hearings, and I have not always done so favourably.
175. It is, of course, important that each person so named is given a prior opportunity to be heard before I make any adverse comments. This Inquiry is subject to and has applied the principles of procedural fairness that must govern any body which is given authority to make adverse public comment. Those principles are explained further in **Chapter 1**.
176. The NSWPF has been at great pains to remind the Inquiry of its obligations in this respect—including where it might have been assumed that the NSWPF would speak on behalf of its employees and ex-employees. Accordingly, this Inquiry has dedicated much time and effort to ensuring that each person who might be anxious as to how they may be portrayed in this Report has been given an opportunity to address me on that matter.
177. The challenge this has posed for the Inquiry cannot be understated. The scope of this Inquiry is vast, and it addresses grave matters. The deaths addressed by the Inquiry involve enormous casts of individuals, as witnesses and suspects or as investigators and reviewers. The strike forces considered by this Inquiry were likewise significant exercises to which many contributed, some of whom might feel aggrieved by my comments in this Report.

178. This has not been an Inquiry where it has been a simple matter to identify the issues and give notice to likely interested parties from the outset. The Inquiry's understanding of the deaths before it, and the broader constellation of issues associated with their investigation and review by the NSWPF, was still evolving until its final months; so too the list of persons who are appropriately named in this Report.
179. Nevertheless, this Inquiry has made every effort to contact, by letter, email or telephone, every person who might consider that the submissions of Counsel Assisting indicate the possibility that they may be referred to adversely in this Report, and a considerable amount of time in the latter part of this Inquiry, on the part of Inquiry staff, has been dedicated to a due diligence exercise in that respect. Some relevant persons are deceased, or could not be located; others could not safely be contacted due to psychological trauma (regarding which I note Paragraph D of my Terms of Reference). Many persons so contacted did not reply.

Structure of the Report

180. The following sections summarise each chapter of the volumes of this Report intended to be made public.

Chapter 1 – Terms of Reference and Operation of the Inquiry

181. **Chapter 1** addresses how I interpreted my Terms of Reference, including the meaning of key undefined terms like “unsolved”, “gay hate bias” and “hate crime death”. This chapter also examines my conclusions in relation to challenges by the NSWPF to my compliance with its Terms of Reference. It includes an explanation of the standard of proof that I have applied in reaching my findings, as well as the circumstances in which a death should be regarded as what I have termed “a suspected LGBTIQ hate crime death”.
182. This chapter also explains how I have implemented the Terms of Reference with respect to two critical issues arising from its work: confidentiality, and procedural fairness. It addresses how I have reconciled the tension between my function to report publicly on the manner and cause of the deaths I have reviewed with the need to both avoid causing prejudice to future criminal investigations and ensure that those persons who may be the subject of adverse comment are given the opportunity to address the Inquiry.

Chapter 2 – Establishment of the Inquiry

183. **Chapter 2** contextualises this Inquiry within the recent history of developing interest historical hate crimes against the LGBTIQ community in NSW, including the milestone investigation in Operation Taradale in 2002 to 2005, the multiple inquests into the death of Scott Johnson, a series of NSWPF strike forces into suspected hate crimes deaths and the development of the landmark documents to which this Inquiry is directed to have reference, including the final report of Strike Force Parrabell.

Chapter 3 – Community Engagement and Communications Strategy

184. **Chapter 3** sets out the Inquiry’s approach to its engagement with the LGBTIQ community, as well as its use of media to gather and distribute information required by and regarding the Inquiry. This chapter also addresses, in brief, the Inquiry’s processes for discussing the sensitive matters it addresses with witnesses and members of the public.

Chapter 4 – Social and Cultural Context of the Inquiry

185. **Chapter 4** provides a brief historical overview of the social and legal regulation of the LGBTIQ community in England and Australia, before discussing the outcomes of the Inquiry’s first public hearing in November 2022 (the **Context Hearing**). The Inquiry heard evidence from a number of LGBTIQ community representatives explaining, in many cases from personal experience, the social and cultural context in which hate crimes were perpetrated against the LGBTIQ community in NSW in the 1970s through to 2010.
186. Broadly, the evidence at the Context Hearing covered four main topics.
- a. The impact on the LGBTIQ community of some of the significant events within the 40 year period in question, including the first Mardi Gras in 1978, the decriminalisation of “homosexual conduct” (between consenting adult males) in 1984, the HIV/AIDS epidemic and the “Grim Reaper” campaign, and the upsurge of violence in the 1980s and 1990s (including the convictions of the so-called “Alexandria Eight” and “Tamarama Three”);
 - b. The striking frequency, and level, of violence perpetrated against the LGBTIQ community during this period—at beats, in private homes, and elsewhere;
 - c. Changes in the relationship between the LGBTIQ community and police, and the changing nature of the police response to anti-LGBTIQ violence; and
 - d. The advocacy and campaigns on behalf of the LGBTIQ community over the period, and the effect of those campaigns.
187. The Inquiry heard from the following witnesses in the Context Hearing:
- | | |
|----------------------|----------------------|
| 1. Garry Wotherspoon | 6. Dr Gary Cox |
| 2. Greg Callahan | 7. Bruce Grant |
| 3. Brent Mackie | 8. Ulo Klemmer |
| 4. Barry Charles | 9. Dr Eloise Brook |
| 5. Les Peterkin | 10. Carole Ruthchild |

Chapter 5 – Category A Deaths

188. **Chapter 5** addresses each of the deaths falling within Category A of the Inquiry's Terms of Reference in (largely) chronological order. The Category A deaths addressed publicly by the Inquiry are:
1. Mark Stewart (Spanswick)
 2. Paul Rath
 3. David Lloyd-Williams
 4. Walter Bedser
 5. Richard Slater
 6. Gerald Cuthbert
 7. Peter Sheil
 8. Wendy Waine
 9. Gilles Mattaini
 10. William Rooney
 11. Andrew Currie
 12. William Allen
 13. Ross Warren
 14. Russell Payne
 15. Samantha Raye
 16. John Hughes
 17. Graham Paynter
 18. John Russell
 19. Simon (Blair) Wark
 20. William Dufield
 21. Robert Malcolm
 22. Brian Walker
 23. Crispin Dye
 24. James Meek
 25. Kenneth Brennan
 26. Carl Stockton
 27. Scott Miller
 28. Samantha Rose
189. The introduction to **Chapter 5** discusses some of the broader challenges faced by the Inquiry in reviewing these deaths, as well as the themes which emerged from the submissions of the NSWPF.

Chapter 6 – Category B Deaths

190. **Chapter 6** covers each of the deaths that I was satisfied fell within Category B of the Terms of Reference and addressed publicly by the Inquiry. Those cases are:
1. Ernest Head
 2. Barry Jones
 3. Peter Baumann
 4. Anthony Cawsey
191. The introduction to **Chapter 6** explains the process by which the Inquiry identified those deaths.

Chapter 7 – Cold Cases

192. **Chapter 7** addresses the oral evidence of a cold case expert Dr Cheryl Allsop, as well as judicial commentary in relation to the impact of delay on potential prosecutions, and the prosecutorial value of exhibit retention, in order to establish best practice in relation to cold case homicide investigations.

Chapter 8 – Investigative Practices Hearing

193. **Chapter 8** summarises the evidence and outcomes from the Investigative Practices Hearing in July and August 2023, on topics including current homicide investigations and training, modern forensic techniques, the operation of the UHT and the exhibit management procedures of the NSWPF.

194. The Inquiry heard from the following witnesses in the Investigative Practices Hearing:
- Assistant Commissioner Rashelle Conroy
 - Superintendent Roger Best
 - Detective Superintendent Daniel Doherty
 - Detective Inspector Nigel Warren
 - Detective Chief Inspector David Laidlaw
 - Sharon Neville (FASS)
 - Dr Cheryl Allsop (whose evidence is considered in **Chapter 7**)

Chapter 9 – Overview of Police Investigations into LGBTIQ hate crimes and Public Hearing 2

195. **Chapter 9** provides an overview of the procedural history of Public Hearing 2. In particular, it addresses the contentions made by the NSWPF, at a point in time after the evidence in Public Hearing 2 had concluded, that certain proposed findings and conclusions were not open to be made and/or would be procedurally unfair because various individuals had not been called to give evidence before the Inquiry. It outlines the resulting steps taken by the Inquiry to provide all such individuals an opportunity to provide a statement and/or submissions to the Inquiry.

Chapter 10 – NSWPF Responses to Hate/Bias Crimes

196. **Chapter 10** provides an overview of the approach adopted by the NSWPF towards hate and/or bias crimes since the mid-1990s. It considers how the NSWPF has approached the categorisation of potential hate and/or bias crimes and explores the fluctuating capabilities of the NSWPF in this area. The Inquiry heard from the following witnesses:
- Sergeant Geoffrey Steer
 - Sergeant Ismail Kirgiz
 - Shoba Sharma
197. The Inquiry also received a written statement on this subject from Superintendent Andrew Hurst, who was not called to give oral evidence.

Chapter 11 – Strike Force Macnamir

198. **Chapter 11** addresses the conduct, methodology and outcomes of Strike Force Macnamir. The Inquiry heard from the following witnesses in relation to Strike Force Macnamir:
- Michael Willing
 - Pamela Young
 - Detective Sergeant Penelope Brown (whose evidence is also considered in **Chapter 12**)
 - Emma Alberici
 - Georgina Wells

199. The following individuals, who were not called to give oral evidence, also provided written statements in relation to Strike Force Macnamir:
- Strath Gordon
 - Siobhan McMahon
 - I446 (a pseudonym, also known as Officer A)

Chapter 12 – Strike Force Neiwand

200. **Chapter 12** addresses the conduct, methodology and outcomes of Strike Force Neiwand. The Inquiry heard from the following witnesses in relation to Strike Force Neiwand:
- Detective Sergeant Steven Morgan
 - Stephen Page
 - John Lehmann
 - Stewart Leggat
 - Detective Sergeant Alicia Taylor
 - Detective Sergeant Penelope Brown
201. The Inquiry also received a written statement on Strike Force Neiwand from Detective Senior Constable Paul Rullo, who was not called to give oral evidence.

Chapter 13 – Strike Force Parrabell

202. **Chapter 13** addresses the conduct, methodology and outcomes of Strike Force Parrabell. The Inquiry heard from the following witnesses in relation to Strike Force Parrabell:
- Assistant Commissioner Anthony Crandell
 - Detective Acting Sergeant Cameron Bignell
 - Dr Derek Dalton
 - Dr Willem de Lint
 - Professor Nicole Asquith
 - Associate Professor Austin Lovegrove
 - Ms Martha Coakley
203. The following individuals, who were not called to give oral evidence, also provided written statements in relation to Strike Force Parrabell:
- Superintendent Craig Middleton
 - Detective Inspector Paul Grace

Chapter 14 – Convergences

204. **Chapter 14** ties together the themes and conclusions of **Chapters 9 to 13** and makes some broader observations on the attitude of the NSWPF to LGBTIQ hate crimes in NSW over time.

Chapter 15 – Response of the NSWPF to the Inquiry

205. **Chapter 15** addresses an overview and chronology of issues arising from the engagement of the NSWPF with the Inquiry, together with some commentary on the value of an independent review.

Chapter 16 – Concluding Remarks

206. **Chapter 16** concludes with observations for acknowledging and redressing the legacy of LGBTIQ hate crimes through positive and meaningful future action.

Confidential Volume

207. As previously noted, this Report has what I have termed a “confidential volume”, comprising **Chapter 17** and several confidential annexures. That volume includes summaries and analysis of evidence taken in a confidential context, including by way of extensive private hearings with witnesses and persons of interest. It also includes my confidential findings and observations on certain matters, and 22 confidential recommendations.
208. My recommendation to the Governor is that the evidence and findings canvassed in that volume should remain confidential for the time being. I have made that recommendation for varied reasons, with regard to the specific evidence in question. The most prominent rationale is the preservation of prospects for future investigations and prosecutions. Another key consideration is the intensely personal nature of the some of the information disclosed to the Inquiry in the course of private hearings, including personal disclosures in relation to sexuality, or even of past abuse. Yet another important reason for confidentiality is the tendency of some witnesses to make allegations against others which are not well supported by evidence before the Inquiry. The procedural fairness implications of publishing that material warrants considerable caution.
209. Similar considerations apply to much of the material redacted from the otherwise public evidence tendered before the Inquiry, and ground many of the pseudonyms applied in those documents and in the Report. The Inquiry’s general approach to confidentiality, and the bases for my recommendations to the Governor, are discussed in more detail in **Chapter 1**.
210. The fact that a matter is not discussed in the public section of the Report, or may have certain aspects that are said to be confidential, should not necessarily be taken to be an indicator that a breakthrough has occurred, that persons of interest have been definitively identified or that criminal proceedings are imminent. The specific reasons and contexts for maintaining confidentiality vary greatly. Further, that the Inquiry considers a significant line of inquiry should be preserved does not necessarily mean it will ultimately be fruitful. Nevertheless, caution is called for where there are still genuine prospects for obtaining results through the criminal justice system.

ACKNOWLEDGEMENTS

211. I reiterate my gratitude to all the family members, loved ones and friends who have worked with the Inquiry, in many different ways. Your efforts have been extremely valuable, and are most gratefully and respectfully received.
212. I acknowledge also the many LGBTIQ community organisations which have been pivotal in raising awareness of the possibility that a disturbing number of deaths, both solved and unsolved, including some not originally recognised as homicides, may have been homicides affected by LGBTIQ bias. That work has also raised awareness of the ongoing impact of those deaths on families, loved ones, and the LGBTIQ community.
213. I give particular thanks to the numerous community members who have made themselves available to assist the Inquiry in various ways, including Sue Thompson, Professor Stephen Tomsen, Duncan McNab, Peter Rolfe and Rick Feneley.
214. I acknowledge the encouragement of Steve Johnson, whose ongoing dedication to justice in these matters is remarkable.
215. I also express the thanks of the Inquiry to:
- a. The many experts who have assisted the Inquiry, whether by way of reports and oral testimony or by way of background consultation;
 - b. The staff of FASS, who have carried out a substantial amount of forensic testing at the request of the Inquiry;
 - c. The *pro bono* barristers and solicitors who generously lent their time and expertise to assist the witnesses and family members who appeared before the Inquiry, and in particular Hamish Bevan SC, who offered not only his own expertise but also to assist the Inquiry make broader arrangements for the *pro bono* representation of families and victim-survivors;
 - d. All the lawyers who have represented interested parties before the Inquiry, both in the hearing room and otherwise; and
 - e. The many members of the public who have contacted the Inquiry and provided information and recollections.

Inquiry staff and support

216. I have been assisted in my task by skilled and experienced Counsel Assisting. Peter Gray SC has been Senior Counsel Assisting the Inquiry since its inception, joined subsequently by James Emmett SC. Seven other barristers have also served as Counsel Assisting: Christine Melis, Meg O'Brien, Claire Palmer, William de Mars, Rebecca McEwen, Kathleen Heath and Grainne Marsden. The Inquiry owes much to their collective wisdom, experience and advice.

217. Enzo Camporeale is the Solicitor Assisting the Inquiry, leading a team of more than 30 solicitors and legal support staff from the Crown Solicitor's Office. Mr Camporeale's considered guidance, and the unflagging efforts of his team, have been invaluable to me.
218. I am grateful to the Inquiry's investigators and analysts, who worked tirelessly with the legal team to advance the many and varied lines of inquiry that arose in the deaths under review, as well as fielding information from members of the public.
219. I also give my personal thanks to Bruce Pope, Bec Wallis and their assistants for their capable project direction of this Inquiry, and to Mr Pope especially for his extensive efforts facilitating the engagement of this Inquiry with LGBTIQ community groups. I must also convey my appreciation for the media expertise of Louise Crealy, who ensured the vital messages of this Inquiry did not go unheard.
220. The Inquiry is most grateful for the expert professional work of icourts, who have been responsible for the Inquiry's document management, as well as the smooth operation of its hearing room, including sound recording, court reporting, transcript preparation, live-streaming and much more.
221. Finally, I (and no doubt many witnesses and family members) thank Vanessa Little for the comfort she provided as the Inquiry's witness support officer.

COUNSEL ASSISTING AND STAFF OF THE INQUIRY

Counsel Assisting

Senior Counsel

Peter Gray SC

James Emmett SC

Junior Counsel

Christine Melis

Claire Palmer

Meg O'Brien

William de Mars

Rebecca McEwen

Kathleen Heath

Gráinne Marsden

Crown Solicitor's Office Staff

Director

Enzo Camporeale

Legal Staff

Aleksandra Jez

Alexandra Touw

Ayesha Bhalla

Caitlin Healey-Nash

Calum Brunton

Claudia Hill

Diana Lambert

Dylan Ferguson

Dylan Swanborough

Crown Solicitor's Office Staff (continued)

Elizabeth Blomfield

Emily Burston

Francesca Lilly

Hermione Nicholls

Isabella Jiang

Jacqueline Krynda

James Herrington

Jesikah Richardson

Kate Lawrence

Kate Lockery

Lily Gordon

Maeve Browne

Michael Tanazefi

Pelin Ersoy

Penelope Smith

Rhys Carvosso

Selena Issa

Tom Allchurch

Zoe Carter

Legal Support Staff

Deborah Rana

Kiara Drewery

Matthew Fletcher

Meriam Staikos

Tracey Clarke

Projects and Technical Support

Bec Wallis	Associate Director, Projects
Bruce Pope	Associate Director, Projects / Consultant
Gautam Joshii	Accounts Officer
Zora Cumurovic	Business Coordinator

Media

Louise Crealy	Senior Media Advisor
----------------------	----------------------

Investigations

Brendan Rook	Director, Investigations
Darren Brown	Principal Investigator
John Goobanko	Investigator
Michael Moloney	Investigator
Tiffany Sutherland	Senior Criminal Intelligence Analyst

Witness Support and Counselling Service

Vanessa Little	Witness Support Officer
-----------------------	-------------------------



Recommendations

RECOMMENDATIONS

Case-specific Recommendations

Scott Miller, Paul Rath, Richard Slater, Carl Stockton, Peter Sheil, Russell Payne, Graham William Paynter, Samantha Raye, Scott Miller and Peter Baumann

Recommendation 1

For the reasons outlined in **Chapter 5**, I recommend that the Commissioner of the NSWPF or a serving police officer make an application for a fresh inquest, in relation to the deaths of the following persons, having regard to the evidence considered by the Inquiry and the findings and conclusions I have made in relation to manner and cause of death:

1. Scott Miller;
2. Paul Rath;
3. Richard Slater; and
4. Carl Stockton.

Recommendation 2

I recommend that BDM correct the Register of Births, Deaths and Marriages pursuant to s. 45(1)(b) of the *Births, Deaths and Marriages Registration Act 1995*, as follows in relation to the below deaths considered by the Inquiry:

1. Peter Sheil such that Mr Sheil's cause of death is recorded as: "cervical spine injuries sustained in a fall".
2. Russell Payne such that Mr Payne's cause of death is recorded as: "septicaemia secondary to Fournier's gangrene, precipitated by a urethral foreign body".
3. Graham William Paynter such that Mr Paynter's cause of death is recorded as: "multiple injuries sustained in a fall from a height in the setting of alcohol intoxication".
4. Samantha Raye such that Ms Raye's:
 - a. Date of death is recorded as "unknown date between 12 and 20 March 1989";
 - b. Cause of death is recorded as "hypoglycaemic brain injury secondary to insulin toxicity, caused by the self-administration of insulin"; and
 - c. The phrase "transsexual depression" be removed from the cause of death.
5. Peter Baumann such that Mr Baumann's date of death is recorded as "on or after 27 October 1983".

Gerald Cuthbert

Recommendation 3

For the reasons outlined in **Chapter 5**, I recommend that the NSWPF consider a reinvestigation into the death of Mr Cuthbert upon receipt of a response from the Federal Bureau of Investigation of the United States of America as to the results of any NCIS search.

Crispin Dye

Recommendation 4

For the reasons outlined in **Chapter 5**, I recommend that the NSWPF:

- a. Regularly monitor all DNA databases available to them with a view to identifying a match to the profile of “Unknown Male B”, whose DNA was located in 2023, at the direction of the Inquiry, from the hair found on Mr Dye’s shirt; and
- b. Ensure that the white card (located during the course of the Inquiry) is kept securely as an exhibit in the event that technological developments can assist in determining whether the bloodstained mark is a fingerprint.

Kenneth Brennan

Recommendation 5

For the reasons outlined in **Chapter 5**, I recommend that FASS takes steps to:

- a. Enhance the “Unknown Male B”, “Unknown Male C”, and “Unknown Male D” profiles, should technological developments occur in the future that indicate a prospect of such enhancement; and
- b. Run the “Unknown Male B”, “Unknown Male C”, and “Unknown Male D” profiles against state and national DNA databases on a regular basis, so that the NSWPF will be notified in the event that there is an individual or familial match with the profiles.

Recommendation 6

I recommend that the NSWPF take steps, including by DNA analysis, to eliminate suspects who may have been prematurely excluded from the investigation.

Anthony Cawsey

Recommendation 7

I recommend that FASS take steps to:

- a. Further enhance the profiles of “Unknown Male A”, “Unknown Male B” and “Unknown Male C”, should technological developments occur in the future that indicate a prospect of such enhancement; and
- b. Run the unidentified profiles against state and national DNA databases on a regular basis, so that the NSWPF will be notified in the event that there is an individual or familial match with any profile.

Investigative Practices Hearing Recommendations

Recommendation 8

For the reasons outlined in **Chapter 8**, I recommend that additional mandatory and ongoing training be provided to NSWPF officers concerning the LGBTIQ community, including but not limited to training on the following topics:

- a. The indicia of LGBTIQ bias crime and the circumstances in which an officer should engage with the NSWPF Engagement and Hate Crime Unit;
- b. The importance of cultural awareness and the use of appropriate and inclusive language;
- c. Trauma-informed communication and engagement with partners, families, friends and loved ones of victims in the specific context of the LGBTIQ community; and
- d. The role of conscious and unconscious bias and the potential impact of bias on investigations.

Any such program should be developed with input from LGBTIQ representatives and organisations, and consideration should be given to whether better outcomes could be achieved through an in-person format, and by having this education delivered by an LGBTIQ organisation external to the NSWPF.

Recommendation 9

For the reasons outlined in **Chapter 8**, I recommend that the NSW Government give consideration to amending the *State Records Act 1998* to clarify the application of that Act to exhibits held by the NSWPF.

Recommendation 10

For the reasons outlined in **Chapter 8**, I recommend the NSWPF conduct a systematic review or audit of all unsolved homicides pertaining to the period 1970 to 2010, including an audit of what exhibits have been retained in relation to each death and their current location. That review should result in appropriately and accurately recorded information about each matter so that there is a real prospect of all matters being reviewed thereafter on a regular basis, every two years. This may require the scope of such future reviews to be limited in an appropriate manner to ensure regularity.

Recommendation 11

Following the review in Recommendation 10, I recommend that the UHT promptly identify exhibits that should be submitted or resubmitted for forensic testing in light of possible technological advances. This process should recur as part of the two yearly review in each matter referred to in Recommendation 10.

Recommendation 12

For the reasons outlined in **Chapter 8**, I recommend that within three months of the publication of this Report, the NSWPF provide a public update as to the implementation of Recommendations 10 and 11 and the anticipated timeframe for the completion of Recommendations 10 and 11.

Recommendation 13

As part of the review in Recommendation 10, the UHT tracking file (or equivalent document or database) should be updated so that it records information relevant to whether there is reason to suspect that a death may be a hate or bias crime. I further recommend that an equivalent record be maintained in respect of missing persons on the Long Term Missing Persons Register.

Recommendation 14

I recommend that FASS and the NSWPF be adequately resourced to implement Recommendations 10 to 12.

Recommendation 15

For the reasons outlined in **Chapter 8**, I recommend a review of the practices, procedures and resourcing of the UHT, including any issues with those practices, procedures and resourcing considered by the Inquiry, with a view to determining the most appropriate and effective practices, procedures and resourcing to give effect to the Charter of the UHT and the management of the investigation of unsolved homicides within NSW. This should address at least the following matters (without intending to limit the scope of the review):

- a. Continuing education of officers in the UHT, including in relation to advances in forensic technology and related science, recognising that training or education conducted years earlier may become stale or may lead to lack of appreciation of the potential significance of scientific or technological advances;
- b. The interaction between the EHCU and the UHT, including ongoing education as to bias crimes and ensuring that UHT officers are aware that the EHCU should be contacted in appropriate cases;
- c. Inclusion in the UHT tracking file, or equivalent document or database, of information relevant to whether there is reason to suspect that a death may be a hate or bias crime;
- d. Regular review of unsolved homicides, including forensic testing of exhibits, in line with Recommendations 10 and 11;
- e. Accurate and thorough recording of information in the UHT tracking file, or equivalent document or database, together with careful and comprehensive document management and record-keeping in respect of unsolved homicides, including in relation to reviews of cases and the location of exhibits. In this recommendation, by “review” I mean to include any procedure in the nature of screening, triage or review of cases;
- f. The appropriateness of the UHT having categories of case (such as “undetected” or “undetermined”) which receive a different priority for review or investigation and, if such categories are used, the rational basis on which the cases are categorised;
- g. Ensuring that Coroners and families or next of kin are fully informed as to the prioritisation of cases within the UHT, including any categories of case which receive a different priority for review or investigation, and whether particular kinds of finding following an inquest (such as an open finding) will affect the priority with which cases are reviewed or investigated by the UHT;
- h. Ensuring that the actual practices of the UHT reflect the policies and procedures (and vice versa), including in relation to whether witnesses should be contacted at particular stages of any review or investigation;
- i. Periodic assessment of all review procedures within the UHT to ensure that they are achieving an appropriate balance between the time taken for each step in a review procedure and the level of depth or detail involved in such steps;

- j. Clear time frames for relevant stages or review or investigation, and appropriate supervision, to ensure that delays are not caused by particular officers not having capacity to undertake certain tasks but failing to report this to their superiors;
- k. The timely implementation of any recommendations made following reviews as to investigative steps that should be taken in particular cases, and maintenance of reliable records as to when such recommendations are implemented or, if they are not implemented, the reasons for not implementing any such recommendations;
- l. Instructions to all Police Area Commands to inform the UHT if they are aware or become aware of any information that provides grounds to suspect that a death or missing person may be a homicide, including in circumstances where there has been a different finding by a Coroner or a decision by a Coroner to dispense with an inquest;
- m. Contact with families and next of kin, including frequency of contact and appropriate provision of information about the progress of cases within the UHT; and
- n. Allocation of adequate resources to the UHT and effective use of those resources within the UHT.

Recommendation 16

For the reasons outlined in **Chapter 8**, I recommend that the NSWPF utilise Forensic Investigative Genetic Genealogy and any available public DNA databases for the purpose of the identification of contributors to unidentified DNA profiles in all unsolved homicide deaths in NSW where such a profile is available, and this process has not yet been undertaken. Without limiting this Recommendation or Recommendation 11, I specifically recommend that this process be utilised in relation to the following unidentified DNA profiles within 12 months of the publication of this Report:

- a. The “Unknown Male B”, “Unknown Male C”, and “Unknown Male D” profiles obtained in relation to the death of Kenneth Brennan;
- b. The “Unknown Male A”, “Unknown Male B” and “Unknown Male C” profiles obtained in relation to the death of Anthony Cawsey; and
- c. The “Unknown Male B” profile obtained in relation to the death of Crispin Dye.

Public Hearing 2 Recommendations

Recommendation 17

For the reasons outlined in **Chapter 12**, I recommend that, if the UHT, upon reviewing a matter, reaches a conclusion that is contrary to prior findings of a Coroner, then the NSWPF or a serving police officer must make an application for a fresh inquest and notify the family or next of kin of the deceased person.

Recommendation 18

I recommend that the NSWPF take appropriate steps to ensure its investigating officers, particularly those within the UHT, are aware of the assistance that can be provided by the EHCU in connection to potential hate and bias crimes.

Recommendation 19

Further to **Recommendation 15(b)**, I recommend that the NSWPF engage an appropriately qualified expert or experts, for the purposes of:

- a. Ensuring that the NSWPF practices in the area of bias crimes are aligned with international best practice as identified by reference to the practices of other police forces (both national and international) recognised as leaders in this field. The report of Professor Asquith, discussed in **Chapter 13**, refers to some of these practices which the NSWPF could consider;
- b. Considering alternative systems of early identification of bias crimes developed since the introduction of the 2015 SOPs and the 2016 BCIF, noting that Recommendation 3 of the Parrabell Report remains unaddressed to date; and
- c. Considering whether the present arrangement, whereby the Hate Crimes Coordinator is organisationally located within the EHCU, are appropriate or whether the NSWPF Hate Crimes Capability should be a stand-alone unit, resourced as such.



Chapter 1: **Terms of Reference and** **Operation of the Inquiry**

INTRODUCTION

- 1.1. Before turning to the substantive content of this Report, it is appropriate to consider the Terms of Reference, how they have been understood by the Inquiry, and other significant principles which guided the way in which the Inquiry has implemented them.
- 1.2. This chapter will:
 - a. Extract the **Terms of Reference**, in full;
 - b. Breakdown the Inquiry's **interpretation** of each paragraph of the Terms of Reference, and summarise relevant judgments handed down in the course of the Inquiry;
 - c. Outline the **standard of proof** applied by the Inquiry;
 - d. Detail the limitations on the **admissibility of evidence** received by this Inquiry;
 - e. Explain the Inquiry's approach to **confidentiality and non-publication orders**; and
 - f. Set out the principles of **procedural fairness** which apply to this Inquiry.

TERMS OF REFERENCE

“By these our Letters Patent, made and issued in Our name by Our Governor on the advice of the Executive Council and under the authority of the *Special Commissions of Inquiry Act 1983* (NSW) and every other enabling power, We hereby authorise you as Commissioner to inquire into and report and make recommendations to Our Governor of the said State on:

- A. The manner and cause of death in all cases that remain unsolved from the 88 deaths or suspected deaths of men potentially motivated by gay hate bias that were considered by Strike Force Parrabell.
- B. The manner and cause of death in all unsolved suspected hate crime deaths in New South Wales that occurred between 1970 and 2010 where:
 - i. the victim was a member of the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) community; and
 - ii. the death was the subject of a previous investigation by the NSW Police Force.

AND hereby establish a Special Commission of Inquiry for this purpose.

AND We direct you, in conducting the inquiry, to have regard to:

- C. The findings of previous inquiries and reports, including:

- i. the interim and final report and findings of the inquiries conducted by the Standing Committee on Social Issues into Gay and Transgender hate crimes between 1970 and 2010;
- ii. the report and findings of Strike Force Parrabell; and
- iii. the AIDS Council of New South Wales report, *In Pursuit of Truth and Justice* (2018).

AND We direct you, in conducting the inquiry:

- D. to establish such arrangements as the Commissioner considers appropriate for evidence and information, including the testimony of witnesses in current and previous inquiries, to be shared with the inquiry in a manner that avoids unnecessary duplication and minimises trauma to witnesses;
- E. to operate in a way that avoids prejudice to criminal investigations, any current or future criminal prosecutions, and any other contemporaneous inquiries; and
- F. that the Commissioner is not required to inquire, or to continue to inquire, into a particular matter to the extent that the Commissioner is satisfied that the matter has been or will be sufficiently and appropriately dealt with by another inquiry or investigation or a criminal or civil proceeding.

AND pursuant to section 21 of the *Special Commissions of Inquiry Act 1983* (NSW) it is hereby declared that sections 22, 23 and 24 shall apply to and in respect of the Special Commission issued to you by Our Letters Patent.

AND OUR further will and pleasure is that, on or before 15 December 2023, you deliver your final report in writing of the results of your inquiry to the offices of the Premier and Our Governor in Sydney.”

INTERPRETING THE TERMS OF REFERENCE

An independent approach

- 1.3. It is evident from the Terms of Reference that the task of the Inquiry extends beyond a mere review of past investigations. Instead, its task is to carry out its own inquiries in relation to unsolved deaths that fall within Category A and Category B, and subsequently report on and make recommendations in relation to those deaths. The *SCOI Act* endows the Inquiry with significant evidence-gathering powers, including coercive powers, that distinguish it from a coronial inquest or parliamentary inquiry.
- 1.4. The requirement of independence is inherent in both the Terms of Reference and the *SCOI Act*. Section 4(1) of the *SCOI Act* indicates that a commission must be issued to a specified person (that is, to an individual Commissioner). By the Terms of Reference, it is this individual person who is authorised or required to inquire into and report to the Governor on the nominated subject matter.

- 1.5. Accordingly, I have been responsible for guiding and directing each of the inquiries carried out pursuant to the Terms of Reference. The Inquiry has sought and received documents from various sources, in most cases by compulsion, and has taken evidence from witnesses in both public and private hearings.

Interpreting Paragraphs A to F

- 1.6. It is appropriate to make some remarks regarding the Terms of Reference and how I have interpreted them during the Inquiry. Subject to the supervision of the courts, the interpretation of the Terms of Reference is a matter for me.¹⁵

Paragraphs A and B

- 1.7. The specific words chosen in the Letters Patent to describe the two categories of unsolved deaths (referred to in this Report as Category A and Category B) highlight several significant features of this Inquiry. These are as follows:
- a. The Inquiry is only to inquire into and report in relation to “deaths”. It is not required to inquire into and report on other crimes, such as assaults, which may have been hate crimes but did not result in death. That is consistent with the recommendation made by the Standing Committee.¹⁶ However, some non-fatal assaults have been considered by the Inquiry in circumstances where those assaults have been deemed relevant to other fatal attacks that are the subject of investigation by the Inquiry.
 - b. Both Category A and Category B restrict the ambit of the Inquiry to cases that are “unsolved”. I deal in detail with the question of what cases were “unsolved” in **Chapter 5**. It was for me to make my own determination as to whether any given case ought to be characterised as “unsolved” or not. This determination has been made on a case-by-case basis and has depended on the particular circumstances of each matter.
 - c. The meaning of “unsolved” was discussed in the context of a subsequent application by the NSWPF and Mr Willing objecting to the Inquiry’s consideration of the conduct by the NSWPF of Strike Force Macnamir and the death of Scott Johnson. That application and the resulting judgment is discussed in more detail below.
 - d. Category B of the Terms of Reference is expressed in expansive terms. It required me to inquire into all unsolved deaths in NSW in the 40 years between 1970 and 2010 where: (a) the victim was a member of the LGBTIQ community; and (b) the death was a “suspected hate crime death”; and (c) the death was the subject of a previous investigation by the NSWPF. That language includes many of the cases in Category A, but also required me to

¹⁵ *Easton v Griffiths* (1995) 69 ALJR 669, 672 (Toohey J).

¹⁶ Recommendation 1 of the Parliamentary Committee reads as follows: “That the NSW Government establish a judicial inquiry or other form of expert review to inquire into unsolved cases of suspected gay and transgender hate crime deaths.” See Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Final Report, Report 58, May 2021), x, 34 (SCOI.02291).

attempt to identify all other deaths that are defined by these three parameters and have occurred within the 40-year period starting from 1970.

- e. In relation to the word “suspected” (as that term is used in the Terms of Reference in relation to Category B cases), the Inquiry has interpreted it as meaning that a suspicion must objectively be able to be held today, having regard to all the material that is presently available. It is not necessary that the NSWPF (or any other person) “suspected” that a death was a “hate crime death” at the time of the victim’s death or during any previous investigation.
- 1.8. A few concepts warrant more detailed consideration, as set out below.

“Member of the LGBTIQ community”

- 1.9. Category B uses the expression “member of the LGBTIQ community”. I understand, as noted in the Terminology Guide, that it is more accurate to speak of “communities”. The use of an initialism reflects the existence of distinct, although potentially overlapping, communities.
- 1.10. The question of whether a person was a member of the LGBTIQ community may raise complexities. For example, a person’s sexuality may not correlate with their sexual practices. People may conceal their sexuality for a variety of reasons, or may themselves be unsure. Trans and gender diverse people might have any sexuality, but issues of gender and sexuality may have been conflated or misstated in records.
- 1.11. The question of how to approach and describe issues of sexuality and gender when looking to the past raises multifaceted, sensitive and nuanced issues. Analysis of, and conclusions about, such matters do not form part of this Inquiry. However, the Terms of Reference required me to engage with the question of whether people were members of the LGBTIQ community.
- 1.12. I have taken the approach that a “victim” (to use the language of Category B) may be considered to come within the meaning of the expression “member of the LGBTIQ community” where:
 - a. They were out as member of the LGBTIQ community; or
 - b. There is reason to believe or suspect that the victim was a member of the LGBTIQ community; or
 - c. There is reason to suspect that a person or persons involved in the death of the victim believed or assumed that the victim was or may have been a member of the LGBTIQ community.

Defining LGBTIQ “hate crime deaths”

- 1.13. Category A refers to deaths that were “potentially motivated by gay hate bias”, while Category B refers to “suspected hate crime deaths... where... the victim was... a member of the [LGBTIQ] community”. Those two different verbal formulations have been treated by the Inquiry as referring to what is substantially the same concept or criterion. I will generally adopt the language of “LGBTIQ hate crime death” as reflecting this one criterion.

- 1.14. For the purposes of this Inquiry, therefore, a death is likely to be regarded as a suspected LGBTIQ hate crime death, and thus (if it is unsolved) within one or both of Categories A and B, in circumstances where there is objectively reason to suspect both that the death was a homicide, and that actual or assumed membership in the LGBTIQ community was a factor in the commission of the crime.
- 1.15. Accordingly, for example, deaths associated with attacks on people who may not themselves be members of the LGBTIQ community, but who are wrongly perceived by their assailants in such a way, would come within the meaning of “LGBTIQ hate crime deaths”.
- 1.16. This approach is consistent with the provisions of s. 21A of the *Crimes (Sentencing Procedure) Act 1999*. That provision sets out matters to be treated as aggravating factors for the purpose of determining the appropriate sentence for an offence. One of those aggravating factors, at subsection (h) of s. 21A, is that:

the offence was motivated by hatred for or prejudice against a group of people to which the offender believed the victim belonged (such as people of a particular ... sexual orientation ...).

“Manner and cause” of death and differences from the coronial context

- 1.17. As is evident in language of the Terms of Reference, it is the “manner and cause” of the deaths to which this Inquiry is directed. Broadly speaking, the “cause” of a death refers to the medical reasons for death, while the “manner” of death refers to the circumstances that surrounded those medical reasons – that is, who or what was responsible for that medical cause of the death.
- 1.18. This language is also found in s. 81(1) of the *Coroners Act 2009* (***Coroners Act***), which provides that a Coroner must make findings in relation to whether a person died and “the manner and cause of the person’s death”.
- 1.19. However, this Inquiry is not a coronial inquest. There are several fundamental differences between the functions carried out by a Coroner and those carried out by the Commissioner of this Inquiry.
- 1.20. The first fundamental difference is that, in the context of this Inquiry, the phrase “manner and cause” is shaped by the Terms of Reference in particular ways that are not relevant to the *Coroners Act*. The Terms of Reference explicitly connect the work of this Inquiry to the concept of LGBTIQ bias. It follows that in considering “manner and cause”, I am required to consider whether LGBTIQ bias was a factor in the commission of a crime and also whether particular deaths ought to be characterised as “hate crime deaths”.
- 1.21. The second fundamental difference is that, whereas a Coroner is not bound by any strict time limit in undertaking whatever investigations and inquiries may be considered necessary in relation to a particular death, this Inquiry is bound by such a time limit. That time limit, bearing in mind that the Inquiry must inquire into many deaths rather than one single death, is a short one. Initially, I was required to deliver my final report by 30 June 2023. This deadline was subsequently extended to 30 August 2023 and then to 15 December 2023.

- 1.22. A third fundamental difference is that, as already referred to above, I have coercive powers that are more extensive than those of a Coroner.

Paragraph C

- 1.23. This section of the Terms of Reference directs me, in conducting the Inquiry, to “have regard to” four reports, namely:

*i. the interim and final report and findings of the inquiries conducted by the Standing Committee on Social Issues into Gay and Transgender hate crimes between 1970 and 2010;*¹⁷

*ii. the report and findings of Strike Force Parrabell;*¹⁸ and

*iii. the AIDS Council of New South Wales report, In Pursuit of Truth and Justice (2018).*¹⁹

- 1.24. The terms of Paragraph C were specifically considered during the Inquiry in the context of an application made by the NSWPF in relation to several documents proposed to be tendered in evidence. That application and the resulting judgment is discussed in more detail below. Paragraph C was also considered in the context of a subsequent application by the NSWPF and Mr Willing objecting to the Inquiry’s consideration of the conduct by the NSWPF of Strike Force Macnamir and the death of Scott Johnson. That application and the resulting judgment is discussed in more detail below.

Paragraph D

- 1.25. As noted above, the Inquiry has been responsible for guiding and directing each of the inquiries carried out pursuant to the Terms of Reference. It has sought and received documents from various sources, in most cases by compulsion, and has taken evidence from witnesses in both public and private hearings. The Inquiry’s approach to supporting witnesses and others involved in its processes are set out at **Chapter 3**.

Paragraphs E and F

- 1.26. In relation to Paragraph E, the Inquiry has taken considerable care to ensure that it operates to avoid “prejudice to criminal investigations, any current or future criminal prosecutions, and any other contemporaneous inquiries.” With this objective in mind, the Inquiry has sought information from the NSWPF, including the UHT, for the purpose of identifying any case that is presently the subject of current investigations.

¹⁷ Exhibit 1, Tab 3, Legislative Council Standing Committee on Social Issues, *Parliament of NSW, Gay and Transgender hate crimes between 1970 and 2010* (Interim Report, Report 52, February 2019) (SCOI.02290); Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, *Parliament of NSW, Gay and Transgender hate crimes between 1970 and 2010* (Final Report, Report 58, May 2021) (SCOI.02291).

¹⁸ Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) (SCOI.02632).

¹⁹ Exhibit 1, Tab 1, ACON, *In Pursuit of Truth & Justice: Documenting Gay and Transgender Prejudice Killings in NSW in the Late 20th Century* (Report, 26 May 2018) (SCOI.03667).

- 1.27. As one part of that checking process, the Inquiry held a private hearing in June 2022 and obtained evidence from a senior officer then employed in the UHT. The NSWPF has subsequently provided to the Inquiry other information that is relevant to Paragraphs E and F. In some cases, this information has limited the scope of matters that it is necessary or appropriate for the Inquiry to investigate.
- 1.28. The terms of Paragraph E were specifically considered by the Inquiry in the context of an application made by the NSWPF for pseudonym and non-publication orders in relation to several individual cases. That application is discussed in more detail below.
- 1.29. The terms of Paragraph F were specifically considered by the Inquiry in the context of an application made by the NSWPF in relation to several documents proposed to be tendered in evidence. That application is discussed in more detail below. Paragraph F was also considered in the context of the subsequent application by the NSWPF and Mr Willing objecting to the Inquiry's consideration of the conduct by the NSWPF of Strike Force Macnamir and the death of Scott Johnson. That application and the resulting judgment is discussed in more detail below.

Judgments addressing the Terms of Reference

- 1.30. At various times in the course of this Inquiry, the NSWPF and other parties given leave to appear have expressly or impliedly raised issues going to this Inquiry's interpretation of various paragraphs of the Terms of Reference. I addressed those issues by way of formal judgments, which are summarised below. Those judgments (and others) were published on the Inquiry's website and form **Annexure 12** to this Report.

Judgment dated 6 December 2022

- 1.31. As referred to above, the terms of Paragraphs C and F were specifically considered in the context of an application made by the NSWPF in relation to several documents proposed to be tendered in evidence. Those documents were identified by the NSWPF as being connected with four particular topics, namely:²⁰
 - a. The creation of the BCU within the NSWPF and the characterisation of hate crimes within that unit;
 - b. The creation of Operation Parrabell and its methodology;
 - c. The creation of Strike Force Parrabell and its methodology; and
 - d. The contract between the NSWPF and certain academics from Flinders University to provide an independent review of Strike Force Parrabell's report.

²⁰ Judgment of the Inquiry, 6 December 2022, [2] (ORD.00001).

- 1.32. The objection by the NSWPF was made on the basis of relevance.²¹ It followed that in order to determine the application, I was required to consider whether the topics referred to above were sufficiently connected to the Terms of Reference, so that documents concerning these topics could be tendered as part of the evidence before the Inquiry. This question was addressed in my judgment dated 6 December 2022. The key issues considered in that judgment are set out below.
- 1.33. It was submitted by the NSWPF that the Inquiry was not “tasked with an assessment of the methodology or background of the previous inquiries listed in Paragraph C”.²² In considering this submission, it was necessary for me to consider the significance of the phrase “have regard to” as that phrase applies to the reports referred to in Paragraph C.
- 1.34. In my judgment, I noted that the content of the requirement to “have regard to” a particular matter “has been consistently interpreted to mean that the decision-maker must take into account the matter to which regard is to be had and give weight to it as an element of making the decision.”²³ Consideration of that matter must be a genuine consideration, and not merely token or nominal consideration.²⁴ Moreover, the context in which the phrase appears will be relevant to how the phrase is interpreted.²⁵
- 1.35. I determined that I was not prohibited from considering the establishment or methodology of Strike Force Parrabell. I noted the following matters.
- 1.36. First, there is no indication of any intention in the Terms of Reference that I am not to review the material or conduct inquiries in connection to these reports.²⁶
- 1.37. Secondly, the list in Paragraph C is not exclusive (i.e., I am permitted to have regard to other matters in addition to the matters listed in Paragraph C).²⁷ Thus, I am required to examine the previous investigations of the NSWPF and consider the extent to which LGBTIQ bias was recognised to be a relevant causal factor in the death of particular individuals.
- 1.38. Thirdly, I am required to examine the means and methodologies by which the NSWPF arrived at its conclusions with respect to the existence (or non-existence) of LGBTIQ bias in these specific cases.²⁸ This required me to examine, in particular, the report and findings of Strike Force Parrabell and the academic review of that process that followed.

²¹ Judgment of the Inquiry, 6 December 2022, [3] (ORD.00001).

²² Judgment of the Inquiry, 6 December 2022, [18d] (ORD.00001).

²³ Judgment of the Inquiry, 6 December 2022, [44] (ORD.00001).

²⁴ *Secretary, Department of Defence v Fox* (1997) 24 24 AAR 171, 176; *NAJT v Minister for Immigration and Multicultural and Indigenous Affairs* [2005] FCAFC 134.

²⁵ *Codelja Construction Pty Ltd v State Rail Authority* (NSW) (1982) 149 CLR 337, 352.

²⁶ Judgment of the Inquiry, 6 December 2022, [47] (ORD.00001).

²⁷ Judgment of the Inquiry, 6 December 2022, [47] (ORD.00001).

²⁸ Judgment of the Inquiry, 6 December 2022, [34] (ORD.00001).

- 1.39. I noted that in my role as Commissioner, I am not required to accept the findings of a report such as Strike Force Parrabell without ascertaining the extent to which I am satisfied by those findings. I stated that this was even more the case in circumstances where several parties, including ACON, expressed concerns in relation to the findings of Strike Force Parrabell.²⁹ Finally, I stated that I considered that the public value of an Inquiry such as this would be “vastly diminished” if I were required to uncritically accept the findings of the reports listed in Paragraph C.³⁰
- 1.40. I further determined that I was not prohibited from considering the establishment or methodology of Strike Force Parrabell on the basis of the provisions set out in Paragraph F. Paragraph F does not prohibit me from inquiring into any matter; rather, it serves to identify matters that I am not *required* to inquire into if certain preconditions are met.³¹ In particular, I am not required to inquire where I am “satisfied that the matter has been or will be sufficiently and appropriately dealt with by another inquiry or investigation or a criminal or civil proceeding.”³²
- 1.41. It follows that Paragraph F has no application in circumstances where I am not satisfied that the matter has been, or will be, sufficiently and appropriately dealt with by another inquiry or investigation or a criminal or civil proceeding.³³ I am entitled, indeed obliged, to investigate particular matters that relevantly concern Strike Force Parrabell, including the conclusions drawn and the manner in which those conclusions were drawn.³⁴ I determined that those conclusions are directly relevant, or relate to, Paragraphs A and B in the Terms of Reference.³⁵

Judgment dated 8 February 2023

- 1.42. As referred to above, the terms of Paragraph E were specifically considered by the Inquiry in the context of an application made by the NSWPF for pseudonym and non-publication orders in relation to several individual cases.
- 1.43. In my judgment dated 8 February 2023 which considered that application, I noted that I am empowered to make orders relating to the non-publication of evidence by s. 8 of the *SCOI Act*,³⁶ and that such orders may be necessary in circumstances where the publication of the relevant information would cause harm to ongoing and future investigations.³⁷

²⁹ Judgment of the Inquiry, 6 December 2022, [34] (ORD.00001).

³⁰ Judgment of the Inquiry, 6 December 2022, [34] (ORD.00001).

³¹ Judgment of the Inquiry, 6 December 2022, [50] (ORD.00001).

³² Judgment of the Inquiry, 6 December 2022, [50] (ORD.00001).

³³ Judgment of the Inquiry, 6 December 2022, [50] (ORD.00001).

³⁴ Judgment of the Inquiry, 6 December 2022, [52] (ORD.00001).

³⁵ Judgment of the Inquiry, 6 December 2022, [52] (ORD.00001).

³⁶ Judgment of the Inquiry, 8 February 2023, [11] (ORD.00002).

³⁷ Judgment of the Inquiry, 8 February 2023, [19c] (ORD.00002).

- 1.44. However, I also stated that in considering whether publication should not occur on the basis that it might cause harm to an investigation, evidence must be presented to the Inquiry that demonstrates an investigation is either active or actively being considered. A future investigation will justify the making of non-publication orders only if it is a realistic prospect.³⁸
- 1.45. The NSWPF made another application for pseudonym and non-publication orders in relation to a statement of Detective Sergeant Steven Morgan, which I dealt with in my judgment dated 20 February 2023. In making that application, the NSWPF submitted that to construe a non-publication order as only being “necessary” in circumstances where “there is an active investigation planned or on foot” is to apply an “unduly narrow construction” of that term.³⁹
- 1.46. In rejecting that application, I concluded that an investigation did not need to be “planned or on foot”, but rather that it must be either “active or actively being considered”, which presents a considerably lower bar than the word “planned”. I reiterated my view that a future reinvestigation will justify the making of non-publication orders (having regard to Paragraph E) only if it is a realistic prospect.⁴⁰

Judgment dated 18 July 2023

- 1.47. As documented in **Chapters 9 to 14**, the Inquiry has convened hearings in relation to three strike forces of the NSWPF: Strike Force Parrabell, Strike Force Macnamir and Strike Force Neiwand. Those hearings occurred in December 2022, February-March 2023, May 2023 and September/October 2023, and are collectively referred to as “Public Hearing 2”.
- 1.48. Written submissions were served by Counsel Assisting on 7 June 2023 on the NSWPF and Mr Willing (together, **the interested parties**). On 21 June 2023, the Inquiry heard oral submissions on behalf of Mr Willing. On 28 June 2023, the Inquiry received written submissions from the interested parties. Those submissions asserted that I was not permitted to inquire into certain matters because they fell outside the Inquiry’s Terms of Reference.⁴¹
- 1.49. Those matters included the conduct by the NSWPF of Strike Force Macnamir and the death of Scott Johnson (to which Strike Force Macnamir was directed). Objection to the former was said by the Commissioner of the NSWPF to extend to evidence concerning the involvement of the senior officer in charge of Strike Force Macnamir in the ABC TV program *Lateline* in April 2015.⁴²

³⁸ Judgment of the Inquiry, 8 February 2023, [19c] (ORD.00002).

³⁹ Judgment of the Inquiry, 20 February 2023, [15] (ORD.00013).

⁴⁰ Judgment of the Inquiry, 20 February 2023, [16] (ORD.00013).

⁴¹ Judgment of the Inquiry, 18 July 2023, [2]–[3] (ORD.00012).

⁴² Judgment of the Inquiry, 18 July 2023, [4] (ORD.00012).

- 1.50. I subsequently invited and received written submissions on these issues from Counsel Assisting and written submissions in reply from the interested parties. At no point during the oral evidence of Public Hearing 2 did the NSWPF or Mr Willing object to the tender of material or to the examination of witnesses on the basis that these matters were outside of the Terms of Reference.⁴³
- 1.51. For the purpose of understanding the submissions of the interested parties, it is necessary to note the following:⁴⁴
- a. On 10 January 2022, Scott White pleaded guilty to the murder of Scott Johnson (prior to the publication of the Terms of Reference on 13 April 2022).
 - b. On 3 May 2022, Mr White was sentenced by Justice Wilson in the Supreme Court for the offence of murder.
 - c. Mr White then sought leave to appeal from his conviction on the basis that the incorrect legal test had been applied in relation to his application to withdraw his plea. On 18 November 2022, the Court of Criminal Appeal allowed the appeal, set aside the conviction and sentence and remitted the matter to the Chief Judge at Common Law.
 - d. On 23 February 2023, Mr White was permitted to withdraw his plea to murder and enter a plea of guilty to manslaughter in satisfaction; and
 - e. On 8 June 2023, Mr White was sentenced by Justice Beech-Jones, Chief Judge at Common Law, for the offence of manslaughter.
- 1.52. The NSWPF submitted that Scott Johnson’s death and Strike Force Macnamir fell outside the Inquiry’s Terms of Reference, and that any findings made by the Inquiry in respect of these issues would be ultra vires.⁴⁵
- 1.53. The rationale for this submission was said to be that:⁴⁶
- ...at no point following the issue of the Inquiry’s Terms of Reference was the Johnson matter “unsolved” within the ordinary meaning of that word such that it fell to be considered by Category A of the Terms of Reference.*
- 1.54. The NSWPF also referred to Paragraph F and submitted that I ought to have been “sufficiently satisfied ... that Mr Johnson’s death would be dealt with sufficiently and appropriately by the criminal proceeding on foot in the Supreme Court.”⁴⁷

⁴³ Judgment of the Inquiry, 18 July 2023, [5] (ORD.00012).

⁴⁴ Judgment of the Inquiry, 18 July 2023, [19] (ORD.00012).

⁴⁵ Submissions of NSWPF, 28 June 2023, [80] (SCOI.84211).

⁴⁶ Submissions of NSWPF, 28 June 2023, [85] (SCOI.84211).

⁴⁷ Submissions of NSWPF, 28 June 2023, [85]-[90] (SCOI.84211).

- 1.55. Mr Willing similarly submitted that the death of Scott Johnson should not be characterised as “unsolved.” He placed significance on the fact that the sentencing judge did not find that Scott Johnson’s death was motivated by LGBTIQ bias. Mr Willing asserted that up until 18 June 2023 (when Mr White was sentenced), any consideration of Scott Johnson’s death by the Inquiry risked prejudice to the relevant criminal proceedings and that the Terms of Reference, while permitting the Inquiry to have regard to Strike Force Parrabell, did not “direct or permit investigation into Strike Force Parrabell per se”.⁴⁸
- 1.56. Finally, it was submitted by Mr Willing that the Terms of Reference “do not authorise, let alone direct, a broadbrush consideration of police approaches to potential homicides.”⁴⁹
- 1.57. In response, Counsel Assisting submitted that the interested parties had (incorrectly) assumed that the examination by the Inquiry of Strike Force Macnamir could only be relevant to an inquiry into the manner and cause of Scott Johnson’s death in isolation and could not be relevant to the Terms of Reference on any other basis.⁵⁰
- 1.58. Secondly, Counsel Assisting emphasised that, by virtue of Paragraph C, I am directed to have regard to “the interim and final report and findings of the inquiries conducted by the Standing Committee into Gay and Transgender hate crimes between 1970 and 2010”⁵¹.
- 1.59. The Standing Committee was required to report on, among other issues, whether, in relation to crimes occurring between 1970 and 2010, there existed impediments within the criminal justice system that impacted the protection of LGBTIQ people in NSW and the delivery of justice to victims and their families. Counsel Assisting also noted that portions of the Standing Committee Interim Report outlined evidence of potential deficiencies in the manner in which the death of Scott Johnson was examined by the NSWPF, in particular by Strike Force Macnamir.⁵²
- 1.60. It was further noted that two of the findings of the Standing Committee reports were highly critical of historical police attitudes towards the investigation of violence directed at gay men. According to Counsel Assisting, it follows that an examination of the investigative processes (including Strike Force Macnamir) that were the subject to the interim and final Standing Committee reports is plainly a matter falling within the Terms of Reference.⁵³
- 1.61. Thirdly, Counsel Assisting submitted that in making recommendations, I am not limited to recommendations that solely concern what should occur in relation to the particular investigation of a particular death.⁵⁴

⁴⁸ Submissions of Michael Willing, 28 June 2023, [99]–[111] (SCOI.84210).

⁴⁹ Submissions of Michael Willing, 28 June 2023, [114] (SCOI.84210).

⁵⁰ Submissions of Counsel Assisting, 7 July 2023, [9] (SCOI.86688).

⁵¹ Submissions of Counsel Assisting, 7 July 2023, [11] (SCOI.86688).

⁵² Submissions of Counsel Assisting, 7 July 2023, [12]–[15] (SCOI.86688).

⁵³ Submissions of Counsel Assisting, 7 July 2023, [16]–[18] (SCOI.86688).

⁵⁴ Submissions of Counsel Assisting, 7 July 2023, [32]–[45] (SCOI.86688).

- 1.62. Fourthly, Counsel Assisting submitted that I should reject the submission that Scott Johnson’s death must be regarded as “solved” for the purposes of Category A of the Terms of Reference.⁵⁵
- 1.63. Fifthly, Counsel Assisting submitted that Paragraph F of the Terms of Reference is permissive, rather than restrictive, in nature and does not circumscribe the matters that I might consider to be “unsolved” for the purposes of Paragraphs A and B. Rather, Paragraph F widens them to include whether or not matters have been sufficiently and appropriately dealt with, and I must be able to look into those matters (for example, Strike Force Macnamir) in order to reach the state of satisfaction contemplated by Paragraph F.⁵⁶
- 1.64. In written submissions in reply, the NSWPF asserted that Counsel Assisting’s submissions “seek to imbue the phrase ‘have regard to’ with a force that goes far beyond that afforded to it in [the 6 December 2022 judgment] or any sensible construction of those words”.⁵⁷ Submissions by Mr Willing also stated that he interpreted the phrase “have regard to” differently to my judgment dated 6 December 2022.⁵⁸
- 1.65. Secondly, the NSWPF submitted that the requirement that I take a “genuine consideration” of the Standing Committee’s reports does not permit, or call for, an investigation of the subject matter addressed in the reports. It was contended that the logic of Counsel Assisting’s submissions would “require” me to investigate any non-fatal assaults that were the subject of consideration by the Standing Committee reports.⁵⁹ It was put that:⁶⁰
- the Inquiry is not charged with conducting a broad-ranging investigation into every matter that might be relevant to the NSWPF’s approach to the investigation of anti-LGBTIQ hate crimes.*
- 1.66. Thirdly, in relation to the *Lateline* interview, the NSWPF submitted that the fact that it concerned Scott Johnson’s death and was given by the Investigation Supervisor of Strike Force Macnamir did not bring it within the Terms of Reference.
- 1.67. Fourthly, it was submitted that the word “unsolved” should be “given its ordinary meaning”.⁶¹ Mr Willing similarly submitted that there did not appear to be a basis for characterising Scott Johnson’s death as “unsolved”, given that the manner and cause of Scott Johnson’s death had been established beyond a reasonable doubt.⁶²

⁵⁵ Submissions of Counsel Assisting, 7 July 2023, [46]–[50] (SCOI.86688).

⁵⁶ Submissions of Counsel Assisting, 7 July 2023, [46]–[50] (SCOI.86688).

⁵⁷ Submissions of NSWPF, 11 July 2023, [9] (SCOI.86689).

⁵⁸ Submissions of Michael Willing, 11 July 2023, [5] (SCOI.86687).

⁵⁹ Submissions of NSWPF, 11 July 2023, [10]–[20] (SCOI.86689).

⁶⁰ Submissions of NSWPF, 11 July 2023, [20] (SCOI.86689).

⁶¹ Submissions of NSWPF, 11 July 2023, [28]–[37] (SCOI.86689).

⁶² Submissions of Michael Willing, 11 July 2023, [4] (SCOI.86687).

- 1.68. My judgment was delivered on 18 July 2023.⁶³ In determining these matters, I identified that Counsel Assisting had advanced two separate bases upon which the Inquiry’s examination of the relevant issues during Public Hearing 2 fell within the Terms of Reference. The first of these I referred to as the *primary basis*. This concerned the examination of Strike Force Macnamir in light of the Inquiry’s obligation to have regard to the matters identified in Paragraph C, and what Strike Force Macnamir may reveal about the approach of the NSWPF to investigating matters falling within Paragraphs A and B. I also identified a *secondary basis*. This stemmed from a view that, in context, Scott Johnson’s death should be considered “unsolved” for the purposes of Category A of the Terms of Reference. I note that Scott Johnson’s death was one of the 88 matters considered by Strike Force Parrabell.⁶⁴
- 1.69. In relation to the primary basis, I referred to the analysis of the phrase “have regard to” as set out at [43]–[46] of my judgment dated 6 December 2022. I emphasised that I am required to give genuine consideration, and not merely token or nominal consideration, to matters to which I am directed to have regard.⁶⁵
- 1.70. I also noted the terms of Finding 1 of the Standing Committee Interim Report (February 2019), which stated:⁶⁶
- That a prevailing acceptance of and indifference towards violence and hostility directed at gay men principally during the period prior to the mid-1990s impacted on the protection of and delivery of justice to victims of hate crime, including but not limited to Mr Alan Rosendale, Mr Scott Johnson, Mr John Russell and Mr Ross Warren.*
- 1.71. Similarly, I noted the terms of Finding 2 of the Standing Committee Final Report, which stated:⁶⁷
- That historically the NSW Police Force failed in its responsibility to properly investigate cases of historical gay and transgender hate crime and this has undermined the confidence of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) communities in the NSW Police Force and the criminal justice system more broadly.*
- 1.72. I accepted Counsel Assisting’s submission that pursuant to Paragraph C, I have in effect been directed to have regard to evidence of potential deficiencies in the manner in which Scott Johnson’s death was examined by the NSWPF, given that this is a matter highlighted in the Standing Committee’s reports.⁶⁸ I did not accept—as was submitted by the NSWPF—that my judgment dated 6 December 2022 somehow circumscribed the manner in which it can be said that the reports to

⁶³ Judgment of the Inquiry, 18 July 2023 (ORD.00012).

⁶⁴ Judgment of the Inquiry, 18 July 2023, [65] (ORD.00012).

⁶⁵ Judgment of the Inquiry, 18 July 2023, [75] (ORD.00012).

⁶⁶ Exhibit 1, Tab 3, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Interim Report, Report 52, February 2019), ix (SCOL.02290).

⁶⁷ Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Final Report, Report 58, May 2021), 11 (SCOI.02291).

⁶⁸ Judgment of the Inquiry, 18 July 2023, [79] (ORD.00012).

which I am required to have regard pursuant to Paragraph C are relevant to informing my inquiries under Categories A and B.⁶⁹

- 1.73. Although I must have regard to the content of the Standing Committee reports generally, I determined that the extent to which I think particular matters referred to in the report are worthy of more detailed exploration in order to assist me with my task pursuant to Categories A and B is a matter for my discretion. The practices and approaches of police in connection with Strike Force Macnamir are matters where further exploration was likely to be, and has been, useful. The exploration of Strike Force Macnamir has assisted me in developing an appropriate understanding of attitudes and approaches within the NSWPF towards the investigation of potential hate crimes against members of the LGBTIQ community.⁷⁰
- 1.74. In the case of Strike Force Neiwand, the deaths that it investigated were also the subject of a case study in the Standing Committee reports. The two strike forces appear to have been the most substantial NSWPF investigative teams charged with considering potential “gay hate” homicides in the years immediately preceding the work of that Committee. They were conducted over a similar time period as each other and Strike Force Parrabell, and, at least on the submissions of Counsel Assisting their personnel overlapped (although the extent of the overlap is disputed by the NSWPF).⁷¹
- 1.75. There is evidence that the senior officer responsible for Strike Force Macnamir was also involved in the production of an Issues Paper for the NSWPF that more generally considered and expressed views concerning 30 potential “gay hate” homicides encompassing the period of those that I have been tasked to consider. In these circumstances, I considered that inquiring into the methodologies and practices of those strike forces would potentially assist me by helping to inform my understanding of the evidence (including relevant police practices) related to the individual deaths the subject of Categories A and B.⁷²
- 1.76. With regard to the *Lateline* interview, the fact that the interview was given by the senior officer responsible for Strike Force Macnamir, and that it concerned Scott Johnson’s death, demonstrated its intimate connections with Strike Force Macnamir. Its content also reflected the animosity of the officer towards Scott Johnson’s family members as reflected in the excerpts from the Standing Committee Interim Report set out earlier in the judgment. I consider the evidence related to the interview to be relevant to the Terms of Reference for the same reasons that Strike Force Macnamir is relevant.⁷³

⁶⁹ Judgment of the Inquiry, 18 July 2023, [81]–[84] (ORD.00012).

⁷⁰ Judgment of the Inquiry, 18 July 2023, [85]–[86] (ORD.00012).

⁷¹ Judgment of the Inquiry, 18 July 2023, [89] (ORD.00012).

⁷² Judgment of the Inquiry, 18 July 2023, [89] (ORD.00012).

⁷³ Judgment of the Inquiry, 18 July 2023, [95]–[96] (ORD.00012).

- 1.77. I also rejected the assertion of Mr Willing that up until 8 June 2023 (when Mr White was sentenced), any consideration of Scott Johnson’s death by the Inquiry risked prejudice to the relevant criminal proceedings. To the extent that any public consideration of matters touching upon Scott Johnson’s death has occurred, this has been to consider police approaches to the investigation of suspected homicides involving LGBTIQ bias as reflected by (the now historical) Strike Force Macnamir. That has occurred in a timeframe that post-dates Mr White’s plea of guilty to manslaughter, from which point the matter was for the exclusive consideration of the Supreme Court in relation to sentence.⁷⁴
- 1.78. As I considered that my inquiries in relation to Strike Force Macnamir in the course of Public Hearing 2 fell within the Terms of Reference on the primary basis referred to above, it was not necessary for me to express a view as to whether or not those inquiries fell within the Terms of Reference on the secondary basis that Scott Johnson’s death should be regarded as an “unsolved” death, potentially motivated by LGBTIQ bias. However, I did remark that notwithstanding the fact of Mr White’s conviction after pleading guilty to manslaughter and his sentence based on an agreed set of facts, it is apparent from the passages of the sentencing judgment that much remains unknown in relation to the circumstances surrounding Scott Johnson’s death.⁷⁵
- 1.79. It is open to me to take a view that a matter falls within Categories A or B of the Terms of Reference, notwithstanding that the matter has proceeded to conviction in criminal proceedings. In fact, this is specifically contemplated by the way in which Paragraph F of the Terms of Reference is framed. Further, even if I ultimately were to agree with the view of the interested parties that Scott Johnson’s death should not be regarded as “unsolved” for the purposes of the Terms of Reference, in my view I would be permitted to make inquiries to assist me to reach an appropriate conclusion on that issue.⁷⁶
- 1.80. For the preceding reasons, I concluded in this judgment that I was permitted to inquire into Strike Force Macnamir, including the involvement of the senior officers of the NSWPF responsible for Strike Force Macnamir in the *Lateline* interview.

Judgment dated 25 October 2023

- 1.81. On 10 October 2023, the NSWPF filed submissions addressing the evidence canvassed in the Investigative Practices Hearing. Those submissions were predicated upon the basis that I would find, as had been submitted concerning some cases before the Inquiry, that those cases were in fact “solved” and consequently were outside the Inquiry’s Terms of Reference.
- 1.82. The NSWPF submission was directed to the deaths of Andrew Currie, Russell Payne, Samantha Raye, William Dutfield, Blair Wark and Graham Paynter.⁷⁷

⁷⁴ Judgment of the Inquiry, 18 July 2023, [98] (ORD.00012).

⁷⁵ Judgment of the Inquiry, 18 July 2023, [110] (ORD.00012).

⁷⁶ Judgment of the Inquiry, 18 July 2023, [111]–[112] (ORD.00012).

⁷⁷ Submissions of NSWPF, 10 October 2023, [277]–[285] (SCOI.86127).

- 1.83. On 13 October 2023, I received written submissions from Counsel Assisting specifically addressing the above submission of the NSWPF.⁷⁸ On 19 October 2023, I advised the NSWPF that I had accepted the submissions of Counsel Assisting, with reasons to follow. My judgment on that matter was handed down on 25 October 2023.⁷⁹
- 1.84. In fact, as a consequence of the approach I took in the early stages of the Inquiry—an approach from which I did not depart, notwithstanding submissions I received—the relevant cases are not “solved”, and the issue consequently falls away.
- 1.85. However, I note that I accepted the submissions of Counsel Assisting that even in cases where I had received sufficient information to form the basis for a finding that a matter did not fall within Category A or B, or in fact reached that conclusion, it might remain appropriate for me to make findings regarding the relevant police investigation where that investigation had impeded my ability to determine that question. I also accepted Counsel Assisting’s submissions that the investigations in each of the matters identified by the NSWPF fell into that category.⁸⁰

Submissions made by the NSWPF and Michael Willing on 23 October 2023

- 1.86. On 23 October 2023, the Inquiry received further submissions from the NSWPF and Mr Willing addressing the written submissions made by Counsel Assisting in relation to Public Hearing 2. Each of those submissions included contentions to the effect that various findings proposed by Counsel Assisting in its submissions dated 7 June 2023 and supplementary submissions dated 16 October 2023 fell outside of the Terms of Reference.
- 1.87. As outlined above, I had at that time already delivered two judgments addressing submissions of the NSWPF to the effect that various matters considered by Public Hearing 2 fell outside the Terms of Reference (see my judgments delivered on 6 December 2022 and 18 July 2023). It was not clear to me how the issues raised by the NSWPF and Mr Willing in their further submissions were not encompassed by those judgments.
- 1.88. Accordingly, on 24 October 2023, the Inquiry wrote to the representatives for both parties seeking clarity as to how the submissions made on 23 October 2023 raised issues going beyond those addressed in my earlier judgments. That correspondence requested that the parties put on any further submissions in support of those contentions by 26 October 2023.⁸¹

⁷⁸ Submissions of Counsel Assisting, 13 October 2023 (SCOI.86175).

⁷⁹ Judgment of the Inquiry, 23 October 2023 (ORD.00007).

⁸⁰ Judgment of the Inquiry, 23 October 2023, [10]–[14] (ORD.00007).

⁸¹ Exhibit 69, Tab 1, Letter from Enzo Camporeale to Katherine Garaty, 24 October 2023 (SCOI.86676); Exhibit 69, Tab 2, Letter from Enzo Camporeale to Jonathan Milner, 24 October 2023 (SCOI.86675).

- 1.89. No additional submissions or correspondence was received from either party by 26 October 2023. Consequently, the Inquiry wrote again to both parties on 30 October 2023, advising that the Inquiry would assume that the parties had no additional submissions they wished to make.⁸² The Inquiry has received no further correspondence relating to those issues prior to the completion of this Report.
- 1.90. As I considered that the issues raised by both the NSWPF and Mr Willing in their submissions of 23 October 2023 did not go further than those addressed by my earlier judgments, I have not made further comment on those issues.

STANDARD OF PROOF

- 1.91. The Terms of Reference do not specify the standard of proof to be applied by this Inquiry in respect of the matters being inquired into. Nor does the *SCOI Act* prescribe a particular standard of proof.
- 1.92. However, commissions of inquiry typically adopt the civil standard of proof, namely the balance of probabilities, applied in accordance with the gravity of the allegations being considered (as well-established since *Briginshaw v Briginshaw* (1938) 60 CLR 336; [1938] HCA 34 (*Briginshaw*)).⁸³
- 1.93. In general, as explained further below, I have adopted that approach.
- 1.94. Where I have done so, I have been mindful of the strictness of proof called for, including in civil proceedings, when considering a finding as to the commission of a serious crime.⁸⁴ As Justice Dixon stressed in *Briginshaw*, the tribunal of fact must “feel an actual persuasion” of the occurrence or existence of the fact proposed; it should not be the result of “mere mechanical comparison of probabilities independent of any belief in reality”.⁸⁵ Where the evidence points to one or more conclusions, but I do not feel an actual persuasion sufficient to make a finding on the balance of probabilities, I have indicated the possible conclusions I consider to be available on the evidence and have expressed opinions about what the evidence indicates in relation to them.
- 1.95. The Terms of Reference require me to inquire into and report on the “manner and cause of” certain unsolved deaths. This language is also found in s. 81(1) of the *Coroners Act* but, as noted above, there are important differences between this Inquiry and a coronial inquest. Nevertheless, when reporting on the manner and cause of a death, I have done so on the basis on the civil standard.

⁸² Exhibit 69, Tab 3, Letter from Enzo Camporeale to Katherine Garaty, 30 October 2023 (SCOI.86678); Exhibit 69, Tab 4, Letter from Enzo Camporeale to Jonathan Milner, 30 October 2023 (SCOI.86677).

⁸³ See also Leonard Arthur Hallett, *Royal Commissions and Boards of Inquiry* (Law Book Co, 1982) 167-171; Peter Hall, *Investigating Corruption and Misconduct in Public Office: Commissions of Inquiry – Powers and Procedures* (Thomson Reuters, 2nd ed, 2019) [8.190].

⁸⁴ *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361–362 (Dixon J); [1938] HCA 34; *Helton v Allen* (1940) 63 CLR 691 at 711; [1940] HCA 20.

⁸⁵ *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361 (Dixon J); [1938] HCA 34.

- 1.96. To the extent that it is necessary or appropriate to make positive factual findings to inform any recommendations that I make, I have also made those findings on the balance of probabilities. Of course, some recommendations do not require specific findings of fact; rather, it is sufficient if I consider that they arise from the state of the evidence before me, including inferences to be drawn from a reasoned analysis of that evidence.
- 1.97. For the most part, I have not considered it necessary to make credibility findings about the witnesses who gave evidence before me. However, on a number of occasions it has been necessary for me to form a view about the reliability of evidence, for example because I have received inconsistent evidence from different sources or because there are reasons to doubt the reliability of a particular witness's evidence. Where appropriate, I have reported on what evidence was received from different witnesses or other sources, and have indicated in the report which evidence I prefer. When I identify which evidence I prefer in the report, I should be understood to be expressing the view that I regard that evidence as more reliable than inconsistent evidence on the same subject matter.
- 1.98. There are two areas where I have not made “findings” on the basis of either the civil standard or the criminal standard. They are where I am reporting on:
 - a. Evidence in relation to whether a particular person was or may have been the perpetrator of a particular homicide; and
 - b. Whether a death should be regarded as a “suspected LGBTIQ hate crime death”, as that expression is explained above.

Whether a particular person was or may have been the perpetrator of a particular homicide

- 1.99. Although the *SCOI Act* does not require any particular standard of proof:
 - a. Section 10(1) requires me to report in connection with “the subject matter of the commission”, and “in particular” as to “whether there is or was any evidence or sufficient evidence warranting the prosecution of a specified person for a specified offence”; and
 - b. Section 9(4) requires me, when preparing such a report (as to offences that may or may not have been committed), to disregard evidence that, in my opinion, would not be likely to be admissible in evidence in relevant criminal proceedings.
- 1.100. While these provisions do not relate to the standard of proof that I should apply, they do highlight the need for caution when considering evidence which bears upon whether or not a person is guilty of a criminal offence.

- 1.101. In *Balog v ICAC* (1990) 169 CLR 625; [1990] HCA 28 (*Balog*), the High Court held that the enabling statute for the Independent Commission Against Corruption (**ICAC**) (in its then form) did not authorise the ICAC to make findings of fact as to criminal guilt. The statutory context was different from the *SCOI Act*, but s. 75(4)(a) of the *Independent Commission Against Corruption Act 1988* then included a duty in the same language as found in the second part of s. 10(1) as extracted above (after the words “in particular”).
- 1.102. Different statutory contexts may of course lead to different results.⁸⁶ see for example. However, the fundamental duties of a Commissioner under the *SCOI Act* are to “enquire” and to “report”: see s. 4, and *Jackson v Slattery* [1984] 1 NSWLR 599, at 604, 609.
- 1.103. In 1997, s. 10(1) was amended to its current form. By adding what is now the first part of s. 10(1), the duty to report “in connection with the subject-matter of the commission”, Parliament has affirmed the primacy of the duty to report, being the duty, which also emerges from s. 4.
- 1.104. Bearing in mind all of these considerations, including that *Balog* has not been overruled, I have exercised caution in reporting on the evidence as to whether a specified person is or might be guilty of a specified offence. That is so even if a suspected perpetrator is deceased. I am conscious that such persons cannot respond, and that a deceased person’s reputation is a matter in which family members may have an interest.⁸⁷ As Justice Megarry observed in *John v Rees* [1970] Ch 345:⁸⁸
- As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change.*
- 1.105. Where there is the realistic prospect of a further investigation and/or prosecution, I have also been mindful—in both the public and confidential sections of the Report—of the direction, in Paragraph E of the Terms of Reference, to operate in a way that avoids prejudice to such an investigation and/or prosecution.
- 1.106. For all of these reasons, in both the public and confidential sections of the Report, when dealing with evidence as to the possible identity of a perpetrator, I have expressed opinions about what the evidence indicates, while refraining from making concluded findings as to whether a specified person committed a specified offence.⁸⁹

⁸⁶ *Australian Communications and Media Authority v Today FM* (Sydney) Pty Ltd (2015) 255 CLR 352; [2015] HCA 7 at [33] and [41]-[42].

⁸⁷ *Annetts v McCann* (1990) 170 CLR 596; [1990] HCA 57 at [11] and [16] (Brennan J).

⁸⁸ *John v Rees* [1970] Ch 345 at 402 (Megarry J); cited with approval in *Re Refugee Review Tribunal; Ex parte Aala* (2000) 204 CLR 82; [2000] HCA 57 at [81] (Gaudron and Gummow JJ) with whom Gleeson CJ agreed.

⁸⁹ *Parker v Anti-Corruption Commission* (Supreme Court of Western Australia Court of Appeal, Murray J, 31 March 1999).

Whether a death should be regarded as a suspected LGBTIQ hate crime death

- 1.107. The Terms of Reference require me to consider unsolved deaths that were “potentially motivated by gay hate bias” (Category A) or “suspected hate crime deaths ... where ... the victim was ... a member of the [LGBTIQ] community” (Category B).
- 1.108. I have explained above that I regard those two verbal formulations as referring to substantially the same criterion, both of which are captured by the expression “suspected LGBTIQ hate crime death”. As also explained above, I regard a death as a “suspected LGBTIQ hate crime death” if there is objectively reason to suspect both that the death was a homicide and, and that actual or assumed membership in the LGBTIQ community was a factor in the commission of the crime.
- 1.109. The words “potential” in Category A and “suspected” in Category B are significant. The Terms of Reference do not require me to make a positive finding that LGBTIQ bias definitely was, or definitely was not, a factor in a death. Rather, I am asked to inquire into, and report on, deaths which were “potentially motivated” by such bias (Category A), or which were “suspected” of being “hate crime deaths” (Category B). Nevertheless, I regard it as appropriate to make comment (but not findings), where I hold that view to the standard outlined above.
- 1.110. Whether LGBTIQ hate or bias was actually present in the mind of a perpetrator will in most cases be very difficult to ascertain. Where the identity of the perpetrator is unknown, as is the case in many of the deaths under consideration, it will usually be impossible. The requirement in Strike Force Parrabell, that a case be designated as one where there was “evidence of bias crime” only if such evidence was present (in whatever paper holdings were located and considered) “beyond reasonable doubt” (the criminal standard), seems to me to have been both inappropriate and misconceived. It inevitably meant that only very few cases would meet such a criterion.
- 1.111. I have reached my conclusions on the question of whether a death is a “suspected LGBTIQ hate crime death”, in relation to each of the deaths under consideration, not by reference to either the civil or the criminal standard of proof but by applying the test set out above (i.e., objective reason to suspect).

ADMISSIBILITY OF EVIDENCE

- 1.112. Having discussed the standard of proof I have applied, it is useful to address briefly the admissibility of the evidence received by this Inquiry, whether provided voluntarily or via the compulsory processes provided for by s. 14 of the *SCOI Act*. That subject is addressed by s. 9 of the *SCOI Act*.

- 1.113. Most relevantly, in public hearings I am required to admit, as far as practicable, only that evidence which I consider would likely to be admissible in civil proceedings. That is not to say the *Evidence Act 1995* and like legislation apply to this Inquiry, but I must have regard to similar principles and employ equivalent considerations in dealing with evidence at public hearings. I am given some discretion as to practicability and some allowance in considering whether evidence is “likely” to be admissible under those standards, but this nevertheless imposes a real limitation with regard to the information where can be received by the Inquiry in public. It does not, however, directly limit the subject matter on which I can report. In particular, s. 9(3) does not prevent me from receiving other evidence in private, nor from reporting in relation to evidence received in private, including in a section of my Report which I recommend be published.

Parliamentary privilege

- 1.114. The Terms of Reference relevantly include the following paragraph:

... *AND We direct you, in conducting the inquiry, to have regard to:*

...

C. The findings of previous inquiries and reports, including:

i. the interim and final report and findings of the inquiries conducted by the Standing Committee on Social Issues into Gay and Transgender hate crimes between 1970 and 2010; ...

- 1.115. The Inquiry was mindful that, in complying with this direction, it was not permitted to breach parliamentary privilege. That privilege belongs to the Parliament, not the Executive, and so it could not be waived by the Terms of Reference, either expressly or impliedly.
- 1.116. Briefly, the doctrine of parliamentary privilege originates in Article 9 of the *Bill of Rights 1688*, which applies in NSW through s. 6 and the Second Schedule of the *Imperial Acts Application Act 1969*. The doctrine indicates that: “the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.”⁹⁰
- 1.117. It is clear that “proceedings in Parliament” include the work of the Standing Committee.⁹¹ I considered that the Inquiry was a “place outside of Parliament” for the purposes of Article 9.⁹²

⁹⁰ Article 9, *Bill of Rights 1688* (1 Will and Mary, sess 2 c 2).

⁹¹ *Mees v Road Corporation* (2003) 128 FCR 418, 442–443 (Gray J).

⁹² *The President of the Legislative Council of Western Australia v Corruption and Crime Commission [No 2]* [2021] WASC 223, [137] (Hall J).

- 1.118. The words “impeached or questioned” have always been given a wide interpretation.⁹³ Relevantly, for the Inquiry’s purposes, it meant that the Inquiry could not question the motives, intentions or reasoning of any witnesses who gave evidence to the Standing Committee, or the correctness of that evidence. Examination of what a witness said to the Standing Committee was permissible to prove only, as a matter of fact, that the words were said.⁹⁴
- 1.119. Section 9(5) of the *SCOI Act* provides:
- For the purposes of [s. 9], in determining whether evidence is admissible, regard is not to be had to parliamentary privilege to the extent that that privilege is waived by or under this Act or otherwise.*
- 1.120. It might be thought that this would circumvent any difficulties posed by parliamentary privilege. However, generally speaking, parliamentary privilege cannot be waived in the absence of legislation which authorises waiver.⁹⁵ I formed the view that the reference to waiver in s. 9(5) was an artefact of a regime formerly found in Part 4A of the *SCOI Act*.⁹⁶ I therefore proceeded on the basis that there was no waiver of parliamentary privilege in respect of the Inquiry.
- 1.121. However, parliamentary privilege did not mean that it was impossible for me to have regard to the reports and findings of the Standing Committee, as required by Paragraph C of the Terms of Reference. The Inquiry reviewed the work of the Standing Committee closely and had regard to it throughout its own work.
- 1.122. There were several witnesses who gave evidence both to the Standing Committee and the Inquiry. As noted above, parliamentary privilege limited the questions that could be asked of these witnesses in relation to their evidence to the Standing Committee, although it did not limit the questions that could be asked of them more generally.

⁹³ See WJD, ‘Privilege of Parliament’ (1944) 18 *Australian Law Journal* 70, 75 (reporting a decision of Lowe J, conducting a Royal Commission).

⁹⁴ *Mees v Road Corporation* (2003) 128 FCR 418, 445 (Gray J); *Leyonhjelm v Hanson-Young* (2021) 282 FCR 341.

⁹⁵ Enid Campbell, *Parliamentary Privilege* (Federation Press, 2003), 62–63; *R v Chaytor* [2011] 1 AC 684, 711 [61] (Lord Phillips); *The President of the Legislative Council of Western Australia v Corruption and Crime Commission [No 2]* [2021] WASC 223, [129] (Hall J).

⁹⁶ Enid Campbell, *Parliamentary Privilege* (Federation Press, 2003), 134.

CONFIDENTIALITY AND NON-PUBLICATION ORDERS

General principles

- 1.123. The principle of open justice is widely recognised as “one of the most fundamental aspects of the system of justice.”⁹⁷ The Inquiry was established for the purpose of investigating matters that are of significant public importance to the LGBTIQ community, as well as the community more broadly. For this reason, there is a compelling public interest in the Inquiry publishing its findings and the evidence upon which those findings are based. It is hoped that by seeking out and scrutinising all available material in connection with these crimes, the Inquiry will shine a light on the circumstances surrounding suspected hate crimes, the impact these crimes have had on victims and their families, and the actions of Australian society and institutions carried out in response.
- 1.124. However, courts (and similarly Special Commissions of Inquiry) possess jurisdiction to modify and adapt the content of general rules of open justice in exceptional circumstances. The following factors were considered in the Inquiry’s determination of whether non-publication orders ought to be made with respect to particular documents or parts of documents.
- 1.125. First, Paragraph E of the Terms of Reference directs the Inquiry “to operate in a way that avoids prejudice to criminal investigations, any current or future criminal prosecutions, and any other contemporaneous inquiries”. The Inquiry was mindful that the publication of certain findings and evidence could possibly cause prejudice of that kind. To provide some obvious examples:
- a. Publicly identifying an individual as a suspect worthy of further investigation may prompt them to change their behaviour in such a way as to frustrate that investigation.
 - b. Publicly identifying an individual as a source of information may expose them to repercussions, which would deter the provision of information to law enforcement in the future, both by that person and by the wider community.
 - c. Publicly referring a matter to the Office of the Director of Public Prosecutions (**ODPP**) may prompt an individual to flee the jurisdiction or otherwise take steps to frustrate efforts to prosecute them. It may also create a risk of prejudicial pre-trial media publicity.
 - d. Publishing specific or detailed information as it relates to ongoing criminal proceedings creates a risk of prejudice in those proceedings.

⁹⁷ *John Fairfax Publications Pty Ltd v District Court of NSW* (2004) 61 NSWLR 344; [2004] NSWCA 324, [18] (Spigelman CJ).

- 1.126. Secondly, particular documents or parts of documents may raise public interest immunity concerns (although it is noted that there may be a significant overlap between the doctrine of public interest immunity and the matters covered by Paragraph E of the Terms of Reference). In practice, the Inquiry did not identify any information that was subject to public interest immunity and was not covered by Paragraph E of the Terms of Reference. The NSWPF likewise did not submit that any documents sought to be tendered by Counsel Assisting were subject to public interest immunity.
- 1.127. Thirdly, specific statutory requirements prevent the publication of certain information. For instance, s. 15A of the *Children (Criminal Proceedings) Act 1987* limits the publication of the identities of persons connected with criminal proceedings who were children at the relevant time.
- 1.128. Fourthly, the evidence available to the Inquiry often included personal information about individuals which was not materially relevant to the subject matter of the Inquiry. Parliament has recognised the importance of government agencies respecting individual privacy in the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*. The Inquiry was not bound by that legislation and the subject matter of the Inquiry meant that it has necessarily published extensive information, including personal details, in relation to certain individuals. This included individuals whose deaths are the subject of the Inquiry, some family members of those individuals, persons of interest, witnesses and other individuals connected to Inquiry proceedings.
- 1.129. However, if an individual's personal information was considered to be irrelevant to the work of the Inquiry, the Inquiry took the view that there was little to no public interest in the publication of that information. To that end, the Inquiry redacted information falling into the following categories, where that information was irrelevant to its work:
- a. Personal contact details including home addresses, email addresses and telephone numbers;
 - b. Work contact details of employees of the NSWPF;
 - c. Dates of birth;
 - d. Central Names Index (**CNI**) numbers and Master Index Numbers (**MIN**); and
 - e. Medical record numbers (except where the Inquiry was aware that the person is deceased).
- 1.130. Fifthly, the Inquiry applied redactions to comply with any existing non-publication orders made by a court in criminal or coronial proceedings.
- 1.131. I made non-publication orders over information which fell into the categories described above. That information was redacted. Where it was necessary to protect the identity of individuals, the Inquiry made orders that those individuals be referred to by pseudonyms.

Process for identifying appropriate redactions

- 1.132. On 1 February 2023, I issued Practice Guideline 2, which dealt with applications for non-publication orders. That occurred after the Inquiry had already obtained significant volumes of material and after it had already conducted some hearings in which material had been tendered into evidence. Practice Guideline 2 was an attempt to refine the process by which the Inquiry dealt with that aspect.
- 1.133. It is unnecessary to go into that process in great detail, other than to say that:
- a. The NSWPF was afforded an opportunity to review material and propose redactions before it was tendered into evidence or published on the Inquiry's website.
 - b. The vast majority of redactions were able to be agreed between the Inquiry and the NSWPF.
 - c. Where the legal team assisting the Inquiry and the NSWPF were unable to agree on proposed redactions and non-publication orders, the matter was referred to me to be dealt with on the papers. I delivered three judgments in relation to non-publication orders, on 8 February 2023, 20 February 2023 and 24 February 2023. Those judgments consider the principles related to non-publication orders and are included in an Appendix to this Report.
- 1.134. The work of the NSWPF in reviewing material prior to tender and publication was of assistance to the Inquiry in two important ways:
- a. First, the NSWPF identified redactions that the legal team assisting the Inquiry had inadvertently missed. It is unsurprising that this occurred, given the volume of material tendered into evidence.
 - b. Secondly, the NSWPF identified additional redactions which it considered were required to avoid prejudice to investigations, as required by Paragraph E of the Terms of Reference. The NSWPF was uniquely well-placed to assist the Inquiry in this regard.
- 1.135. That said, there were many redactions proposed by the NSWPF which were not accepted by the legal team assisting the Inquiry. In most cases, the NSWPF accepted the reasoning of the legal team and did not press the matter. On the three occasions when the NSWPF did press the matter, I found against them, as noted above.

Recommendations to the Governor regarding publication

- 1.136. I am empowered, under s. 10(3) of the *SCOI Act*, to make recommendations to the Governor with respect to the publication of all or parts of this Report. I note that, to the extent parts of this Report (such as the confidential volume or pseudonyms applied) are affected by non-publication orders I have made with respect to certain evidence, those orders are framed to be subject to the Governor's discretion to disclose or publish the information in this Report.

- 1.137. I make the following recommendations:
- a. I recommend that **Volume 4** of this Report, described elsewhere as “the confidential volume”, not be published for a period of 30 years.
 - b. Notwithstanding recommendation a. above, I recommend that **Volume 4** be provided, on a confidential basis, to the NSWPF, the NSW Crime Commission and any other law enforcement or prosecutorial agency which may require it for the purpose of criminal investigations or prosecutions.
 - c. Notwithstanding recommendation a. above, I recommend that, after 30 years have elapsed, or if earlier disclosure is contemplated, the NSWPF or any successor agency be consulted as to whether specific parts of **Volume 4** should not be published for a longer period to avoid an unreasonable impact on the exercise of the investigative functions of that agency.
 - d. If the NSW government is considering publishing **Volume 4** at some later date, consideration should be given at that time to whether it should be published in a redacted or unredacted form. For example, the government of the day may consider it appropriate to make redactions or only publish part of **Volume 4**, in order to comply with s. 15A of the *Children (Criminal Proceedings) Act 1987*, or in order to avoid disclosing intimate personal information about living people (such as disclosures as to sexuality or gender identity not generally known, or disclosures of past abuse), or on the basis that there may still be a prospect of an investigation in relation to particular cases, so that relevant parts of **Volume 4** might not be published if that could prejudice those investigations. All of this will be a matter for the government of the day, based on the circumstances that obtain at that time.
 - e. I recommend that the names in **Volumes 1–3** (comprising **Chapters 1–16**) of this Report that have been made subject to pseudonyms (as set out in the non-publication orders annexed to **Volume 4**) not be published for a period of 30 years, subject to the same consultation as identified in recommendation c. and the same considerations as identified in recommendation d. above.
 - f. I otherwise recommend that **Volumes 1–3** (comprising **Chapters 1–16**) and the **Annexures** of the Report be published as soon as possible.
- 1.138. It is not possible to set out my rationale for those recommendations by reference to every individual name or component of the confidential volume to which they apply. My specific reasons are frequently detailed in the relevant parts of the confidential volume. In general, however, my recommendation is grounded in one or more of the following considerations, as will be apparent with regard to each piece of information in its context:
- a. To preserve the possibility of future criminal investigations and prosecutions;
 - b. To protect sensitive personal information which is not directly relevant to the matters being considered by this Inquiry, including evidence or disclosures of an LGBTIQ identity which may not be generally known and evidence of childhood sexual abuse or other trauma;

- c. To comply with the obligation placed upon the Inquiry by Paragraph D of the Terms of Reference to proceed in a manner which minimises trauma to witnesses, as well as to avoid unnecessary trauma to family members and loved ones;
 - d. To avoid the widespread publication of allegations made by witnesses against other persons which are not relevant to the work of the Inquiry or not sufficiently grounded in evidence before the Inquiry; and
 - e. To meet reasonable requests by witnesses, or the family members or loved ones of witnesses or victims, with respect to the non-publication of information which is not relevant or of only incidental relevance to the work of the Inquiry.
- 1.139. I observe that the ability to take evidence in private, and to make reasonable assurances of confidentiality, is vital to the work of an Inquiry of this nature. It is important that, where appropriate, witnesses can approach the Inquiry with reasonable confidence that information they provide will not be disclosed to a greater extent than is necessary to advance the work of the Inquiry. In some cases, that means it has been necessary to include information in my Report by way of context for certain findings, recommendations or comments that should not be published to the world at large. Such considerations should be borne in mind when making any decision to publish information to which the above recommendations apply.

PROCEDURAL FAIRNESS

Principles of procedural fairness

- 1.140. It may be readily accepted that the requirements of procedural fairness apply to this Inquiry.
- 1.141. Neither the *SCOI Act*, nor the Terms of Reference, contain any directions as to the “practice and procedure to be followed” which might be understood as directly imposing requirements of procedural fairness.⁹⁸ However, to exclude the application of procedural fairness, express statutory language would usually be required.⁹⁹ As Mason CJ, Deane and McHugh JJ observed in *Annetts v McCann*:¹⁰⁰

When a statute confers power upon a public official to destroy, defeat or prejudice a person’s rights, interests or legitimate expectations, the rules of natural justice regulate the exercise of that power unless they are excluded by plain words of necessary intentment.

⁹⁸ See *Special Commissions of Inquiry Act 1983*, s. 5.

⁹⁹ *Annetts v McCann* (1990) 170 CLR 596, 598; [1990] HCA 57.

¹⁰⁰ *Annetts v McCann* (1990) 170 CLR 596, 598; [1990] HCA 57. See also *Commissioner of Police v Tanos* (1958) 98 CLR 383, 396 (Dixon CJ and Webb J); [1957] HCA 73, observing that intention of the legislature is not to be assumed or spelled out from “indirect references, uncertain inferences or equivocal consideration”.

- 1.142. Section 12(2) of the *SCOI Act* provides that where it is shown to the Commissioner's satisfaction that "any person is substantially and directly interested in any subject-matter of the inquiry", or that "the person's conduct in relation to any such matter has been challenged to the person's detriment", the Commissioner may authorise the person to appear and be represented before the Inquiry. A provision of this kind is ordinarily understood to supplement, rather than supplant, the common law requirements of procedural fairness.¹⁰¹ Therefore while s. 12(2) prescribes a circumstance in which a person is entitled to have an opportunity to be heard in the course of the Inquiry, the threshold concept of a "substantial and direct interest" in the Inquiry's "subject matter" falls to be assessed by reference to the common law.
- 1.143. Moreover, there is a clear line of authority that establishes that the principles of procedural fairness apply to commissions of inquiry.¹⁰² That authority indicates that a duty to observe procedural fairness may be implied as a condition of the exercise of statutory powers and functions which are capable of adversely affecting the rights and interests of persons or organisations.¹⁰³
- 1.144. However, what procedural fairness requires in a given context is not fixed. Rather, procedural fairness represents "a flexible obligation to adopt fair procedures which are appropriate and adapted to the circumstances of the particular case".¹⁰⁴ The content of that obligation in an Inquiry context is different from that which applies in judicial proceedings.¹⁰⁵ Procedural fairness "is essentially practical ... [T]he concern of the law is to avoid practical injustice."¹⁰⁶
- 1.145. It has been recognised that the "fundamental obligation of the inquirer" in a commission of inquiry is to "give a person, whose interests might be affected by the decision of the inquirer, a reasonable opportunity to be heard before the decision which may affect those interests is made".¹⁰⁷ In particular, this means that I cannot lawfully make any finding adverse to the interests of a person "without first giving them an opportunity to answer the matters put against them and to put submissions as to the findings or recommendations that might be made".¹⁰⁸

¹⁰¹ See *Annetts v McCann* (1990) 170 CLR 596, 598; [1990] HCA 57.

¹⁰² *Mahon v Air New Zealand Ltd* [1984] AC 808; *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564; [1992] HCA 10; *Annetts v McCann* (1990) 170 CLR 596; [1990] HCA 57; *Re Royal Commission on Thomas Case* [1980] 1 NZLR 602; *Ferguson v Cole* (2002) 121 FCR 402 (Branson J); [2002] FCA 1411.

¹⁰³ *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564, 578, 592; [1992] HCA 10. See also *Annetts v McCann* (1990) 170 CLR 596, 598 (Mason CJ, Deane and McHugh JJ); *Plaintiff S10/2011 v Minister for Immigration and Citizenship* (2012) 246 CLR 636, [97] (Gummow, Hayne, Crennan and Bell JJ); [2012] HCA 31.

¹⁰⁴ *Kioa v West* (1985) 159 CLR 550, 585 (Mason J); [1985] HCA 81.

¹⁰⁵ Hall, P M, *Investigating Corruption and Misconduct in Public Office – Commissions of Inquiry – Powers and Procedures* (Lawbook Co, 2nd ed, 2019) 550–551: "A commissioner conducting an inquiry... does so as an investigator and as such is not bound to adopt the judicial model or mode of proceeding. The functions he or she is required to perform and the matters required to be investigated may call for quite different procedures and a different approach to those observed in inter partes litigation. Accordingly, in general the principles of procedural fairness must be observed, their content must accommodate and facilitate the due discharge of the responsibilities that rest with a commission of inquiry."

¹⁰⁶ *Re Minister for Immigration and Multicultural Affairs; Ex parte Lam* (2003) 214 CLR 1; [2003] HCA 6 at [37] (Gleeson CJ).

¹⁰⁷ *Lawrie v Lawler* [2016] NTCA 3, [180].

¹⁰⁸ *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564, 581; [1992] HCA 10; see also *Annetts v McCann* (1990) 170 CLR 596, 600–601; [1990] HCA 57; *National Companies and Securities Commission v News Corp Ltd* (1984) 156 CLR 296, 314–315; [1984] HCA 29.

- 1.146. In essence, this imposes two requirements on the Inquiry:
- a. To provide notice to a person, whose interests might be adversely affected by a proposed finding, of the “nature and content of adverse material”;¹⁰⁹ and
 - b. To give that person an opportunity to provide information or make submissions against the making of that proposed finding.
- 1.147. However, two matters need to be emphasised.
- 1.148. First, these duties are enlivened only in respect of a person whose interests may be “adversely affected” by a proposed finding. They are not owed to every person who has some connection with, or may have knowledge of, a matter at issue, unless an “adverse” finding is proposed about that person.
- 1.149. Courts take a broad, open-ended approach to determining the kinds of “interests” which attract the protection of procedural fairness.¹¹⁰ The threshold is relatively low, in that “some clear form of possible adverse affectation” may suffice.¹¹¹
- 1.150. Nonetheless, where no adverse finding is proposed about a person, the question whether to obtain evidence from that person is purely a forensic decision for me, as the sole repository of the power to call witnesses before this Inquiry.¹¹² In such circumstances the question whether, in the absence of evidence from that person, a finding is open to be made, is one of *sufficiency* of evidence, and does not involve any possible denial of procedural fairness.
- 1.151. Secondly, a person must be affected as an individual for procedural fairness to apply. As Justice Deane held in *Kioa v West*,¹¹³ each of the challenged orders in that case “directly affected the rights, interest and status of the person ... in respect of whom it was made and *against whom as an individual* it was directed” (emphasis added).¹¹⁴ A distinction often drawn in this regard is between a decision affecting an individual, and a decision affecting a group or class of which an individual is a member (including the public at large).¹¹⁵

¹⁰⁹ *Lawrie v Lawler* [2016] NTCA 3, [181]; *Commissioner for the Australian Capital Territory Revenue v Alphaone Pty Ltd* (1994) 49 FCR 576, 591–2; [1994] FCA 293.

¹¹⁰ It is accepted that courts take a broad, open-ended approach to determining the kinds of ‘interests’ which attract the protection of procedural fairness: Mark Aronson, Matthew Groves and Greg Weeks, *Judicial Action of Administrative Action and Government Liability* (7th ed, Thomson Reuters, 2021), [8.60]; see also *Plaintiff M61/2010E v Commonwealth (Offshore Processing Case)* (2010) 243 CLR 319; [2010] HCA 41 at [75].

¹¹¹ *CLM18 v Minister for Home Affairs* (2019) 272 FCR 639; [2019] FCAFC 170, [55] (Perram J).

¹¹² *Special Commissions of Inquiry Act 1983*, s. 14. As Dr Stephen Donaghue KC notes in the context of Royal Commissions and commissions of inquiry generally, “Commission legislation does not confer a right on interested persons to call witnesses to give further evidence to a commission. This is not surprising, as if such a right existed a hearing ‘might become so protracted as to render it practically futile’”: *Royal Commissions and Permanent Commissions of Inquiry* (Butterworths, 2001) 190, quoting *NCSC v News Corp Ltd* (1984) 156 CLR 296, 313–314 (Gibbs CJ); [1984] HCA 29.

¹¹³ *Kioa v West* (1985) 159 CLR 550; [1985] HCA 81.

¹¹⁴ *Kioa v West* (1985) 159 CLR 550, 632 (Deane J); [1985] HCA 81; see also the observations of Mason J at 584.

¹¹⁵ *Kioa v West* (1985) 159 CLR 550, 620 (Brennan J); [1985] HCA 81; *Castle v Director General State Emergency Service* [2008] NSWCA 231, [6] (Basten JA), dissenting as to outcome but not as to the relevant statement of principle.

Approach of this Inquiry to procedural fairness

- 1.152. The Inquiry has sought to contact, by letter, email or telephone, every living person (or, in certain circumstances, next of kin) where I considered procedural fairness required them to be notified of the work of the Inquiry. In every case, I offered those persons an opportunity to be heard before the Inquiry, and in most cases by way of written submissions.
- 1.153. In many cases, the Inquiry received no response to its communications. While the Inquiry has taken pains to identify current contact details for each person so affected, it has not always been possible to ascertain definitively whether those persons had received the correspondence and chosen not to take action, or had not received it at all. Depending on the nature of the findings in question, I have at times taken the view that I must assume an absence of response indicates the relevant person did not wish to be heard.
- 1.154. In general, noting the relatively low threshold described above, I have taken a cautious approach to affording procedural fairness to persons named in this Report. In some very rare cases, notably with respect to some OICs of historical investigations, the Inquiry has also had to consider the risks of contact or further contact causing or exacerbating significant trauma in an individual (to which see also Paragraph D of the Terms of Reference).
- 1.155. In those cases, where a person is named in the Report, I have brought particular scrutiny to bear on whether I think the threshold has been met, taking the view that the requirement to avoid practical injustice includes taking these matters into account. In some such cases, I have taken the view that those persons should not be further approached to make submissions, as to do so would pose a greater risk to them than the manner in which they are to be named.



Chapter 2: Establishment of the Inquiry

HISTORICAL CONTEXT

Introduction and context

- 2.1. The purpose of this Inquiry, as embodied in the Terms of Reference, is considered in **Chapter 1** of the Report. The immediate trigger for the Inquiry was a recommendation in the Standing Committee Final Report.¹¹⁶
- 2.2. The Inquiry was established on 13 April 2022 by Letters Patent issued in the name of the Governor of New South Wales pursuant to the *SCOI Act*.
- 2.3. However, more broadly, the Inquiry has come about due to the tireless work and advocacy of persons and bodies determined to see that deaths that may have been hate crimes that occurred in the period between 1970 and 2010 would not go without recognition and redress.
- 2.4. Of particular note in this respect is the organisation ACON, which was formerly the AIDS Council of New South Wales. ACON was established in 1985 to “fight the devastation of HIV/AIDS.”¹¹⁷ Initially, ACON was a community response to the need for clear, accurate and relevant information concerning HIV, and for advocacy for those living with HIV and for the gay community.¹¹⁸ Since that time, ACON has continued to work towards ending HIV in addition to supporting those living with HIV, but has also expanded its operations to encompass other programs and campaigns of education, advocacy and support for the LGBTIQ community (noting that ACON defers to specialist organisations on issues affecting persons with intersex characteristics).¹¹⁹
- 2.5. In May 2018, ACON published a report titled *In Pursuit of Truth & Justice: Documenting Gay and Transgender Prejudice Killings in NSW in the Late 20th Century (In Pursuit of Truth & Justice)*.¹²⁰ This report, which considered 88 deaths that occurred in NSW between 1976 and 2000, is discussed further below. *In Pursuit of Truth & Justice* is referred to in my Terms of Reference and was referred to in the Standing Committee Final Report as a “seminal” report on hate crimes against the LGBTIQ community.

¹¹⁶ Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Final Report, Report 58, May 2021) (SCOI.02291).

¹¹⁷ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [10] (SCOI.77301).

¹¹⁸ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [11]–[12] (SCOI.77301).

¹¹⁹ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [14]–[15], [67]–[72] (SCOI.77301).

¹²⁰ Exhibit 1, Tab 1, ACON, *In Pursuit of Truth & Justice: Documenting Gay and Transgender Prejudice Killings in NSW in the Late 20th Century* (Report, May 2018), 12 (SCOI.03667).

- 2.6. Another significant event in the establishment of the Inquiry was a report published in June 2018 concerning the NSWPF's Strike Force Parrabell (**Parrabell Report**)¹²¹. The Parrabell Report considered the same 88 deaths that occurred in NSW between 1976 and 2000. As is explained below, however, *In Pursuit of Truth and Justice* and the Parrabell Report differed on the question of how many of the 88 deaths were likely to have been motivated by LGBTIQ bias. The Parrabell Report, and Strike Force Parrabell generally, are the subject of **Chapter 13**.

KEY EVENTS

- 2.7. A number of key events in the timeline that led to the establishment of the Inquiry, and that are of particular significance to the work of the Inquiry, are set out in this Chapter.
- 2.8. The majority of these events are dealt with in more detail in subsequent chapters, including by reference to written and oral evidence received by the Inquiry. Consequently, the following should be understood as a summary only.

Operation Taradale

- 2.9. In June 2001, Detective Sergeant Stephen Page was appointed as the Officer in Charge of an investigation referred to as Operation Taradale. Operation Taradale was established to review the disappearance and presumed death of Ross Warren, the death of John Russell, and an assault on David McMahon. In August 2002, Operation Taradale was expanded to include the disappearance and presumed death of Gilles Mattaini.¹²²
- 2.10. The hearings in the inquest were convened as a consequence of Operation Taradale (**Taradale Inquest**) and occurred between 31 March 2003 and 10 September 2003, and oral submissions were heard on 23 December 2004. Senior Deputy State Coroner Milledge (**Coroner Milledge**) delivered findings and recommendations on 9 March 2005.¹²³
- 2.11. Mr Russell's body was found on 23 November 1989 lying on the rocks in the Marks Park area of the Bondi to Tamarama walking track. This area was known to be a beat. Mr Russell was 31 at the time of his death, and resided with his brother in Bondi. He was gay, had two jobs, and the support of a loving family. A number of coins were found proximate to his body, and human hair believed to be from another person was observed on one of his hands. There was evidence that those hairs were "bagged" for analysis, but they were lost prior to the initial inquest into Mr Russell's death conducted on 2 July 1990. No forensic analysis was ever performed on those hairs.¹²⁴

¹²¹ Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) (SCOI.02632).

¹²² Exhibit 6, Tab 253, Statement of Stephen Page, 16 February 2023, [10]–[11] (SCOI.82472).

¹²³ Exhibit 6, Tab 253, Statement of Stephen Page, 16 February 2023, [18]–[19] (SCOI.82472).

¹²⁴ Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 1 (SCOI.02751.00021).

- 2.12. The OIC of the original investigation into Mr Russell’s death deemed his death “accidental” and it was not pursued as a homicide, although some police involved in the investigation believed Mr Russell had been the victim of an assault.¹²⁵
- 2.13. No transcript of the initial inquest remains, but the manner and cause of death was recorded as “the effects of multiple injuries sustained then and there when he fell from a cliff to the rocks below, but whether he fell accidentally or otherwise, the evidence does not enable me to say.”¹²⁶
- 2.14. Mr Warren disappeared four months prior to Mr Russell’s death. Mr Warren was 25 years old, gay, and a television presenter with WIN 4 Television in Wollongong. He was last seen by a friend in Oxford Street on 22 July 1989. On 23 July 1989, his friends located his car in Kenneth Street, Bondi, very close to Marks Park. The following day, Mr Warren’s keys were located in a rock “pocket” below the cliff near the water’s edge. Police subsequently found Mr Warren’s wallet in his car.¹²⁷
- 2.15. Appeals were made through the media, and police were assisted in their investigations by two of Mr Warren’s friends and by his family. However, within a week of his disappearance the Senior Detective co-ordinating the investigation chose to “sideline” the investigation, saying:¹²⁸
- Investigating police are of the opinion that the missing person has fallen into the ocean in some manner and it is anticipated that his body will surface and be recovered. I am not able to offer any explanation as to how he would have fallen into the water, only that the area near where the keys were located is a treacherous rock formation which at the present time is secreting a lot of water and moisture from recent rains. There is extensive moss and slippery sections from where experience [sic] would not be difficult to envisage slipping onto the rocks, particularly after 2am on the morning of 22 July.*
- 2.16. Mr Warren’s suspected death was never reported to the Coroner.¹²⁹
- 2.17. Mr Mattaini was a French national, gay, and 27 years old at the time of his disappearance. At the time of his disappearance, he had been concerned about his residency because he had overstayed his visa. However, he was also looking forward to a visit from a friend from France and was in the process of decorating his apartment in Bondi, which he shared with his partner. Mr Mattaini was known to take long walks along the Marks Park walking track but was not known to be a user of the beat. He was last seen walking on the track at Bondi on or about

¹²⁵ Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 1 (SCOI.02751.00021).

¹²⁶ Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 1 (SCOI.02751.00021).

¹²⁷ Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 1–2 (SCOI.02751.00021).

¹²⁸ Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 2 (SCOI.02751.00021).

¹²⁹ Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 2 (SCOI.02751.00021).

- 15 September 1985. His headphones, a yellow spray jacket and his keys were missing from his house.¹³⁰
- 2.18. A concerned friend contacted Mr Mattaini’s partner in France when Mr Mattaini did not present for work. Mr Mattaini’s partner and other friends conducted an extensive search when Mr Mattaini’s partner returned to Australia in September 1985. One of Mr Mattaini’s friends believed the other had reported Mr Mattaini missing to the Paddington Police Station, but no report of that could be found. No police investigation was undertaken at that time, and by the time of the inquest the person said to have reported him missing was deceased.¹³¹
- 2.19. Coroner Milledge made a number of comments about the investigation of Mr Warren’s death. No brief of evidence was provided for the inquest, although one was said to have been provided for the 1990 inquest. Detective Sergeant Bowditch, who had coordinated the investigation, could not account for the location of the records concerning the investigation.¹³²
- 2.20. Coroner Milledge considered that the “state of affairs defies belief”, and that “[i]t is appalling that no documents allegedly struck during the course of the investigation have been found.” Her Honour went on to say that “[t]his was a grossly inadequate and shameful investigation. Indeed, to characterise it as an ‘investigation’ is to give it a label it does not deserve.”¹³³
- 2.21. Coroner Milledge considered that the investigation into Mr Russell’s death was “better”, but still “far from adequate”. Her Honour observed that “[w]hilst it was known that Marks Park was an area where homosexual men were bashed and robbed, little investigation regarding this type of activity was undertaken into Mr Russell’s death”. Her Honour described the loss of the hairs that had been found on Mr Russell’s hand and the absence of forensic testing as “disgraceful”, and considered that no satisfactory explanation was given as to the loss of the exhibit.¹³⁴ Her Honour went on to say:¹³⁵

In both Mr Warren’s disappearance and Mr Russell’s death there were similarities that should have linked them in the early stages of the investigation and suggested to the police the possibility of foul play in both deaths.

¹³⁰ Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 2 (SCOI.02751.00021).

¹³¹ Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 2–3 (SCOI.02751.00021).

¹³² Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 5–6 (SCOI.02751.00021).

¹³³ Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 6 (SCOI.02751.00021).

¹³⁴ Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 6 (SCOI.02751.00021).

¹³⁵ Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 8 (SCOI.02751.00021).

Both men were homosexual. The last place either man was prior to death was Marks Park. Mr Russell had coins scattered near his body, Mr Warren's keys were found on the rocks. These items were used by some men to attract attention in that area and may have been used for that purpose by the victims. Marks Park was a known area for brutal attacks on homosexual males. Yet investigating police believed Mr Warren and Mr Russell met their death by 'misadventure'.

The earlier investigations into these men were inadequate and naïve.

- 2.22. By contrast to the earlier investigations, Coroner Milledge considered that the investigations that had led to the inquest had been “impeccable”. The brief of evidence at the beginning of the inquest comprised six lever arch folders of statements and 276 annexures, including a 258 page statement from Detective Sergeant Page. The investigation was ongoing during the inquest, and further statements were taken from witnesses as they became known.¹³⁶
- 2.23. Coroner Milledge found that:¹³⁷
- a. Mr Warren died in Sydney on or about 22 July 1989 as a victim of a homicide perpetrated by a person or persons unknown;
 - b. Mr Russell died between 22 and 23 November 1989 from multiple injuries sustained when he was thrown from the cliff onto rocks by a person or persons unknown; and
 - c. Mr Mattaini died on or about 15 September 1985, and that the manner and cause of his death could not be determined.
- 2.24. Her Honour observed that at the time of Mr Russell's death, and of Mr Warren's and Mr Mattaini's disappearances, there were “gay hate assailants” who operated in Marks Park, and considered that the evidence strongly supported the probability that Mr Warren, Mr Mattaini and Mr Russell met their deaths in this way.¹³⁸

¹³⁶ Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 8–9. (SCOI.02751.00021).

¹³⁷ Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 14 (SCOI.02751.00021).

¹³⁸ Exhibit 6, Tab 161, Findings and recommendations of Senior Deputy State Coroner Milledge, Inquest into the death of John Alan Russell, Inquest into the suspected deaths of Ross Bradley Warren and Gilles Jacques Mattaini, 9 March 2005, 13–14 (SCOI.02751.00021).

Scott Johnson inquests

- 2.25. Scott Johnson was an American student completing a PhD in Australia. On 10 December 1988, his body was found at the bottom of a cliff at North Head near Manly. He had suffered “unsurvivable traumatic injuries.”¹³⁹ He was naked, and his clothes were located at the top of the cliff.¹⁴⁰ He is referred to as Scott Johnson, rather than Dr Johnson, in this Report to distinguish him from his brother, Steve Johnson, and from Richard Johnson, who was murdered in 1990. Constable Robert Ludlow was one of the police officers who made his way to the top of the cliff above where the body was located. The clothes were not photographed *in situ*, nor was a forensic examination conducted of the area in which they were found. Constable Ludlow, who gave evidence at the first inquest, said that the clothes were neatly folded “some ten metres back from the top of the cliff.”¹⁴¹
- 2.26. Brian Butson, one of the fishermen who first found Scott Johnson’s body and who attended the scene with police, recalled seeing a “heavy metal pen” lying on top of the pile of clothes. However, the two police officers on the scene did not observe the pen, and it was not photographed by the forensic officer who took photographs of the clothes and other items collected from the scene.¹⁴²
- 2.27. An inquest was conducted by Deputy State Coroner Derek Hand (**Coroner Hand**) on 16 March 1989. It was completed within a day. Coroner Hand delivered a finding that between 8 and 10 December 1988, at North Head, Manly, Scott Johnson “died of the effect of multiple injury sustained then and there when he jumped from the top to the rocks below with the intention of taking his own life.”¹⁴³
- 2.28. At the second inquest into Scott Johnson’s death, discussed further below, State Coroner Michael Barnes summarised Deputy State Coroner Hand’s conclusions in this way:¹⁴⁴

His Honour accepted that there was no evidence as to why Scott might want to take his own life and that there was no suicide note. However, he expressed the view that suicides often occur without any reason that is apparent to friends and families and it is common for people who commit suicide to not leave a note. His Honour also said that the description of Scott as an extremely brilliant mathematician who was reserved and introverted and did not join in conversation unless asked direct questions was consistent with the type of person who might commit suicide. His Honour further noted that Mr Noone had given evidence that Scott had

¹³⁹ Exhibit 6, Tab 232, Findings and recommendations of State Coroner Barnes, Inquest into the death of Scott Russell Johnson, 30 November 2017, [1] (SCOI.11064.00018).

¹⁴⁰ Exhibit 6, Tab 232, Findings and recommendations of State Coroner Barnes, Inquest into the death of Scott Russell Johnson, 30 November 2017, [30], [193] (SCOI.11064.00018).

¹⁴¹ Exhibit 6, Tab 232, Findings and recommendations of State Coroner Barnes, Inquest into the death of Scott Russell Johnson, 30 November 2017, [191], [193] (SCOI.11064.00018).

¹⁴² Exhibit 6, Tab 232, Findings and recommendations of State Coroner Barnes, Inquest into the death of Scott Russell Johnson, 30 November 2017, [89], [191], [195]–[196] (SCOI.11064.00018).

¹⁴³ Exhibit 6, Tab 232, Findings and recommendations of State Coroner Barnes, Inquest into the death of Scott Russell Johnson, 30 November 2017, [4], [9] (SCOI.11064.00018).

¹⁴⁴ Exhibit 6, Tab 232, Findings and recommendations of State Coroner Barnes, Inquest into the death of Scott Russell Johnson, 30 November 2017, [10] (SCOI.11064.00018).

mentioned an attempted suicide at some earlier time when Scott thought he might have AIDS, but the subsequent tests were negative.

- 2.29. Scott Johnson was in a committed relationship with his partner, Michael Noone. However, there was evidence that on occasion Scott Johnson engaged in sexual activity outside that relationship.¹⁴⁵ Evidence was given in the first inquest by the OIC that the area where Scott Johnson’s body was found was not used as a beat, apparently based on the fact that the NSWPF had not received any reports of violence towards “homosexual persons” occurring in that area.¹⁴⁶ As is set out below, this view was later established to be erroneous.
- 2.30. Following the findings at the Taradale Inquest in March 2005, a journalist contacted then retired Detective Sergeant Page and put him in contact with Steve Johnson, Scott Johnson’s brother.¹⁴⁷ In early 2006 Steve Johnson raised with Mr Page similarities between the finding in the Taradale cases and the death of Scott Johnson. Mr Page considered that Scott Johnson’s case warranted reinvestigation.¹⁴⁸
- 2.31. On 16 March 2006, Mr Page and Steve Johnson went to Manly Police Station and requested a review of Scott Johnson’s death. It appears that, at this time, the NSWPF declined to carry out a reinvestigation. Mr Page continued to assist the Johnson family, and an investigative journalist, with the case.¹⁴⁹
- 2.32. Subsequently, following the Johnson family’s contact with the State Coroner, there was a review of the original investigation by the NSWPF and a fresh inquest into Scott Johnson’s death. The second inquest was held on 27 June 2012. Evidence was given by Detective Senior Constable Wilson concerning the review conducted by police which identified similarities between Scott Johnson’s death and the deaths the subject of the Taradale Inquest. The review also identified potential avenues for further investigation, including potential persons of interest.¹⁵⁰ Mr Page provided a report to the second inquest.¹⁵¹
- 2.33. At the conclusion of the second inquest, Deputy State Coroner Forbes found that Scott Johnson “died between 8 and 10 December 1988 at North Head, Manly, north of Blue Fish Point, from the effects of multiple injuries he sustained as a result of falling from a cliff.” Her Honour considered that the evidence did not permit her to make a finding as to how he came to fall, and recommended that the death be referred to “Cold Cases” for further investigation.¹⁵²

¹⁴⁵ Exhibit 6, Tab 232, Findings and recommendations of State Coroner Barnes, Inquest into the death of Scott Russell Johnson, 30 November 2017, [55] (SCOI.11064.00018).

¹⁴⁶ Exhibit 6, Tab 232, Findings and recommendations of State Coroner Barnes, Inquest into the death of Scott Russell Johnson, 30 November 2017, [8] (SCOI.11064.00018).

¹⁴⁷ Exhibit 6, Tab 253, Statement of Stephen Page, 16 February 2023, [21] (SCOI.82472).

¹⁴⁸ Exhibit 6, Tab 253, Statement of Stephen Page, 16 February 2023, [22] (SCOI.82472).

¹⁴⁹ Exhibit 6, Tab 253, Statement of Stephen Page, 16 February 2023, [23]–[24] (SCOI.82472).

¹⁵⁰ Exhibit 6, Tab 232, Findings and recommendations of State Coroner Barnes, Inquest into the death of Scott Russell Johnson, 30 November 2017, [16]–[18] (SCOI.11064.00018).

¹⁵¹ Exhibit 6, Tab 253, Statement of Stephen Page, 16 February 2023, [25] (SCOI.82472).

¹⁵² Exhibit 6, Tab 232, Findings and recommendations of State Coroner Barnes, Inquest into the death of Scott Russell Johnson, 30 November 2017, [19]–[20] (SCOI.11064.00018).

- 2.34. On 11 February 2013 the ABC's *Australian Story* broadcast an episode concerning Scott Johnson's death. Subsequently, on 12 February 2013, the Minister for Police and Emergency Services at that time spoke with the then Commander of the Homicide Squad and met with Steve Johnson.¹⁵³
- 2.35. The Minister approved an application made by the NSWPF on 20 November 2012 for a \$100,000 reward for information that determined how Scott Johnson had died. It was also determined that the UHT would reinvestigate Scott Johnson's death, and Strike Force Macnamir was established for this purpose.¹⁵⁴
- 2.36. The OIC of Strike Force Macnamir was initially Detective Chief Inspector Pamela Young. She was succeeded in that role by Detective Sergeant Penelope Brown.¹⁵⁵ Officers from Strike Force Macnamir reinterviewed police and community members who had been interviewed as part of the initial investigation, as well as interviewing other persons and investigating the possible involvement of a number of persons of interest.¹⁵⁶
- 2.37. On 19 March 2014, the Commander of the Homicide Squad wrote to the State Coroner to request a "further examination of the circumstances surrounding the death of Scott Johnson following the finalisation of current investigations".¹⁵⁷ State Coroner Barnes ultimately convened a third inquest. The work of Strike Force Macnamir continued during the course of the third inquest, and steps were taken to encourage members of the public who might hold information to come forward.¹⁵⁸
- 2.38. On 13 April 2015, Detective Chief Inspector Young was interviewed on *Lateline*. In that interview she defended the original investigation of Scott Johnson's death, and expressed the view that suicide was the likely explanation, and that the former Minister of Police Mike Gallacher had "kowtowed" to Steve Johnson in agreeing to reinvestigate Scott Johnson's death. As a consequence of this appearance, State Coroner Barnes ordered that Detective Chief Inspector Young be removed from the Scott Johnson investigation.¹⁵⁹

¹⁵³ Exhibit 6, Tab 232, Findings and recommendations of State Coroner Barnes, Inquest into the death of Scott Russell Johnson, 30 November 2017, [21]–[22] (SCOI.11064.00018).

¹⁵⁴ Exhibit 6, Tab 232, Findings and recommendations of State Coroner Barnes, Inquest into the death of Scott Russell Johnson, 30 November 2017, [22]–[23] (SCOI.11064.00018).

¹⁵⁵ Exhibit 6, Tab 253, Statement of Stephen Page, 16 February 2023, [27] (SCOI.82472).

¹⁵⁶ Exhibit 6, Tab 232, Findings and recommendations of State Coroner Barnes, Inquest into the death of Scott Russell Johnson, 30 November 2017, [24] (SCOI.11064.00018).

¹⁵⁷ Exhibit 6, Tab 252C, Letter from Detective Superintendent Commander Michael Willing to Magistrate Michael Barnes, 19 March 2014 (SCOI.82369.00004).

¹⁵⁸ Exhibit 6, Tab 232, Findings and recommendations of State Coroner Barnes, Inquest into the death of Scott Russell Johnson, 30 November 2017, [26]–[28] (SCOI.11064.00018).

¹⁵⁹ Transcript of the Inquiry, 20 February 2023, T1626.11–33, T1626.35–43 (TRA.00023.00001).

2.39. The third inquest into the death of Scott Johnson was conducted in two stages. From 13 to 16 December 2016, evidence was received concerning Scott Johnson’s background, relationships, and his movements over the days before his death. From 13 to 23 June 2017, the evidence focused upon beats, particularly in relation to the North Head beat.¹⁶⁰ Evidence was given that the people using the beat habitually took their clothes off and folded them or left them on the ground.¹⁶¹ Detective Sergeant Page provided an additional report which included criticisms of Strike Force Macnamir.¹⁶²

2.40. The NSWPF submitted at the inquest that there was no evidence of any “actual occasions when groups of young men attended the beat at North Head to commit violence towards homosexuals in any period proximate to the time of Scott’s death.”¹⁶³ State Coroner Barnes concluded that:¹⁶⁴

I am of the view that the absence of recorded reports to police of incidents of anti-gay violence at the Blue Fish Point beat around the time of Scott’s death does not of itself support a conclusion that no such incidents occurred. On the contrary, the evidence of men who had frequented the beat before and after Scott’s death leads me to conclude that such violence did occur there around the time of Scott’s death.

2.41. A number of men who grew up in the Northern Beaches and who were suspected to have knowledge of, or to have been involved in, violent assaults on gay men in the Northern Beaches, North Sydney and Sydney areas were called to give evidence.¹⁶⁵

2.42. Specific evidence (based on alleged admissions) connecting two of those men to the death of Scott Johnson was unable to be established to the requisite standard.¹⁶⁶ Similarly, evidence concerning another person of interest and his associates was unable to connect those people directly with Scott Johnson’s death. Evidence concerning a third person of interest and the possible involvement of army personnel from the Army School of Artillery at North Head was similarly unable to provide any clear connection to Scott Johnson’s death.¹⁶⁷

¹⁶⁰ Exhibit 6, Tab 232, Findings and recommendations of State Coroner Barnes, Inquest into the death of Scott Russell Johnson, 30 November 2017, [29]–[31] (SCOI.11064.00018).

¹⁶¹ Exhibit 6, Tab 232, Findings and recommendations of State Coroner Barnes, Inquest into the death of Scott Russell Johnson, 30 November 2017, [98] (SCOI.11064.00018).

¹⁶² Exhibit 6, Tab 253, Statement of Stephen Page, 16 February 2023, [29] (SCOI.82472).

¹⁶³ Exhibit 6, Tab 232, Findings and recommendations of State Coroner Barnes, Inquest into the death of Scott Russell Johnson, 30 November 2017, [114] (SCOI.11064.00018).

¹⁶⁴ Exhibit 6, Tab 232, Findings and recommendations of State Coroner Barnes, Inquest into the death of Scott Russell Johnson, 30 November 2017, [116] (SCOI.11064.00018).

¹⁶⁵ Exhibit 6, Tab 232, Findings and recommendations of State Coroner Barnes, Inquest into the death of Scott Russell Johnson, 30 November 2017, [117]–[118] (SCOI.11064.00018).

¹⁶⁶ Exhibit 6, Tab 232, Findings and recommendations of State Coroner Barnes, Inquest into the death of Scott Russell Johnson, 30 November 2017, [158]–[159] (SCOI.11064.00018).

¹⁶⁷ Exhibit 6, Tab 232, Findings and recommendations of State Coroner Barnes, Inquest into the death of Scott Russell Johnson, 30 November 2017, [180]–[187] (SCOI.11064.00018).

- 2.43. State Coroner Barnes made the following observations concerning the initial investigations:¹⁶⁸

Regrettably, those responsible for the initial investigation quickly jumped to conclusions without thoroughly and impartially examining all of the facts. I am sure that was not due to any malice or other improper motives. Rather, it was just easier to accept what seemed to be the most obvious explanation.

- 2.44. State Coroner Barnes came to the following conclusions concerning Scott Johnson's death:¹⁶⁹

In this case, I readily conclude that homicide is more likely than either of the other two scenarios – accident or suicide. It is likely that more than one person was involved – Scott was young and strong and fit. I have given careful consideration as to how confident I can be that two or more persons came upon Scott naked and engaged in such violent conduct towards him that he was either pushed over the cliff or fell while trying to escape.

The inadequacy of the original investigation, the passage of time since the incident and the unreliability of many of the witnesses has made establishing the precise facts more difficult. Nonetheless, I am persuaded to the requisite standard that Scott died as a result of a gay hate attack. There is however, insufficient reliable evidence to identify the perpetrators.

- 2.45. State Coroner Barnes was satisfied that so many improvements had been made to police procedures since the time of Scott's death that recommendations focused on that issue would be otiose.¹⁷⁰ His Honour also declined to make a recommendation for further investigation, although his Honour noted the case would not be closed.¹⁷¹

- 2.46. State Coroner Barnes found that Scott Johnson had died on 8 December 1988 and that his death was “caused by the combined effect of multiple injuries sustained in a fall from height”. State Coroner Barnes found that Scott Johnson “fell from the cliff top as a result of actual or threatened violence by unidentified persons who attacked him because they perceived him to be homosexual.”¹⁷²

¹⁶⁸ Exhibit 6, Tab 232, Findings and recommendations of State Coroner Barnes, Inquest into the death of Scott Russell Johnson, 30 November 2017, [234] (SCOI.11064.00018).

¹⁶⁹ Exhibit 6, Tab 232, Findings and recommendations of State Coroner Barnes, Inquest into the death of Scott Russell Johnson, 30 November 2017, [275]–[276] (SCOI.11064.00018).

¹⁷⁰ Exhibit 6, Tab 232, Findings and recommendations of State Coroner Barnes, Inquest into the death of Scott Russell Johnson, 30 November 2017, [280] (SCOI.11064.00018).

¹⁷¹ Exhibit 6, Tab 232, Findings and recommendations of State Coroner Barnes, Inquest into the death of Scott Russell Johnson, 30 November 2017, [284] (SCOI.11064.00018).

¹⁷² Exhibit 6, Tab 232, Findings and recommendations of State Coroner Barnes, Inquest into the death of Scott Russell Johnson, 30 November 2017, [285] (SCOI.11064.00018).

- 2.47. In 2018, following the State Coroner's finding of homicide, Strike Force Welsford was established to reinvestigate Scott Johnson's death, led by Detective Chief Inspector Yeomans. That strike force was initiated under Mr Willing's successor as Homicide Commander, under a new Commissioner of Police, and led by an officer who was not in the UHT or indeed in the Homicide Squad.
- 2.48. The work of Strike Force Welsford resulted in the apprehension of a suspect, who on 12 May 2020 was arrested and charged for the alleged murder of Scott Johnson. That suspect ultimately pleaded guilty to a charge of manslaughter in February 2023.¹⁷³

Other Strike Forces

- 2.49. Strike Force Neiwand commenced in or around October 2015 and concluded in late 2017. Strike Force Neiwand, like Strike Force Macnamir, was conducted by the UHT.¹⁷⁴ Like Operation Taradale, it was established specifically to reinvestigate the deaths of Mr Mattaini, Mr Russell and Mr Warren.¹⁷⁵
- 2.50. The Inquiry heard evidence about Strike Force Neiwand from Mr Willing, who was the Commander of the Homicide Squad at the time of Strike Force Neiwand, and Detective Sergeant Steve Morgan, who was the Investigation Supervisor. Aspects of that evidence dealt with the purpose of Strike Force Neiwand and the motivation for its creation, in addition to the conclusions reached by Strike Force Neiwand. This is dealt with in **Chapter 12**.

In Pursuit of Truth & Justice

- 2.51. In 2015, ACON began working with community partners to address the grief and trauma felt by the LGBTQ community relating to historical violence.¹⁷⁶ This work culminated in the publishing of *In Pursuit of Truth & Justice*, which considered 88 "suspected anti-gay homicides", the majority of which were compiled between 1990 and 2015 by then Gay and Lesbian Liaison Officer for the NSWPF Sue Thompson and Professor Stephen Tomsen, a NSW-based criminologist.¹⁷⁷ The review of the 88 suspected anti-gay homicides was done with the object of "truth, justice, healing, vigilance, advocacy, policy, awareness and relationship building." This list of 88 cases was not exhaustive.¹⁷⁸

¹⁷³ Transcript of the Inquiry, 20 February 2023, T1706.32–37 (TRA.00023.00001); *R v White* [2023] NSWSC 611.

¹⁷⁴ Exhibit 6, Tab 253, Statement of Stephen Page, 16 February 2023, [31]–[32] (SCOI.82472).

¹⁷⁵ Exhibit 6, Tab 253, Statement of Stephen Page, 16 February 2023, [37] (SCOI.82472).

¹⁷⁶ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [58] (SCOI.77301).

¹⁷⁷ Exhibit 1, Tab 1, ACON, *In Pursuit of Truth & Justice: Documenting Gay and Transgender Prejudice Killings in NSW in the Late 20th Century* (Report, May 2018), 3 (SCOI.03667).

¹⁷⁸ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [59], [64] (SCOI.77301).

- 2.52. The project was initiated as part of the LGBTIQ community's response to Strike Force Macnamir, and the *Lateline* interview referred to above.¹⁷⁹ In a statement given to the Inquiry, Brent Mackie, Director of Policy, Strategy and Research at ACON, described the process through which *In Pursuit of Truth & Justice* came about in this way:¹⁸⁰

Following this Lateline media report, ACON met with other community organisations (Gay and Lesbian Rights Lobby, Mardi Gras, Inner City Legal Centre) and Garry Wotherspoon (community historian) and decided that ACON records, along with other data, should be examined and compiled into a standalone report which would include a dossier on each of the suspected murder cases. It was felt that it was important to have a community voice on this issue, and that it was also important to have these men's lives remembered and honoured through a community-based, historical document.

In the work over the ensuing years, the report was turned into a higher-level project that did not identify the deaths by reference to individual names. This would differentiate the report from the Strike Force Parrabell report, which was being prepared by the NSW Police at a similar time, and focus instead on the themes behind the hate crimes. ...

- 2.53. At the end of the foreword to the report, Justin Koonin (the ACON President) and Nicolas Parkhill (the ACON Chief Executive Officer) made the following observations:¹⁸¹

We hope that in releasing this Report that further cultural change is sparked in our criminal justice institutions, as well as in broader community attitudes. We remember the loved ones, family, friends and community members lost, and we aim to shine a light on our history, hoping that healing and justice will follow. We acknowledge the ongoing efforts of NSW Police to improve relationships with LGBTI communities. Importantly, we also look towards the future, towards building on partnerships and accountability processes that mean LGBTI people can feel safe, be protected and access justice.

¹⁷⁹ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [60] (SCOI.77301).

¹⁸⁰ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [61]–[62] (SCOI.77301).

¹⁸¹ Exhibit 1, Tab 1, ACON, *In Pursuit of Truth & Justice: Documenting Gay and Transgender Prejudice Killings in NSW in the Late 20th Century* (Report, May 2018), 4 (SCOI.03667).

- 2.54. *In Pursuit of Truth & Justice* made 10 key findings concerning the cases it considered, and recommendations concerning each of those findings.¹⁸² It emphasised that the 88 cases considered did not represent an exhaustive list.¹⁸³ In considering those cases, it drew upon judgments, coronial documents, journal articles, research reports, newspapers, archives and library databases.¹⁸⁴ In its foreword, *In Pursuit of Truth and Justice* acknowledged that:¹⁸⁵

In compiling a report such as this, a few people or institutions may question or even dispute some elements or issues of detail. It is true that ACON has not been privy to the full brief of evidence for each individual case that criminal justice agencies have on these matters. However, we stand by the overarching consistency of the concern that exists about the totality of the prevailing attitudes, the manner in which these influenced too may investigative processes, the evidence we have reviewed, and ultimately, the recorded experiences of violence and injustice by our communities. This report serves to highlight how understanding, attitudes and equality before the law are fundamental to LGBTI people’s lived experience – including their experience of justice, both historically, and very much still today.

- 2.55. *In Pursuit of Truth and Justice* concluded that violence was commonly experienced by LGBTI people between 1970 and 2000; something that was “to be expected, feared and avoided where possible.” *In Pursuit of Truth and Justice* acknowledged the ongoing trauma experienced by many members of the LGBTIQ community and concluded that there had not been an adequate acknowledgement or recognition of the “extent and severity” of past hate crimes.¹⁸⁶
- 2.56. *In Pursuit of Truth and Justice* identified “patterns of bias” within the criminal justice system, concluding that “[t]he NSW criminal justice system was very slow to respond to the systematic attacks being carried out on the gay community and other related violence. This resulted in missed opportunities to protect lives.”¹⁸⁷ *In Pursuit of Truth and Justice* identified that “for some victims, the opportunity for justice has been lost forever.”¹⁸⁸

¹⁸² Exhibit 1, Tab 1, ACON, *In Pursuit of Truth & Justice: Documenting Gay and Transgender Prejudice Killings in NSW in the Late 20th Century* (Report, May 2018), 5–6, 23–27 (SCOI.03667).

¹⁸³ Exhibit 1, Tab 1, ACON, *In Pursuit of Truth & Justice: Documenting Gay and Transgender Prejudice Killings in NSW in the Late 20th Century* (Report, May 2018), 8 (SCOI.03667).

¹⁸⁴ Exhibit 1, Tab 1, ACON, *In Pursuit of Truth & Justice: Documenting Gay and Transgender Prejudice Killings in NSW in the Late 20th Century* (Report, May 2018), 7 (SCOI.03667).

¹⁸⁵ Exhibit 1, Tab 1, ACON, *In Pursuit of Truth & Justice: Documenting Gay and Transgender Prejudice Killings in NSW in the Late 20th Century* (Report, May 2018), 4 (SCOI.03667).

¹⁸⁶ Exhibit 1, Tab 1, ACON, *In Pursuit of Truth & Justice: Documenting Gay and Transgender Prejudice Killings in NSW in the Late 20th Century* (Report, May 2018), 23 (SCOI.03667).

¹⁸⁷ Exhibit 1, Tab 1, ACON, *In Pursuit of Truth & Justice: Documenting Gay and Transgender Prejudice Killings in NSW in the Late 20th Century* (Report, May 2018), 25 (SCOI.03667).

¹⁸⁸ Exhibit 1, Tab 1, ACON, *In Pursuit of Truth & Justice: Documenting Gay and Transgender Prejudice Killings in NSW in the Late 20th Century* (Report, May 2018), 25 (SCOI.03667).

The Strike Force Parrabell Final Report (June 2018)

- 2.57. As noted above, from the early 1990s onwards Ms Thompson, with the cooperation of others including Professor Tomsen, had gradually compiled two documents that listed 88 deaths between 1977 and 1999, which Ms Thompson suspected might have been murders motivated by anti-LGBTIQ bias.
- 2.58. By August 2015, then Superintendent Anthony Crandell, Commander of the Surry Hills LAC and the NSWPF Corporate Sponsor for Sexuality, Gender Diversity and Intersex, had formed the view that a further consideration of the 88 cases identified by Ms Thompson was warranted.¹⁸⁹ However, he considered that the BCU “was not resourced or equipped to conduct investigations of that type”.¹⁹⁰
- 2.59. On 30 August 2015, Strike Force Parrabell was formally established under the direction of Superintendent Crandell.¹⁹¹ In the course of its existence, up to 13 officers of varying rank and experience participated in the Strike Force.¹⁹² Strike Force Parrabell was not to reinvestigate the 88 cases but carry out a “paper” review. The methods of Strike Force Parrabell are considered in detail in **Chapter 13**.
- 2.60. As part of Strike Force Parrabell, a team of academics from Flinders University in South Australia was contracted to independently review the results of the Strike Force Parrabell officers. The academic team had access to the forms completed by the Strike Force Parrabell officers concerning each case, but not the historical files or material on which those completed forms were based.
- 2.61. In late June 2018, the Parrabell Report was published. It was in two parts, the first by the Strike Force Parrabell officers and the second by the academic team. Of the 86 cases reviewed, the Strike Force Parrabell officers categorised them as follows:¹⁹³
- Evidence of bias crime: eight cases
 - Suspected bias crime: 19 cases
 - No evidence of bias crime: 34 cases
 - Insufficient information to establish a bias crime: 25 cases.
- 2.62. The Parrabell Report treated only 23 of the 88 cases as “unsolved”.¹⁹⁴
- 2.63. Of those 23 unsolved cases, Strike Force Parrabell categorised them as follows:
- Evidence of bias crime: zero cases
 - Suspected bias crime: five cases
 - No evidence of bias crime: four cases
 - Insufficient information to establish a bias crime: 14 cases.

¹⁸⁹ Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [33] (SCOI.76961).

¹⁹⁰ Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [30] (SCOI.76961).

¹⁹¹ Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018), 19–20 (SCOI.02632).

¹⁹² Exhibit 6, Tab 4, Statement of Assistant Commissioner Anthony Crandell, 31 October 2022, [64]–[68] (SCOI.76961).

¹⁹³ Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018), 24 (SCOI.02632).

¹⁹⁴ Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018), 23 (SCOI.02632).

- 2.64. The academic team used a different methodology, but arrived at similar numerical conclusions.
- Anti-gay bias: 17 cases (two unsolved)
 - Anti-paedophile animus: 12 cases (zero unsolved)
 - No evidence of bias crime: 23 cases (two unsolved)
 - Insufficient information: 33 cases (19 unsolved).

The Standing Committee

- 2.65. The Standing Committee conducted an inquiry into gay and transgender hate crimes carried out between 1970 and 2010. It tabled the Standing Committee Interim Report on 26 February 2019¹⁹⁵ and a final report on 4 May 2021 (the Standing Committee Final Report referred to above).¹⁹⁶
- 2.66. The Terms of Reference for the Standing Committee (governing both the Interim and Final Reports):¹⁹⁷

1) That with reference to the May 2018 report of ACON In Pursuit of Truth and Justice and the progress made by NSW Police through Strike Force Parrabell, the Standing Committee on Social Issues inquire into and report on the response to Gay and Transgender hate crimes between 1970 and 2010 and current developments in policy and practice in relation to such crimes, and in particular:

a) the violent crimes committed in New South Wales between 1970 and 2010 where the victim of that crime was a member of the LGBTIQ community and where the relevant crime was the subject of a report to the NSW Police Force, including:

i. whether there existed impediments within the criminal justice system that impacted the protection of LGBTIQ people in New South Wales and the delivery of justice to victims of LGBTIQ hate crimes and their families, with reference to case studies of particular matters including but not limited to Alan Rosendale, Scott Johnson, John Russell and Ross Warren,

ii. to the extent that past impediments are identified, how effectively these have been addressed by current policy and practice,

¹⁹⁵ Exhibit 1, Tab 3, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Interim Report, Report 52, February 2019) (SCOI.02290).

¹⁹⁶ Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Final Report, Report 58, May 2021) (SCOI.02291).

¹⁹⁷ Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Final Report, Report 58, May 2021), v (SCOI.02291).

b) in relation to LGBTIQ hate crimes more generally:

- i. what role the so-called 'gay panic' defence played in the culture of LGBTIQ hate crimes between 1970 and 2010, and*
- ii. how the so-called 'gay panic' defence impacted the delivery of justice and the treatment of gay men during LGBTIQ hate crime investigations and court proceedings, and*

c) any other related matter.

2.67. In the Chair's foreword, The Hon Shayne Mallard MLC made these observations:¹⁹⁸

While decades have passed since the brutality and tragedy of history's gay and transgender hate crimes, this committee has come to know all too well that the hurt from these crimes has not. Indeed, the continued pursuit of justice by victims and their families, loved ones and advocates tell of a journey towards healing that for some has barely begun.

With this re-established inquiry, the committee has been privileged with the personal stories of many that – together with evidence from the initial inquiry into this subject – have collectively painted a deeply painful and distressing picture of the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) experience of hate crime between 1970 and 2010.

It is from this picture that the committee makes three important findings in this inquiry, the first of which points to the enduring physical, mental and emotional trauma many victims of gay and transgender hate crime often carry as a result of their experiences. The committee's second finding relates to the historical failure of the NSW Police Force in its responsibility to properly investigate cases of historical gay and transgender hate crime, which in turn has undermined the confidence of LGBTIQ communities in the NSW Police Force and the criminal justice system more broadly. Together, these themes speak to the committee's third finding which is that, for many victims of LGBTIQ hate crime and their families, the acknowledgment of past wrongs by those who failed to protect and deliver justice for LGBTIQ people is a necessary and significant step towards healing.

For the committee, these findings go hand in hand with a call to action. To this end, the key recommendation of this inquiry is that the NSW Government establish a judicial inquiry or other form of expert review to inquire into unsolved cases of suspected gay and transgender hate crime deaths. For too long these deaths have remained unresolved and unanswered for, leaving a hole in the lives of victims' families and loved ones. The committee believes that now is the time to act before the receding window of opportunity to obtain evidence relating to these decades old crimes closes.

¹⁹⁸ Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Final Report, Report 58, May 2021), vii (SCOI.02291).

- 2.68. The Standing Committee’s Final Report contained the following recommendations:¹⁹⁹

Finding 1

That victims of gay and transgender hate crime often carry enduring physical, mental and emotional trauma as a result of their experiences.

Finding 2

That historically the NSW Police Force failed in its responsibility to properly investigate cases of historical gay and transgender hate crime and this has undermined the confidence of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) communities in the NSW Police Force and the criminal justice system more broadly.

Finding 3

That for many victims of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) hate crime and their families, the acknowledgement of past wrongs by those who failed to protect and deliver justice for LGBTIQ people is a necessary and significant step towards healing.

- 2.69. As noted in the Chair’s foreword, one of the recommendations from the Standing Committee Final Report was:²⁰⁰

That the NSW Government establish a judicial inquiry or other form of expert review to inquire into unsolved cases of suspected gay and transgender hate crime deaths.

- 2.70. The Standing Committee received 36 submissions and four supplementary submissions. It also held two public hearings at Parliament House in Sydney, and conducted a site visit to Marks Park in Bondi.²⁰¹ A response to the Standing Committee Interim Report was received on 19 August 2019 from the Hon David Elliot MP, the then-Minister for Police and Emergency Services. He advised the Standing Committee that the NSWPF had accepted the 12 recommendations from the Parrabell Report, and that those recommendations were “evidence of the improvements being made to ensure Officers have the skills and knowledge to engage with LGBTIQ people respectfully and equally”.²⁰²

¹⁹⁹ Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Final Report, Report 58, May 2021), ix (SCOI.02291).

²⁰⁰ Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Final Report, Report 58, May 2021), x (SCOI.02291).

²⁰¹ Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Final Report, Report 58, May 2021), xi (SCOI.02291).

²⁰² Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Final Report, Report 58, May 2021), [1.9] (SCOI.02291).

2.71. Minister Elliot told the Standing Committee that “significant progress against the recommendations” had been made, and highlighted revised bias crime indicator assessment tools, a review of internal policies ensuring open-mindedness regarding motive, ongoing internal ethical and cultural training to specifically include LGBTIQ experiences, and ongoing improvements to ensure bias crimes are centrally captured.²⁰³

2.72. Stakeholder responses were also received, including from ACON. In the context of a recommendation directed at the NSWPF, ACON said:²⁰⁴

We would assert that the New South Wales Police Force also needs to consider the impact of their policing and its effect on our communities in the past. It is only in conjunction with ongoing reflection on these issues that skills and knowledge will have any effect on the relationship between our communities and the Police.

2.73. In addition, ACON was critical in its responsive submission concerning the government’s response to the Standing Committee Interim Report. ACON said:²⁰⁵

The crimes that occurred in the past are abhorrent, and the police response to these crimes was negligent at best. These facts are known by our communities. ACON was extremely disappointed that no such acknowledgment was included in Minister Elliot’s response. ACON believes that the response from the NSW Government must include assurances to the families and loved ones of the victims of these horrific crimes, as well as the LGBTQ community as a whole, that the wrongs and failures of the past will be prevented from reoccurring.

2.74. Mr Parkhill of ACON went on to explain:²⁰⁶

At an individual level, at a personal level and certainly at an organisational level, it feels like we are not being listened to or we are being dismissed. The work that so many others are also doing is being dismissed and the bravery of people who have come forward to share their stories has been dismissed. It feels as though it speaks to a pattern of disengagement, disbelief, not owning what has happened before and not taking the appropriate steps to try to heal or work towards resolution. It comes across as dismissive or kind of like, "go away", rather than doing any meaningful work.

²⁰³ Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Final Report, Report 58, May 2021), [1.9] (SCOI.02291).

²⁰⁴ Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Final Report, Report 58, May 2021), [1.16] (SCOI.02291).

²⁰⁵ Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Final Report, Report 58, May 2021), [1.23] (SCOI.02291).

²⁰⁶ Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Final Report, Report 58, May 2021), [1.24] (SCOI.02291).

- 2.75. Ms Thompson commented on the assurances concerning the current views and attitudes of the NSWPF, saying that in her view it was “not wise” to express confidence given the unfolding of the Scott Johnson case:²⁰⁷

...I understand our desire to be ideal but it is not wise to express that confidence. If you look impartially and look at the 10 years until there was an arrest in the Scott Johnson matter. If you look at what happened under Macnamir, under Parrabell and then under the Flinders review, it is one of the most disappointing eras of public service process that I have ever seen in terms of letting people down. Justice in the Scott Johnson case has only come about by an absolutely haphazard form of justice that brought together a really unique combination of people...You cannot say that has just changed overnight. It does not and it cannot...

- 2.76. The Standing Committee observed that several overarching themes had emerged over the course of the inquiries, namely: the “reality that those touched by gay and transgender hate crime often carry deep and enduring physical, mental and emotional traumas from their experiences”; the culture of the NSWPF during the relevant period; and the seeking of healing and justice through the acknowledgement of past wrongs committed against gay and trans people and the broader LGBTIQ community.²⁰⁸ The Standing Committee observed, in relation to the trauma of the LGBTIQ community:²⁰⁹

While the initial inquiry primarily focused on the tragic cases of those who died or disappeared as a result of the crimes perpetrated against them, the current inquiry provided further opportunity to hear the stories of those who suffered violence but ultimately survived.

In telling these stories, inquiry participants revealed the enduring physical, mental and emotional traumas some people have carried and continue to carry from their experiences. It is a narrative shared by many across both inquiries, and one that inquiry participants urged to be acknowledged for a greater understanding of the deep-seated challenges faced by the LGBTIQ community, particularly in the 1970s, 1980s and 1990s.

²⁰⁷ Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Final Report, Report 58, May 2021), [1.30] (SCOI.02291).

²⁰⁸ Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Final Report, Report 58, May 2021), [2.2] (SCOI.02291).

²⁰⁹ Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Final Report, Report 58, May 2021), [2.5]–[2.6] (SCOI.02291).

- 2.77. In relation to the culture of the NSWPF, the Standing Committee noted that “there was a prevailing acceptance of and indifference towards the violence and hostility directed at gay men particularly in the period prior to the mid-1990s.”²¹⁰ Ms Thompson told the Standing Committee that “such was the fear held by the gay and transgender community that the resistance to reporting any crimes of violence was ‘huge’, even as efforts to get people to come forward began to mount in the 1990s.”²¹¹
- 2.78. Submissions to the Standing Committee also questioned the validity of the assertion that the attitudes of the NSWPF merely mirrored those of broader society. The Gay and Lesbian Rights Lobby submitted that “to frame violence and negligence from police as part of the broader community’s historical values minimises the trauma experienced by those who suffered at the hands of perpetrators and police.”²¹² Other participants to the inquiry described the “hit and miss” quality of investigations into hate crimes perpetrated on the gay and trans communities.²¹³ Further, while many participants recognised improvements in police practice and culture, some commented that there have been and are “pockets of resistance” within the NSWPF.²¹⁴
- 2.79. The Standing Committee received a number of submissions that dealt with the need for there to be acknowledgment of past wrongs. The Standing Committee quoted observations of Ms Thompson:²¹⁵

...[H]ow powerful and important it is for government organisations, especially community role models like the Police, to quickly, openly and easily admit mistakes and be seen to make amends without a fuss or needing to be dragged kicking and screaming to the apology table. That is leadership and honour in my mind. It is powerful and it allows the world to heal and move on rather than be stuck on conflict.

- 2.80. The Standing Committee, in commenting on the subject matter of the inquiries, acknowledged:²¹⁶

...the profound impact gay and transgender hate crime and violence has had on individuals and the wider LGBTIQ community. In particular, the committee recognises that many have been deeply hurt – physically, mentally and emotionally – from their experiences, and continue to carry this enduring trauma.

²¹⁰ Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Final Report, Report 58, May 2021), [2.12] (SCOI.02291).

²¹¹ Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Final Report, Report 58, May 2021), [2.17] (SCOI.02291).

²¹² Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Final Report, Report 58, May 2021), [2.27] (SCOI.02291).

²¹³ Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Final Report, Report 58, May 2021), [2.28] (SCOI.02291).

²¹⁴ Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Final Report, Report 58, May 2021), [2.36] (SCOI.02291).

²¹⁵ Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Final Report, Report 58, May 2021), [2.45] (SCOI.02291).

²¹⁶ Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Final Report, Report 58, May 2021), [2.66] (SCOI.02291).

- 2.81. The Standing Committee made the following comments about the role of the NSWPF:²¹⁷

The committee also acknowledges, however, the progress made by the NSW Police Force to shift its culture and improve its practices over time – indeed, the committee appreciates the commitment expressed by Assistant Commissioner Gelina Talbot, NSW Police Force, to learn from past failures.

Nevertheless, the committee shares the views of some inquiry participants that there may still be 'pockets of resistance' within the NSW Police Force today, a legacy of the culture of old. If not, then why was there a reluctance to support the Scott Johnson case as a murder? Why are the police today not pursuing cases such as that of Alan Rosendale/Paul Simes? Why was there a resistance to cooperate with or assist those seeking to report on and publicise this tragic period in history?

On balance, the committee therefore finds that historically the NSW Police Force failed in its responsibility to properly investigate cases of historical gay and transgender hate crime and this has undermined the confidence of LGBTIQ communities in the NSW Police Force and the criminal justice system more broadly.

- 2.82. Having made reference to the case of Scott Johnson, the Standing Committee noted that there had been “mounting calls” for a judicial inquiry to be established to consider unsolved suspected LGBTIQ bias crimes. Mr Parkhill described this as “what is required to take the pathway for truth and justice forward.”²¹⁸ The Standing Committee concluded:²¹⁹

While the committee notes the suggestion that police investigations can proceed without a judicial inquiry, the committee is of the view that a judicial inquiry is the most appropriate avenue for pursuing justice for victims of historical gay and transgender hate crimes. Particularly in light of the receding window of opportunity to obtain evidence from people who may have been involved, witnessed or have knowledge of these decades old crimes, the committee believes that the coercive powers of a judicial inquiry will assist in piecing together an accurate account of the crimes being investigated.

- 2.83. The Government ultimately accepted the recommendation of the Standing Committee to establish a judicial inquiry and, as noted above, Letters Patent were issued on 13 April 2022.

²¹⁷ Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Final Report, Report 58, May 2021), [2.71]–[2.73] (SCOI.02291).

²¹⁸ Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Final Report, Report 58, May 2021), [2.92] (SCOI.02291).

²¹⁹ Exhibit 1, Tab 4, Legislative Council Standing Committee on Social Issues, Parliament of NSW, *Gay and Transgender hate crimes between 1970 and 2010* (Final Report, Report 58, May 2021), [2.107] (SCOI.02291).



Chapter 3: Community Engagement and Communications Strategy

INTRODUCTION

- 3.1. At the outset of this Inquiry, and during the development of a community engagement and communications strategy, it was important to recognise that, to a substantial extent, the establishment of the previous inquiry of the Standing Committee and this Inquiry was provoked by the work of the LGBTIQ community.
- 3.2. The work of ACON and others to produce the *In Pursuit of Truth and Justice* report was pivotal to raising awareness of the possibility that a number of deaths, whether previously recognised to be homicides or not, may have been homicides affected by LGBTIQ bias, and the ongoing impact of those cases on families, loved ones, and the LGBTIQ community, including the legacy of ongoing distrust of the NSWPF.
- 3.3. It was important to not only acknowledge previous work of the LGBTIQ community, but to listen to the current views, experiences and concerns of that community.
- 3.4. Some members of the LGBTIQ community took the understandable view that they had already told their story and that they did not want to relive traumatic events, particularly if they felt that nothing was going to change, and in particular if nothing was going to change within the NSWPF. It is unfortunate that the NSWPF has built such a reputation, and I hope it is able to defy that prediction to rebuild trust with those elements of the LGBTIQ community.
- 3.5. Other members of the LGBTIQ community and LGBTIQ organisations raised issues of erasure, particularly in relation to the trans and gender diverse community, Aboriginal and Torres Strait Islander communities, people from culturally and linguistically diverse backgrounds, and people living with disabilities. Some of these matters are dealt with in **Chapter 4**.
- 3.6. It is important that work continues to better understand the way that people from intersectional backgrounds within the LGBTIQ community may experience hate or hate crimes. That work extends beyond the scope of the Inquiry's Terms of Reference. However, I observe that this may be important to consider in the context of further reform,²²⁰ whether within the NSWPF or through the policy and legislative approach of government entities more broadly.

²²⁰ Relevantly, as at the completion of this Report, the NSW Law Reform Commission is undertaking a review of the *Anti-Discrimination Act 1977* (NSW) to ensure it reflects current community standards, including in relation to hatred directed towards the LGBTIQ community.

ENGAGEMENT WITH THE LGBTIQ COMMUNITY

- 3.7. Effective and meaningful engagement with the LGBTIQ community was critical to the work of the Inquiry. The goal was to:
- a. Understand the priorities of the community in the context of the Inquiry's work;
 - b. Encourage members of the community to provide information or other assistance to the Inquiry in ways they were comfortable with; and
 - c. Provide information about the Inquiry.
- 3.8. It was hoped that increasing awareness of the work of the Inquiry, and listening to the LGBTIQ community, could also assist in providing closure to the community in relation to the deaths which are the subject of the Inquiry.

Principles and goals

- 3.9. The Inquiry's community engagement strategy aimed to:
- a. Ensure that engagement with the LGBTIQ community was trauma-informed and recognised that members of the LGBTIQ community continue to live with the legacy of violence and discrimination;
 - b. Build avenues of trust between the Inquiry and the LGBTIQ community so that those with relevant information would be comfortable sharing that information with the Inquiry, including information they previously may not have shared with bodies such as the NSWPF;
 - c. Use methods that were inclusive and recognised the needs of different members of the LGBTIQ community, such as those of older LGBTIQ people or those living with disabilities;
 - d. Focus on communication strategies that were mutually respectful, open and honest, and (where possible) supported by peer-to-peer engagement; and
 - e. Remain ongoing throughout the work of the Inquiry.
- 3.10. The Inquiry ensured that as many LGBTIQ organisations as possible were kept informed concerning its work on an ongoing basis. I would particularly like to acknowledge ACON, who worked extensively with the Inquiry to reach members of the community through their social media channels and affiliated communities.
- 3.11. The Inquiry also distributed 500 pamphlets through ACON. These contained the Inquiry's appeal for information and included the Inquiry's contact details and a QR code for easy access to the contact page on the Inquiry's website. Additional pamphlets were also distributed at select venues across Sydney.

- 3.12. I would also like to thank all LGBTIQ community organisations and members of the community who engaged with the Inquiry, and in particular the following organisations and representatives:
- ACON
 - Sex Worker Outreach Project (**SWOP**)
 - The Gender Centre
 - LGBTIQ+ Health Australia
 - Equality Australia
 - Dykes on Bikes
 - Twenty10
 - BLaQ
 - Wear It Purple
 - Australian Queer Archives
 - Victorian Commissioner for LGBTIQ+ Communities
 - Australian GLBTIQ Multicultural Council

Independent community engagement projects

- 3.13. The Inquiry sought to listen to all members of the LGBTIQ community who wished to contribute to the Inquiry, and to engage with different parts of the LGBTIQ community to ensure that a range of voices were heard, including those of groups who may have been historically marginalised within the LGBTIQ community.
- 3.14. The Inquiry became aware through its work with the trans and gender diverse community that this community has often been overlooked or marginalised in the context of historical hate crimes against the LGBTIQ community. This is a topic that is dealt with in **Chapter 4**.
- 3.15. In recognition of this historical marginalisation the Inquiry commissioned an independent community engagement project led by the Gender Centre and the Sex Workers Outreach Project. The project focused on hearing about the experiences of the trans and gender diverse community. The project was delivered through peer-based engagement, which included workshops and individual engagement. The result of this project is an independent report, authored by Professor Noah Riseman, that reflects the views and experiences of the research team and community members who contributed. The independent report, *Speaking Out Against Anti-Trans Violence: A Call for Justice*, was published on the Inquiry's website on 7 September 2023.²²¹

²²¹ Exhibit 70, Professor Noah Riseman, *Speaking Out Against Anti-Trans Violence: A Call for Justice* (Report, 23 June 2023) (SCOI.86684) <<https://lgbtiq.specialcommission.nsw.gov.au/community-engagement/>>

COMMUNICATIONS STRATEGY

- 3.16. The key objective of the Inquiry's communications strategy was to assist the Inquiry fulfil its obligation under its Terms of Reference to investigate unsolved suspected hate crime deaths of LGBTIQ people (or people presumed or suspected to be LGBTIQ) in NSW between 1970 and 2010.
- 3.17. As noted above, it was important to ensure that the Inquiry's approach was trauma-informed and supportive of families, friends and loved ones of victims, the LGBTIQ community, victims/survivors of LGBTIQ hate crimes, and all those that have been impacted by LGBTIQ hate crimes.
- 3.18. Additionally, the communications strategy aimed to assist the work of the Inquiry by ensuring that any information about cases which might fall within the Terms of Reference was identified and considered. The LGBTIQ community, and members of the general public, were considered to be a valuable potential source of information that may not have been contained in, for example, investigative files held by the NSWPF.
- 3.19. The Inquiry recognised that it was important to reach as many people in the community as possible, and to encourage people to come forward with relevant information. To that end, the communications strategy focussed upon:
 - a. Communicating the work of the Inquiry broadly;
 - b. Ensuring that it was easy to contact the Inquiry;
 - c. Providing assurance that information would be handled sensitively, confidentially and anonymously (if required); and
 - d. Providing references to support services where required.
- 3.20. The communications strategy specifically involved:
 - a. Setting up different ways for members of the public to contact the Inquiry (including mail, telephone, email and a website contact page);
 - b. Disseminating contact details and requests for information across several different channels through traditional advertising, pamphlet drops and social media campaigns (including distribution through LGBTIQ organisations and networks);
 - c. Working with the LGBTIQ community to provide information concerning the work of the Inquiry, and the progression of that work, including answering questions from members of the LGBTIQ community and LGBTIQ organisations; and
 - d. Helping generate information and updates about the work of the Inquiry through mainstream media coverage.

Contacting the Inquiry

- 3.21. The communications strategy included a range of ways for members of the public to contact the Inquiry:
- a. First, a contact email address was established and monitored. All emails were read, categorised, recorded, and responded to;
 - b. Secondly, there was an Inquiry telephone number where members of the public could telephone and leave messages. These were similarly recorded and actioned by Inquiry staff;
 - c. Thirdly, Post Office Box details were distributed for those who preferred to write to the Inquiry with their information; and
 - d. Fourthly, there was a contact form on the Inquiry's website.
- 3.22. These multiple points of contact sought to remove barriers for those wanting to communicate with the Inquiry (for example, hesitancy concerning making telephone contact, or a reluctance to use email or the Inquiry's website).

Advertising

- 3.23. The contact details of the Inquiry were disseminated through paid advertising campaigns across NSW over several months. This advertising included online, print and radio advertising in mainstream, regional, local and LGBTIQ publications. This ensured widespread coverage across varied mediums and types of publications, independent of specific journalists and media outlets.
- 3.24. The publications targeted included the *Daily Telegraph*, *Sunday Telegraph*, *The Australian* and the *Sydney Morning Herald*. Advertising was also placed in regional and local publications, particularly targeting those located in areas of interest to the Inquiry such as the *Newcastle Herald*, Wollongong's *Illawarra Mercury*, *Manly Daily* and *Wentworth Courier*. Advertising in areas of interest was adjusted with the aim of refreshing memories specific to that location. The Inquiry also ran advertising across morning radio (2GB).
- 3.25. In addition to providing contact details, the advertisements often contained a detailed appeal for those with information to come forward. This request for assistance highlighted that the Inquiry might be the last opportunity for the truth concerning cases being investigated by the Inquiry to come to light. It was hoped that this kind of messaging might not only spark recollections, but also persuade people to come forward with information they had not previously shared.
- 3.26. The Inquiry also placed advertising in LGBTIQ publications such as the *Star Observer* and *QNews*. This was largely online and through their social media channels.

Website

- 3.27. The Inquiry's website was an important part of the communications strategy and has been used by the Inquiry both to provide information and to record the work of the Inquiry. Details of all public hearings, including a short summary of the subject matter, were available ahead of time, as was information about the Inquiry itself, such as its Terms of Reference, and information concerning each case the Inquiry was considering.
- 3.28. A livestream of every public hearing was available on the website, allowing the family, friends and loved ones of victims, members of the public, and media to view the proceedings remotely. This included regional, interstate and international viewers. A recording of each public hearing was subsequently made available on the website, together with transcripts. Exhibits, written submissions and family statements were also made available on the website subject to redactions based on non-publication orders made to protect sensitive or confidential information.

Media coverage

- 3.29. Media reporting on the work of the Inquiry by journalists in mainstream and LGBTIQ media played an important role in keeping the LGBTIQ community and the general public informed concerning the Inquiry's work.
- 3.30. The Inquiry's public hearings were covered extensively by the *Sydney Morning Herald*, the ABC and the *Guardian* in print and online, and across regional and national radio. Journalists employed by News Corp wrote stories that were syndicated nationally and printed in *The Australian* and *Daily Telegraph*. Australian Associated Press also covered the hearings, syndicating the story across dozens of regional publications. LGBTIQ publications *Star Observer* and *QNews* also reported on the work of the Inquiry.
- 3.31. The Inquiry received extensive television coverage on the ABC—with morning news, the midday report, afternoon news, *7.30* and *The Drum* all covering the work of the Inquiry. Additionally, Channels 9, 7, 10, SBS and the ABC all reported on the work of the Inquiry on their flagship nightly news programs.
- 3.32. International media also ran the story, including coverage in the *Washington Post*, *LA Times* and by the BBC.
- 3.33. According to the Inquiry's media monitoring service, the Inquiry has been covered in over 6000 different publications over the 12 month period between November 2022 and November 2023.

WITNESS SUPPORT

- 3.34. The wellbeing and safety of all those affected by the work of the Inquiry, particularly the family, friends and loved ones of the individuals whose deaths the Inquiry has considered, and the LGBTIQ community, was a paramount consideration for the Inquiry. The Inquiry was conscious that people may find the subject matter of the Inquiry deeply distressing, and that for some it might create a risk of re-traumatisation. The Inquiry was also conscious that support services should engage trauma-informed principles of care.²²²
- 3.35. A specialist witness support and counselling service (**WSCS**) was established by the Inquiry. This service was responsive to the needs of the diverse range of people interacting with the Inquiry. The Inquiry offered participants the choice of receiving counselling support from the Inquiry's WSCS or from an external counselling service provided by ACON Pride Counselling. An intake process was developed to direct participants to support from either ACON or the Inquiry's WSCS.
- 3.36. The elements of the WSCS included:
- a. Development of counselling and support service practice guidelines;
 - b. Delivery of witness court orientation sessions for witnesses appearing before the Inquiry;
 - c. Provision of support and counselling to:
 - i. witnesses providing evidence at a public hearing;
 - ii. witnesses providing evidence at select private hearings;
 - iii. victim/survivors of hate crime violence, partners, family members and friends of victims interacting with the Inquiry;
 - d. Provision of orientation, information and support to members of the public attending the Inquiry;
 - e. Responding to people accessing the Inquiry's WSCS through a designated and publicly listed email and phone number; and
 - f. Provision of case consultation and trauma informed practice guidance to Inquiry staff as required.

Support and adjustments for witnesses and members of the public

- 3.37. People interacted with the Inquiry's WSCS in a variety of ways, including by email, phone and in person. People could be referred to the support team by legal, projects, investigations and media teams.

²²² NSW Agency for Clinical Innovation, Trauma-informed care and mental health in NSW (Evidence Series, November 2019) <https://aci.health.nsw.gov.au/__data/assets/pdf_file/0008/561977/ACI-Trauma-informed-care-and-mental-health-in-NSW-evidence-series.pdf>.

- 3.38. The majority of witness support was provided during public hearings. This support included:
- a. Witness orientation sessions were offered to witnesses prior to their appearance at a hearing. These orientation sessions included a tour of the courtroom and explanation of hearing day processes, and familiarisation with the witness box, witness counselling room and witness facilities;
 - b. A private counselling room was provided for witnesses, their legal representatives and their support people. The Inquiry's WSCS team was available to provide brief clinical interventions in this space as required. Witnesses made use of this space in various ways, including to prepare for giving evidence, to speak with their families, to take a respite from proceedings, and to access a debrief at the conclusion of giving evidence;
 - c. A "screening room" was available for people who did not wish to sit in the courtroom during proceedings. Public hearings were live streamed on a large screen and could be viewed by the public in this room. The WSCS team was available for people who became distressed while viewing proceedings; and
 - d. At the conclusion of public hearings, a member of the WSCS team was available to provide counselling to witnesses experiencing distress. Community based support service information was on hand for witnesses to access, and WSCS members could refer witnesses to relevant services if required. Referral to ACON Pride Counselling for longer term support was also an option for witnesses.
- 3.39. The WSCS team provided therapeutic support to family members, partners, and friends who attended public hearings. This included support in the courtroom while evidence was being given, therapeutic support in the counselling room during recess, and debriefing at the conclusion of daily proceedings.

The Inquiry's counselling and support services

- 3.40. The WSCS aimed to provide an effective layer of support to people engaging with the Inquiry. The Inquiry was committed to providing support to individuals directly impacted by LGBTIQ hate crimes including victims/survivors of hate crime who participated in the Inquiry, witnesses, partners, family, friends and loved ones of victims/survivors, and the staff working at the Inquiry.
- 3.41. The Inquiry's WSCS team provided participants with the option of up to two counselling sessions after participating in an Inquiry hearing. Participants could then be referred to other community-based support organisations or a private practitioner for longer term support. LGBTIQ participants were able to access ongoing counselling with ACON Pride Counselling, funded through the Inquiry.
- 3.42. Pride Counselling is ACON's inclusive and affirming counselling service for people of diverse genders and sexualities. Pride Counselling clinicians are fully qualified and registered psychologists, mental health accredited social workers and counsellors, who are also very experienced working with people of diverse genders and sexualities.

WSCS Guidelines

- 3.43. The Inquiry's Guidelines were developed with the intention of providing Inquiry staff with a set of guidelines that would assist them with their work. The Guidelines identified best practice for the WSCS team, and related staff across the Inquiry interacting with witnesses, victims/survivors and families. The guidelines also delineated the role of the WSCS team and ACON Pride Counselling within the parameters of the Inquiry. The Guidelines were distributed to all Inquiry teams.

Contact with the WSCS email and phone

- 3.44. The WSCS team provided a response to people connecting with the Inquiry via the public support email address and a phone line five days per week.

Case consultation

- 3.45. The WSCS team was available to provide case consultation to Inquiry staff as required. This included clinical recommendations regarding mental health issues that may arise for witnesses as a consequence of interacting with the Inquiry, and types of support that may be beneficial.

ENGAGEMENT WITH THE VICTORIAN COMMISSIONER FOR LGBTIQA+ COMMUNITIES

- 3.46. The Inquiry is grateful for the assistance of the Victorian Commissioner for LGBTIQA+ Communities, Dr Todd Fernando, and his office. I was able to meet with Dr Fernando during the course of the Inquiry and his office provided assistance with the Inquiry's Terminology Guide.
- 3.47. My engagement with Dr Fernando and his office caused me to consider the existence of similar statutory office holders or policy bodies intended to assist in supporting the LGBTIQ community, including in relation to the engagement between the LGBTIQ community and institutions such as the NSWPF. The State of Victoria is unique in having a Commissioner for LGBTIQA+ Communities, although other Australian jurisdictions have a range of policy or advisory bodies.²²³
- 3.48. I am conscious that such government offices or bodies exist in a wider ecology, including charitable and other non-profit organisations which have had a significant role informing policy over the years. These non-governmental organisations make an enormous contribution, and many of them have been of great assistance to this Inquiry. The role of some of these organisations, and their engagement with this Inquiry, are referred to above.

The Victorian Commissioner for LGBTIQA+ Communities

- 3.49. The office of Victorian Commissioner for LGBTIQA+ Communities was created in 2015 by the Minister for Equality at the time, the Hon. Martin Foley. The role was then called the Commissioner for Gender and Sexuality. Dr Fernando is the second person to hold the role.
- 3.50. The office of Commissioner is an advisory one without legislated powers. The Commissioner's function is to "provide advice to the Victorian Government on the development of policies, services and programs that are inclusive and meet the needs of our diverse communities". The Commissioner also has a role in liaising with community organisations, businesses, and others to ensure the needs of LGBTIQA+ Victorians are met, and to better understand issues impacting the community.²²⁴

²²³ See, e.g., The Queensland LGBTIQ+ Roundtable (Department of Communities, Housing and Digital Economy (Qld), *Queensland LGBTIQ+ Roundtable*, 'Queensland Lesbian, Gay, Bi-sexual, Transgender, Intersex, Queer + (LGBTIQ+) Roundtable' (Web Page, 11 July 2023) <<https://www.chde.qld.gov.au/about/initiatives/lgbti-roundtable>>); the ACT's LGBTIQ+ Ministerial Advisory Round Table (Chief Minister, Treasury and Economic Development Directorate (ACT), *LGBTIQ+ Ministerial Advisory Council*, "The ACT Lesbian, Gay, Bisexual, Transgender, Intersex and Queer Ministerial Advisory Council" (Web Page, 15 November 2023) <<https://www.cmtedd.act.gov.au/policystrategic/the-office-of-lgbtiq-affairs/lgbtiq-ministerial-advisory-council>>.

²²⁴ State Government of Victoria, *The Victorian Commissioner for LGBTIQA+ Communities* (Web Page, 27 November 2021) <<https://www.vic.gov.au/victorian-commissioner-lgbtiqa-communities>>.

- 3.51. The Commissioner is assisted in their work by the Victorian LGBTIQ+ Taskforce, which was also created in 2015. The Taskforce is made up of community members who are appointed for two year terms. The Minister for Equality and a taskforce community member are co-chairs of the Taskforce. Deputy secretaries from the Department of Families, Fairness and Housing, Department of Justice and Community Safety, Department of Health, and Department of Education and Training are *ex-officio* Taskforce members.
- 3.52. The LGBTIQ+ Taskforce is supported in its work by the Health and Wellbeing Working Group and the Justice Working Group. Working group members are appointed by the Minister for Equality for two year terms.

Observations concerning oversight and policy bodies

- 3.53. A theme that has emerged throughout the work of the Inquiry is a level of insularity and defensiveness within the NSWPF in relation to any perceived criticism. As I have observed elsewhere, this attitude is not universal, and it is apparent that the NSWPF has taken steps to seek to educate its officers in relation to the LGBTIQ community and issues that affect the LGBTIQ community, and to engage with the LGBTIQ community. This is dealt with in **Chapters 8 and 15**.
- 3.54. I do not consider that I should make a specific recommendation concerning an oversight or policy body in NSW. I observe, however, that having someone in a role such as the Victorian Commissioner for LGBTIQ+ Communities may play an important role in not only supporting members of the LGBTIQ community with individual concerns, but also in identifying systemic or broader cultural issues within bodies such as the NSWPF and assisting with implementing institutional change.
- 3.55. As is explained in **Chapter 8**, I have formed the view that it is likely that some of the historical deficiencies in investigations, and in record keeping and exhibit management, were influenced by subconscious or conscious bias against members of the LGBTIQ community. It is apparent that many members of the LGBTIQ community have a justified and wholly understandable sense of grievance concerning the treatment of their community by the NSWPF.
- 3.56. It is not sufficient for the NSWPF to merely say that homophobic attitudes are historical; there is a need for tangible action to be taken, including through education and engagement with LGBTIQ organisations external to the NSWPF. I have received evidence to suggest that engagement of this kind is, to some extent, already occurring, and I strongly urge that this continue.



Chapter 4: Social and Cultural Context of Hate Crime Deaths

THE CONTEXT HEARING

Scope and purpose of the Context Hearing

- 4.1. In November 2022, the Inquiry held the first of its public hearings: **the Context Hearing**.
- 4.2. The evidence of the witnesses called in the Context Hearing was intended to assist the Inquiry in understanding the social, legal and cultural factors affecting the LGBTIQ community during the period covered by the Terms of Reference. The Inquiry gratefully acknowledges the assistance provided by each of these witnesses.
- 4.3. The evidence of each witness called to assist the Inquiry is set out below. The summaries of evidence retain the language used by each witness, which in some instances differs from the language used by the Inquiry and explained earlier in this Report.
- 4.4. Broadly, the evidence of the witnesses called at the Context Hearing covered four main topics:
 - a. First, the impact of significant events within this period on the LGBTIQ community, including the decriminalisation of “homosexual conduct” in 1984, and the HIV/AIDS epidemic and the upsurge of violence in the 1980s and 1990s;
 - b. Secondly, the levels of violence perpetrated against the LGBTIQ community during this period at beats, in private homes, and elsewhere;
 - c. Thirdly, changes in the relationship between the LGBTIQ community and police, and the changing nature of the police response to anti-LGBTIQ violence; and
 - d. Fourthly, the advocacy and campaigns on behalf of the LGBTIQ community over the period, and the effect of those campaigns.
- 4.5. Before describing that evidence, I should raise two preliminary matters.
- 4.6. First, at many times throughout this Report, I speak of the “relationship” between the NSWPF and the LGBTIQ community. In using the word “relationship”, I should not be understood as suggesting that the NSWPF and the LGBTIQ community have been able to engage on an equal footing.
- 4.7. I have made a number of observations elsewhere in this Report about the evidence I have received that, in the past, the LGBTIQ community has been marginalised and harmed in their interactions with the NSWPF. In addition, the broader marginalisation of the LGBTIQ community, and particularly the criminalisation of sexual activity between men, necessarily affected the ability of the LGBTIQ community to seek the assistance of the NSWPF, and created a culture where marginalisation or discrimination by the NSWPF was consistent with this broader culture.

- 4.8. Secondly, in addressing historical hostility against the LGBTIQ community, I acknowledge those deaths that were (and still are) caused indirectly by the cumulative effects of bullying, forced conformity and withheld opportunities. For many sections of the LGBTIQ community, including those underrepresented in the victims considered by this Report, that may have been the more common experience of violence and hostility. Those deaths may fall outside the scope of this Inquiry, but they were—and are—no less real.

Background to the Context Hearing

- 4.9. Before turning to the evidence of each of the witnesses called to give evidence in the Context Hearing, it is useful to set out some background historical and contextual matters. This section deals primarily with the regulation, primarily by means of the criminal law, of same sex/gender relationships and sexual activity. It is necessarily brief, and by no means comprehensive. However, it highlights significant legal developments, in addition to some significant events which are referred to by the witnesses who gave evidence at the Context Hearing.

Legal regulation of same sex/gender relationships and sexual activity

- 4.10. From at least the 16th century until various times in the 20th century, the legal regulation of same sex/gender relationships and sexual activity in the United States, the United Kingdom and Australia was in significant part effected through the offences of “sodomy” or “buggery”. Consistent with the historical language, the word “sodomy” and the phrase “homosexual offences” are used in the following paragraphs.
- 4.11. The first instance of statutory regulation of sodomy in English law was the *Buggery Act 1533* (UK) (the ***Buggery Act***), enacted in 1533 by Henry VIII, which made sodomy an offence. Prior to this time, sodomy was dealt with in England by the ecclesiastical courts, who sought to “punish those that were perceived as endangering social purity, defiling the kingdom and disturbing the racial or religious order of things”.²²⁵ Sodomy was also, from the Medieval period onwards, often referred to as an “unspeakable” or “unmentionable” vice.²²⁶

²²⁵ The Hon Michael Kirby, ‘The Sodomy Offence: England’s Least Lovely Criminal Law Export?’ in Corinne Lennox and Matthew Waites (eds), *Human Rights, Sexual Orientation and Gender Identity in the Commonwealth* (University of London Press, 2013) 61, 62.

²²⁶ Robert Mills, ‘Homosexuality: Specters of Sodom’ in Ruth Evans (ed), *A Cultural History of Sexuality in the Middle Ages* (Bloomsbury Academic, 2011) 57, 75.

- 4.12. The *Buggery Act* did not distinguish between sodomy of a man, woman or beast.²²⁷ English courts construed the prohibition as applying to anal intercourse, but as not extending to other forms of sexual activity such as oral intercourse.²²⁸ Following a number of renewals and reenactments, and a short period of repeal after the ascension of Mary I,²²⁹ the *Buggery Act* was made perpetual in 1562 by Elizabeth I.²³⁰
- 4.13. Over the following centuries there were significant regional and institutional differences in attitudes towards enforcing the prohibitions on sodomy.²³¹ It is important not to conflate the statutory proscription with the reality of policing and enforcement.
- 4.14. The first successful prosecution (and execution) for sodomy involving only adults under the *Buggery Act* did not occur until 1631, with the prosecution of the Earl of Castlehaven.²³² The existing records suggest, in general, little appetite for prosecutions pursuant to the *Buggery Act* during the 16th and 17th centuries, and a level of social “toleration” for consensual sodomy (at least until the “matter enter[ed] the legal arena”²³³).²³⁴ Even in the early 18th century, it was extremely unusual for an accusation of sodomy to lead to execution.²³⁵ However, by the 1780s, sodomy was regularly prosecuted at the Old Bailey.²³⁶

²²⁷ See *R v Wiseman* (1717) Fort 91; 92 ER 774, where a majority of the Court of King’s Bench upheld the conviction of a man for the sodomy of an 11-year-old girl, holding that it answered the statutory description of ‘buggery’. The Court observed that ‘the material word [in the Act] is not man but mankind, which has a very different meaning; for, the word mankind takes in, all the species of man, whether male or female, boys or girls’ (at 94, 775).

²²⁸ See *R v Jacobs* (1817) Russ & Ry 331; 168 ER 830, where it was held that oral sex forced by an adult man onto a 7-year-old boy did not constitute the offence of sodomy.

²²⁹ H Montgomery Hyde, *The Other Love: An Historical and Contemporary Survey of Homosexuality in Britain* (Heinemann, 1970), 40; see also Francois Lafitte, ‘Homosexuality and the Law’ (1958) 9 *British Journal of Delinquency* 8, 14.

²³⁰ *An Act for the Punishment of the Vjce of Sodomye 1562*, 5 Eliz 1, c 17. See Paul Johnson, ‘Buggery and Parliament, 1533-2017’ (2019) 38(3) *Parliamentary History* 32, 328.

²³¹ Rosalind Carr, ‘The Importance and Impossibility of Manhood: Polite and Libertine Masculinities in the Urban Eighteenth Century’ in Lynn Abrams and Elizabeth L. Ewan (eds), *Nine centuries of man: Manhood and masculinities in Scottish history* (Edinburgh University Press, 2017) 58, 63; See also analysis in Steve Poole, ‘“Bringing great shame upon this city”: sodomy, the courts and the civic idiom in eighteenth-century Bristol’ (2007) 34 *Urban History* 114; Jeffrey Weeks, ‘Inverts, Perverts, and Mary Annes: Male Prostitution and the Regulation of Homosexuality in England in the Nineteenth and Early Twentieth Centuries’ (1981) 6 *Journal of Homosexuality* 113, 118-119; Seth Stein LeJacq, ‘Buggery’s travels: Royal Navy sodomy on ship and shore in the long eighteenth century’ (2015) 17 *Journal for Maritime Research* 103; Seth Stein LeJacq, ‘Escaping court martial for sodomy: Prosecution and its alternatives in the Royal Navy, 1690-1840’ (2021) 33 *The International Journal of Maritime History* 16.

²³² BR Burg, *Sodomy and the Pirate Tradition: English Sea Rovers in the Seventeenth-Century Caribbean* (New York University Press, 2nd ed, 1995) 3, 6; Cynthia Herrup, *A House in Gross Disorder: Sex, Law and the 2nd Earl of Castlehaven* (Oxford University Press, 2001). See also Caroline Bingham, ‘Seventeenth-Century Attitudes towards Deviant Sex’ (1971) 1 *The Journal of Interdisciplinary History* 447.

²³³ Peter Bartlett, ‘Sodomites in the Pillory in Eighteenth-Century London’ (1997) 6 *Social & Legal Studies* 553, 562.

²³⁴ Louis Crompton, *Homosexuality and Civilization* (Harvard University Press, 2003) 366; BR Burg, *Sodomy and the Pirate Tradition: English Sea Rovers in the Seventeenth-Century Caribbean* (New York University Press, 2nd ed, 1995) xxxviii, 40; BR Burg, ‘Ho Hum, Another Work of the Devil: Buggery and Sodomy in Early Stuart England’ (1980) 6(1-2) *Journal of Homosexuality* 69, 70-72; Polly Morris, ‘Sodomy and Male Honor: The Case of Somerset, 1740-1840’ (1989) 16 *Journal of Homosexuality* 383, 386; Dennis Rubini, ‘Sexuality and Augustan England: Sodomy, Politics, Elite Circles and Society’ (1989) 16 *Journal of Homosexuality* 349, 350; Angus McLaren, *Sexual Blackmail* (Harvard University Press, 2002), 13; Morris Kaplan, *Sodom on the Thames: Sex, Lone and Scandal in Wilde Times* (Cornell University Press, 2012) 186.

²³⁵ Farid Azfar, ‘Genealogy of an Execution: The Sodomite, the Bishop, and the Anomaly of 1726’ (2012) 51 (3) *Journal of British Studies* 568, 569.

²³⁶ HG Cocks, ‘Homosexuality between Men in Britain since the Eighteenth Century’ (2007) 5 *History Compass* 865, 869. See also HG Cocks, ‘Safeguarding Civility: Sodomy, Class and Moral Reform in Early Nineteenth-Century England’ (2006) 190 *Past & Present* 121.

The receipt of English law in NSW

- 4.15. The process by which English criminal statutes (including the *Buggery Act*) were received in NSW involved several stages.²³⁷ The last and most significant of those stages occurred on 25 July 1828, when the application of the entire body of the English common law and statute law in NSW was confirmed by the entry into force of the *Australian Courts Act 1828*.²³⁸ Section 24 provided that all laws and statutes in force in England on that day would be applied in the administration of justice in the courts of NSW (then including present-day Victoria and Queensland) and Van Diemen's Land.²³⁹

The 19th century

- 4.16. The 19th century was a time of significant political, social and economic upheaval in the UK and Australia. In the first decades of the 19th century, the consequences of a charge of sodomy in England and Wales remained grave. Fifty “sodomites” were executed in the period between 1805 and 1832.²⁴⁰ Associate Professor Harry Cocks, a historian, observed that:²⁴¹

The nineteenth century witnessed an unprecedented rise in the numbers of men punished for simply having sex with each other. Never before in the history of Britain had so many men been arrested, convicted, imprisoned, pilloried and even executed for homosexual offences.

- 4.17. Prosecutions of sodomy were relatively rare in the early years of the NSW colony. Between 1788 and 1828, only three men were charged with sodomy and a further 11 with attempted sodomy, in a population of 40,069 as at 1828.²⁴²
- 4.18. In 1828, the *Buggery Act* was repealed by English Parliament and the prohibition on sodomy re-enacted as an “offence against the person” in similar terms.²⁴³ Sodomy remained a capital offence until the enactment in 1861 of the *Offences Against the Person Act 1828* (UK).²⁴⁴ The last hanging for sodomy in the UK took place in 1835.²⁴⁵

²³⁷ See Alex Castles, ‘The Reception and Status of English Law in Australia’ (1963) 2(1) *Adelaide Law Review*.

²³⁸ *Australian Courts Act 1828*, 9 Geo 4, c 83.

²³⁹ The Hon Victor Windeyer, ‘“A Birthright and Inheritance”: The Establishment of the Rule of Law in Australia’ (1962) 1(5) *University of Tasmania Law Review* 635, 635.

²⁴⁰ Angus McLaren, *Sexual Blackmail* (Harvard University Press, 2002) 16. See also AD Harvey, ‘Prosecutions for Sodomy in England at the Beginning of the Nineteenth Century’ (1978) 21 *The Historical Journal* 939, 939-948. Interestingly, for the majority of the nineteenth century those arraigned for criminal offences were prevented from making statements in their own defence: see HG Cocks, ‘Making the Sodomite Speak: Voices of the Accused in English Sodomy Trials, c. 1800-98’ (2006) 18 *Gender & History* 87.

²⁴¹ HG Cocks, ‘Secrets, Crimes and Diseases’ in Matt Cook (ed), *A Gay History of Britain: Love and Sex Between Men Since the Middle Ages* (Greenwood World Publishing, 2007) 107, 107.

²⁴² Luke Taylor, ‘Speaking the Unspeakable: Buggery, Law, and Community Surveillance in New South Wales, 1788-1838’ (2020) 38(4) *Law and History Review* 737, 747-8. That figure excludes prosecutions for bestiality under the same provision.

²⁴³ *Offences Against the Person Act 1828* (UK), 9 Geo 4, c 31, 18.

²⁴⁴ *Offences Against the Person Act 1828* (UK) 24 & 25 Vict, c 100, s. 61.

²⁴⁵ Dominic Janes, ‘Regarding Pratt and Smith, the Last Couple of Sodomites to be Hanged in Britain’ in Sean Brady and Mark Seymour (eds), *From Sodomy Laws to Same-Sex Marriage: International Perspectives Since 1789* (Bloomsbury, 2019) 48.

- 4.19. Overall, it is estimated that approximately 20 men were executed for sodomy offences in the Australian colonies up to the 1860s.²⁴⁶ For the most part, these executions involved acts of sodomy against minors and/or without consent (noting that it is not possible for someone under the age of consent to provide lawful consent to sexual activity).²⁴⁷
- 4.20. No private and consensual sexual act between two persons of the same sex/gender other than sodomy was punishable in the UK until 1885.²⁴⁸ However, it was possible to prosecute other same sex/gender sexual acts using the prohibition on sodomy because, at this time, an attempt to commit a crime was taken to amount to the crime itself. Other sexual acts between men could be treated as “attempts” to commit sodomy, and so “any kind of touching or even invitation to a homosexual act was a crime”.²⁴⁹
- 4.21. In 1885, an offence of “gross indecency” was introduced into the *Criminal Law Amendment Act 1885* (UK).²⁵⁰ The gross indecency offence, dubbed the ‘Labouchère Amendment’, was broad enough to capture all forms of sexual activity between cisgender men, including oral sex.
- 4.22. Upon Australian federation, each State and Territory retained its own statutory prohibition on sodomy.²⁵¹ State and Territory laws also criminalised “indecent assaults” on men, as well as acts of “indecency” or “gross indecency”.²⁵² Further, various public order statutes were in force which did not specifically proscribe sexual activity, but which were relied upon to prosecute gay men for sexual activity. For instance, in Victoria there was an offence of “loitering for homosexual purposes”.²⁵³

The process of decriminalisation

Decriminalisation in the UK

- 4.23. In 1967 the offences of buggery and gross indecency were decriminalised in England and Wales, and thereafter in the rest of the UK. However, there remained some discrepancies between the legal treatment of “heterosexual” and “homosexual” sexual activity.

²⁴⁶ Robert French, *Camping by a Billabong – gay and lesbian stories from Australian history* (Black Wattle Press, 1993); Destiny Rogers, ‘Australian LGBTIQ history timeline: 1727–1901’ *QNews* (Web page, 20 January 2020) < <https://qnews.com.au/australian-lgbtiq-history-timeline-1727-1901/>>.

²⁴⁷ See, e.g., John Mead (hanged in Sydney on 29 November 1836 for sodomy of a ten year old boy); William Gibson (hanged at Launceston on 31 January 1859 for sodomy of a ten year old boy); Hendrick Whitnelder (hanged at Hobart on 20 February 1863 for sodomy of a fourteen year old boy); John Kelly (hanged at Beechworth, Victoria on 4 May 1867 for sodomy of an eighteen month old boy).

²⁴⁸ Francois Lafitte, ‘Homosexuality and the Law’ (1958) 9 *British Journal of Delinquency* 8, 12.

²⁴⁹ HG Cocks, ‘Secrets, Crimes and Diseases’ in Matt Cook (ed), *A Gay History of Britain: Love and Sex Between Men Since the Middle Ages* (Greenwood World Publishing, 2007) 107, 110.

²⁵⁰ *Criminal Law Amendment Act 1885* (UK) 48 & 49 Vict, c 69.

²⁵¹ See, e.g., *Crimes Act 1900*, ss. 79, 81, 81A; *Criminal Code* (Tas), ss. 122–123, *Criminal Code* (Qld), s. 208; *Criminal Code* (WA), ss. 181, 184; *Crimes Act 1958* (Vic), s. 68(2); *Criminal Law Consolidation Act 1935* (SA), ss. 69–70, all as originally enacted.

²⁵² See *Crimes Act 1900*, s. 81A–81B; *Crimes Act 1958* (Vic), s. 69; *Criminal Law Consolidation Act 1935* (SA), ss. 58, 71; *Criminal Code* (Tas), ss 123, 127; *Criminal Code* (Qld), s. 211; *Criminal Code* (WA), s. 184.

²⁵³ *Summary Offences Act 1966* (Vic), s. 18: “Any person who for the purposes of prostitution or for homosexual purposes solicits or accosts any person in a public place or loiters in a public place shall be guilty of an offence.”

- 4.24. One catalyst for decriminalisation was the *Report of the Committee on Homosexual Offences and Prostitution (the Wolfenden Report)*. The Wolfenden Committee was established in 1954 in the UK amidst public concern about the perceived increase in the visibility of sex workers in London and in trials for homosexual offending before the English courts.²⁵⁴
- 4.25. After three years and some 62 interviews with witnesses including judges, religious leaders, psychiatrists, social workers and (few) members of the LGBTIQ community (one of whom was Peter Wildeblood, who had by that time been released from prison and published his renowned memoir *Against the Law*²⁵⁵), the Committee tabled its report in September 1957. It concluded:²⁵⁶
- It is not the function of the law to interfere in the private lives of citizens, or to seek to enhance any particular pattern of behaviour... [It is the law's duty to] preserve public order and decency, to protect the citizen from what is offensive and injurious, and to provide safeguards against the exploitation and corruption of others... unless a deliberate attempt is made by society, acting through the agency of the law, to equate the sphere of crime with that of sin, there must remain a realm of private morality and immorality which is not the law's business.*
- 4.26. On this basis, the Wolfenden Report recommended that participation in “homosexual acts” committed between consenting adult men in private be decriminalised.²⁵⁷
- 4.27. The prohibitions on buggery and gross indecency in the *Sexual Offences Act 1956* (UK), the former as qualified in 1994 and both being subject to the limited decriminalisation provided for by the *Sexual Offences Act 1967* (UK), remained in force until their repeal with effect from 1 May 2004 by operation of the *Sexual Offences Act 2003* (UK).²⁵⁸ The repeal of the common law prohibition on sodomy in Scotland only took effect as late as 2013.²⁵⁹

²⁵⁴ Emma Henderson, ‘Of Signifiers and Sodomy: Privacy, Public Morality and Sex in the Decriminalisation Debates’ (1996) 20(4) *Melbourne University Law Review* 1023, 1027.

²⁵⁵ See Adam Mars-Jones, ‘The Wildeblood scandal: the trial that rocked 1950s Britain – and changed gay rights’ *The Guardian*, (online, 14 July 2017) <<https://www.theguardian.com/books/2017/jul/14/against-the-law-the-wildeblood-scandal-the-case-that-rocked-1950s-britain-and-changed-gay-rights>>.

²⁵⁶ Home Office, Scottish Home Department, *Report of the Committee on Homosexual Offences and Prostitution* (Cmd 247, 1957) 9–10.

²⁵⁷ Home Office, Scottish Home Department, *Report of the Committee on Homosexual Offences and Prostitution* (Cmd 247, 1957).

²⁵⁸ See *Sexual Offences Act 1967* (UK) s. 140 and Sch 7.

²⁵⁹ See *Sexual Offences (Scotland) Act 2009* (Scot) s. 52.

Decriminalisation in Australia

- 4.28. South Australia was the first state to decriminalise male “homosexual offences” in 1972 (adopting a formulation based on the 1967 English statute),²⁶⁰ with a full repeal of sodomy and gross indecency offences in 1975.²⁶¹ A similar manner of decriminalisation occurred in the ACT (1976),²⁶² followed by Victoria (1980),²⁶³ the Northern Territory (1983),²⁶⁴ NSW (1984),²⁶⁵ Western Australia (1989, with effect from March 1990),²⁶⁶ Queensland (1990),²⁶⁷ and Tasmania (1997).²⁶⁸
- 4.29. On 24 November 2014, the *Criminal Records Act 1991* was amended to allow those convicted of specified historical homosexual offences to apply for their convictions to be “extinguished”.²⁶⁹ Legislation to similar effect was introduced in the United Kingdom in 2017.²⁷⁰

Significant events during the 20th century

- 4.30. Some other significant events over the period of the 20th century form part of the context against which the evidence of the witnesses in the Context Hearing should be understood. What follows is by no means a comprehensive summary of key events affecting the LGBTIQ community in Australia. As the evidence given in the Context Hearing demonstrates, the 20th century was a time of profound social change, and there were many events of huge significance to the LGBTIQ community. The following events, however, are of particular significance to the Inquiry’s work.

²⁶⁰ *Criminal Law Consolidation Act Amendment Act 1972* (SA), No 94 of 1972, s. 3.

²⁶¹ *Criminal Law (Sexual Offences) Amendment Act 1975* (SA), No 66 of 1975, s. 29. See *Criminal Law Consolidation Act 1935* (SA) s. 68A as in force today.

²⁶² *Law Reform (Sexual Behaviour) Ordinance 1976* (ACT), which provided by s. 3(1): “Subject to this Ordinance, a person who, with the consent of another person (whether of the same or different sex) and in private, commits an act of a sexual nature upon or with that person is not, by reason only of the commission of that act, guilty of an offence.”

Section 5 provided: “Where a person is charged with an offence against section 79, 80 or 81 of the Crimes Act [defined by s 2(1) as “the Crimes Act 1900 of the State of New South Wales in its application to the Territory], the court shall not find that the offence has been established unless it is proved – (a) that the person upon or with whom the act alleged to constitute the offence was committed did not give an effective consent to the commission of the act; (b) that the person was related to the defendant; or (c) that the act alleged to constitute the offence was committed otherwise than in private.”

²⁶³ *Crimes (Sexual Offences) Act 1980* (Vic) s. 6.

²⁶⁴ With the enactment of the *Criminal Code Act 1983* (NT). However, “carnal knowledge” or “gross indecency” between adult males in public remained an offence under s 127 of that Act until its repeal and replacement by the *Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003* (NT) s. 5.

²⁶⁵ *Crimes (Amendment) Act 1984* s 3 and ch 1, items (6), (7).

²⁶⁶ *Law Reform (Decriminalisation of Sodomy) Act 1989* (WA) s. 5; a more limited offence for gross indecency in public between two men remained in force as s 184 of the Code until it was repealed by *Acts Amendment (Lesbian And Gay Law Reform) Act 2002* (WA) s. 35(1).

²⁶⁷ *Criminal Code and Another Act Amendment Act 1990* (Qld), s. 5.

²⁶⁸ *Criminal Code Amendment Act 1997* (Tas), ss. 4, 5.

²⁶⁹ See *Criminal Records Act 1991* pt 4A. See also Allen George, ‘Sex offenders no more: Historical homosexual offences expungement legislation in Australia’ (2019) 44(4) *Alternative Law Journal* 297.

²⁷⁰ *Policing and Crime Act 2017* (UK) ss. 164–172.

The Kinsey Report

- 4.31. The Kinsey Report refers to Alfred Kinsey’s 1948 publication *Sexual Behavior in the Human Male*. As a result of the Kinsey Report, “homosexuality entered spectacularly into mainstream consciousness [in the USA].”²⁷¹ It sparked significant controversy and a strong conservative backlash.²⁷²
- 4.32. Garry Wotherspoon, whose evidence before the Inquiry is discussed below, describes the impact of the Kinsey Report in his book *Gay Sydney: A History*.²⁷³

Two events in the 1940s had major effects on the lives of men with homoerotic desire. They were World War II, and the publication of Alfred Kinsey’s Sexual Behavior in the Human Male in 1948. Both were important, albeit in different ways. The war acted as a catalyst for dramatic changes in social behaviour, in particular sexual behaviour. It shook Australians out of the Depression; indeed, it can be argued that economic recovery only began when the government started large-scale spending in a war economy. And the ‘war in the Pacific’ had a much greater impact on Sydney and its institutions than World War I; one net effect was that thousands of men and women were able to witness or experience, for the first time, the realities of homoerotic sexuality and love. This not only gave immediate experiential rewards, it had impacts in the longer term.

If war led to a widening and deepening of homosexual experiences in Australia, the Kinsey Report in 1948 was important in showing just how widespread such practices were in modern society. Works such as Kinsey’s paved the way for new theories about “deviant” sexuality. The 1940s was an important decade in Australia’s social history because it started the “end to unknowing” about homoeroticism and homosexuality in Australia.

Cooma jail

- 4.33. In 1957, a jail in Cooma that had been closed in the early 1900s was reopened to house men convicted of homosexual offences. It continued to operate until the 1970s.²⁷⁴ The Cooma jail was the subject of detailed treatment in the 2022 podcast, *The Greatest Menace*, a collaboration between documentary maker Simon Cunich and journalist Patrick Abboud. The podcast discusses evidence that aversion therapy and psychosurgery may have been used on inmates, and that the prison was a “coordinated effort between government and police to provide a pool of subjects for study and experimentation to discover a ‘cure’ for homosexuality.”²⁷⁵

²⁷¹ Byrne Fone, *Homophobia: A History* (Picador, 2000) 389. See also David Serlin, “Bodies” in Don Romesburg (ed) *The Routledge History of Queer America* (Routledge, 2018), 135–147, 144; Exhibit 2, Tab 1, Statement of Garry Wotherspoon, [81] (SCOI.77300).

²⁷² Byrne Fone, *Homophobia: A History* (Picador, 2000) 389–394.

²⁷³ Garry Wotherspoon, *Gay Sydney: A History* (NewSouth Publishing, 2016) 70.

²⁷⁴ Barry Divola, “Exposing the shocking plan behind Australia’s gay prison” *The Sydney Morning Herald* (online, 24 February 2022) <<https://www.smh.com.au/culture/tv-and-radio/exposing-the-shocking-plan-behind-australia-s-gay-prison-20220221-p59yci.html>>.

²⁷⁵ Barry Divola, “Exposing the shocking plan behind Australia’s gay prison” *The Sydney Morning Herald* (online, 24 February 2022) <<https://www.smh.com.au/culture/tv-and-radio/exposing-the-shocking-plan-behind-australia-s-gay-prison-20220221-p59yci.html>>.

The Trethowan Report

- 4.34. On 1 July 1958, the *Canberra Times* ran an article entitled “State appoints Committee on Sexuality”, announcing that The Hon Reginald Downing, the Attorney General, had appointed a committee to investigate the “causes and treatment of homosexuality”.²⁷⁶ Mr Downing was quoted as stating that “the Government considers that the problem must be attacked with vigour”, and that “the first, and perhaps the most important step is to obtain a scientific evaluation of the problem and its possible solution.” The article referred to the opening of Cooma jail as a matter that would “facilitate the investigation”.
- 4.35. The Committee’s work took five years, and its report, commonly referred to as the Trethowan Report after Professor Trethowan, one of the Committee members, was announced in March 1963. However, the Trethowan Report was never released, and some have suggested that was because at least some on the Committee did not consider that homosexuality was a social problem.²⁷⁷

Stonewall (1969)

- 4.36. The Stonewall Riots, which occurred in New York, were one of the most significant events in the history of the modern gay rights movement, and they are referred to by a number of the witnesses who gave evidence in the Context Hearing.
- 4.37. In June 1969, police raided the Stonewall Inn, a gay bar in Greenwich Village. Rather than the “usual docile response” to what was a “familiar event in New York City’s gay bar culture”, the bar’s patrons resisted police. Byrne Fone, a historian and pioneer in the teaching of gay and lesbian studies, has called the Stonewall Riots “[t]he most spectacular manifestation of a new consciousness”; that is, a consciousness of a gay identity.²⁷⁸
- 4.38. Although Stonewall is often discussed as being significant to gay liberation, it is important to appreciate that “gay” is being used in a broad sense: the Stonewall Inn was patronised by a wide range of people, including middle- and working-class lesbians and gay men, trans and gender diverse people, LGBTIQ youth, including homeless youth, sex workers and drag-queens. Many of its patrons were Black or Latinx.²⁷⁹

²⁷⁶ ‘State Appoints Committee on Homosexuality’, *The Canberra Times* (Canberra, 1 July 1958) 10, archived at <<https://trove.nla.gov.au/newspaper/article/136301603>>.

²⁷⁷ Exhibit 2, Tab 1, Statement of Garry Wotherspoon, 14 November 2022, [97] (SCOI.77300).

²⁷⁸ Byrne Fone, *Homophobia: A History* (Picador USA, 2000) 407.

²⁷⁹ Laura Belmonte, *The International LGBT Rights Movement: A History* (Bloomsbury Academic, 2021), 120.

- 4.39. In the introduction to *The Stonewall Riots: A Documentary History*, Professor Mark Stein, a historian of US law and politics, says:²⁸⁰

Whether they are understood as the starting point or turning point in the history of LGBTQ activism, the riots are justifiably viewed as a key moment in the mobilization of one of the most transformative social movements of the twentieth and twenty-first centuries. They also have become an iconic symbol of resistance to oppression and an inspirational example of empowerment for the dispossessed.

Royal Commission into Human Relationships (1974)

- 4.40. On 21 August 1974, the Prime Minister, Gough Whitlam, announced the appointment of the Royal Commission into Human Relationships.²⁸¹ The Terms of Reference for the Royal Commission required it to:²⁸²

... inquire into and report upon the family, social, educational, legal and sexual aspects of male and female relationships, so far as those matters are relevant to the powers and functions of the Australian Parliament and Government, including powers and functions in relation to the Territories.

- 4.41. Chapter 6 of Volume 6 of the Royal Commission's report dealt with "Discrimination against homosexuals". In the introduction to Chapter 6, the Royal Commission noted that there was no consensus that homosexuality was a social problem at all. The Royal Commission identified the two competing views: one group of people considered "that the government and the law not only have a right but an obligation to restrict such practices, which are seen as depraved or perverted,"²⁸³ while another considered that homosexuality was "a matter of private and personal behaviour; there is no issue of public morals involved, and the law has no business to interfere. To seek an emotional or sexual relationship with a person of the same sex is simply an indication of an alternative lifestyle and nothing more."²⁸⁴
- 4.42. The Royal Commission acknowledged that "[t]he medical profession, and especially psychiatrists, are not clear as to the nature of homosexuality", but noted that "[c]ontemporary psychiatric and psychological opinion ... rejects the view that it is a disease."²⁸⁵ The Royal Commission acknowledged that "[i]n evidence to us referring to homosexuals, discrimination against them was the main area of concern" and that "[m]uch of this discrimination appears to be inadvertent rather than deliberate."²⁸⁶ The Committee concluded Chapter 6 with a number of recommendations focused on addressing discrimination, and with these remarks:²⁸⁷

²⁸⁰ Marc Stein, "Introduction" in Marc Stein (ed) *The Stonewall Riots: A Documentary History* (New York University Press, 2019) 1–26, 1.

²⁸¹ Office of the Prime Minister, Press Statement No. 306, 21 August 1974.

²⁸² *Royal Commission into Human Relationships* (Final Report, 21 November 1977), ix–x.

²⁸³ *Royal Commission into Human Relationships* (Final Report, 21 November 1977), c 6, [2].

²⁸⁴ *Royal Commission into Human Relationships* (Final Report, 21 November 1977), c 6, [3].

²⁸⁵ *Royal Commission into Human Relationships* (Final Report, 21 November 1977), c 6, [14].

²⁸⁶ *Royal Commission into Human Relationships* (Final Report, 21 November 1977), c 6, [48], [50].

²⁸⁷ *Royal Commission into Human Relationships* (Final Report, 21 November 1977), c 6, [76]–[77].

We believe that there is no such entity as 'homosexuality' but rather that there are people in our society who, for reasons known or unknown, prefer members of their own sex as emotional or sexual partners. We have received no evidence which suggests that there are substantial numbers of homosexuals who wish to 'discontinue their present methods of sexual gratification' or that sexual gratification is any more significant a part of homosexual relationships than of heterosexual relationships. On the other hand, we have received a great deal of evidence from homosexuals and nonhomosexuals that they have a genuine desire to change the legal and social consequences of being a homosexual in Australia.

The issues surrounding homosexuality, are complex and are mixed with many other attitudes; we have endeavoured to disentangle these, to measure the strength with which they are held and where they fit in a hierarchy of values. We realise that the activists of CAMP do not necessarily speak for the views and wishes of all homosexuals; but equally that there is a new sympathy and understanding evidenced by many submissions we received which supported changes in the law though not necessarily approving homosexual acts. While this may fall short of full acceptance of homosexuals, it is an important step. Once people begin to realise that change in the law does not necessarily imply moral judgments, and that removal of discrimination does not mean a complete change in social structures, the public will become more amenable to reform movements. At the moment, people are afraid because they are ignorant, education has not helped them to see that their own basic life patterns will not be adversely affected. As Ms Eglinton told us:

What is really destructive to homosexuals themselves is not society's view of them so much, as when they see these roles as the only roles they can adopt and so in fact put themselves into them because it is better to be accepted as something than nothing at all.

- 4.43. The reference to diverging opinions within the medical profession—by that time beginning to converge into an acceptance that being other than heterosexual was not a pathology—reflects almost a century of debate amongst medical professionals concerning the nature of homosexuality.

- 4.44. A significant development in the 19th century, which persisted well into the 20th century,²⁸⁸ was a body of thought that medicalised or pathologised same sex/gender attraction. Although medical evidence was common in sodomy trials throughout the 19th century,²⁸⁹ efforts to explain same sex/gender attraction through science are generally considered as having begun in the 1860s with the work of German writer Karl-Heinrich Ulrichs, who began to describe different categories of homosexuality (or Uranism, as he called it).²⁹⁰
- 4.45. Ulrichs used the categories to argue that homosexuality should be socially accepted.²⁹¹ Speaking generally, the key question that was debated between sexologists was this: “was homosexuality immutable, involuntary, in born, and located in the body or was it mutable, voluntary, learned and environmental?”²⁹²
- 4.46. The terms “homosexuality” and “heterosexuality” were first used in 1869 by journalist Karl Maria Benkert in a letter to Ulrichs. Both Benkert and Ulrichs wrote pamphlets advocating for homosexual rights.²⁹³ Prior to this time, same sex/gender behaviour was frequently discussed through a lens of “inversion”, focusing on “deviant” gender behaviour.²⁹⁴
- 4.47. Homosexuality was removed from the American Psychiatric Association’s Diagnostic and Statistical Manual (**DSM**) in 1973.²⁹⁵ Mr Wotherspoon explains below the symbolic significance he believes this decision had. However, the removal of homosexuality from the DSM did not “immediately end psychiatry’s pathologizing of some presentations of homosexuality.”²⁹⁶ It was not until 1987 that the category “Ego Dystonic Homosexuality” was removed from the DSM-III-R, and “the APA implicitly accepted a normal variant view of homosexuality...”²⁹⁷

²⁸⁸ See the analysis in Chris Waters, ‘The homosexual as a social being in Britain, 1945-1968’ in Brian Lewis (ed) *British Queer History: New Approaches and Perspectives* (Manchester University Press, 2013) 188, especially 190, 193, 198.

²⁸⁹ Ivan Crozier explains the interplay between medical approaches to homosexuality and the law in ‘The Medical Construction of Homosexuality and its Relation to the Law in Nineteenth-Century England’ (2001) 45 *Medical History* 61. See also Ivan Crozier, ‘Nineteenth-Century British Psychiatric Writing about Havelock Ellis: The Missing Story’ (2008) 63 *Journal of the History of Medicine and Allied Sciences* 65, 65–102.

²⁹⁰ H.G. Cocks, ‘Secrets, Crimes and Diseases’ in Matt Cook (ed), *A Gay History of Britain: Love and Sex Between Men Since the Middle Ages* (Greenwood World Publishing, 2007) 107,

²⁹¹ HG Cocks, ‘Secrets, Crimes and Diseases’ in Matt Cook (ed), *A Gay History of Britain: Love and Sex Between Men Since the Middle Ages* (Greenwood World Publishing, 2007) 107, 135.

²⁹² Benjamin Kahan, *The Book of Minor Perverts: Sexology, Etiology, and the Emergence of Sexuality* (University of Chicago Press, 2019) 1.

²⁹³ Byrne Fone, *Homophobia: A History* (Picador USA, 2000) 274.

²⁹⁴ For a consideration of how the vocabulary of “perversion” affected people’s sense of their own identity, see Matt T Reed, ‘Historicizing inversion: or how to make a homosexual’ (2001) 14 *History of the Human Sciences* 1–29. In addition, the association of gender deviance and homosexual offences continues well into the twentieth century. For example, the use of cosmetics was treated as relevant in prosecutions for sodomy in London following World War I: see Matt Houllbrook, ‘“The Man with the Powder Puff” In Interwar London’ (2007) 50 *The Historical Journal* 145.

²⁹⁵ Transcript of the Inquiry, 21 November 2022, T202.1–19 (TRA.00004.00001).

²⁹⁶ Jack Drescher, ‘Out of the DSM: Depathologizing Homosexuality’ (2015) 5 *Behavioural Sciences* 565, 571–572.

²⁹⁷ Jack Drescher, ‘Out of the DSM: Depathologizing Homosexuality’ (2015) 5 *Behavioural Sciences* 565, 571–572.

The first Mardi Gras

- 4.48. A date of huge significance in LGBTIQ history in Australia is 24 June 1978. Mr Wotherspoon explained that, on this date, “the tension between police and the gay community culminated in the notorious first Mardi Gras.”²⁹⁸ He described the first Mardi Gras as being “Sydney’s version of the Stonewall Riots”.²⁹⁹ Many of the witnesses to the Context Hearing addressed in their evidence the significance of the first Mardi Gras.
- 4.49. At the first Mardi Gras, 53 people were arrested after police disrupted the peaceful march down Oxford Street from Taylor Square to Hyde Park.³⁰⁰ Those who marched at the first Mardi Gras, and participated in protests concerning the arrest of marchers, are now referred to as the “78ers”. Many of the marchers were beaten by police, and *The Sydney Morning Herald* published a complete list of the names and occupations of those who were arrested.³⁰¹
- 4.50. There are many resources available that tell the story of the first Mardi Gras in detail, including the online resource *First Mardi Gras*, which includes text written by four of the 78ers.³⁰² In 1999, Gavin Harris, in conjunction with a number of photographers, and sponsored by a range of organisations, published *It was a Riot: Sydney’s First Gay & Lesbian Mardi Gras*, which contains photographs and accounts from marchers.

Other legal developments

- 4.51. The movement towards decriminalisation was by no means the only significant legal development throughout the period of the Terms of Reference in respect of the LGBTIQ community. As noted above, it is important that it be understood that these legal developments do not always represent an optimal outcome for the LGBTIQ community, nor do they necessarily equate to social change. Indeed, many of the hate crimes addressed in this Report occurred subsequent to the decriminalisation of homosexuality in NSW, and anti-LGBTIQ discrimination and violence continues to this day, both institutionally and socially.

²⁹⁸ Exhibit 2, Tab 1, Statement of Garry Wotherspoon, 14 November 2022, [116] (SCOI.77300).

²⁹⁹ Exhibit 2, Tab 1, Statement of Garry Wotherspoon, 14 November 2022, [116] (SCOI.77300).

³⁰⁰ Exhibit 2, Tab 1, Statement of Garry Wotherspoon, 14 November 2022, [116] (SCOI.77300).

³⁰¹ See the remarks of Graham Willett, quoted in The National Museum of Australia, “First gay Mardi Gras”, (Web Page, 21 September 2022) <<https://www.nma.gov.au/defining-moments/resources/first-gay-mardi-gras>>.

³⁰² See ‘Welcome to First Mardi Gras Inc,’ First Mardi Gras (Web Page) <<https://www.78ers.org.au/>>.

Developments in anti-discrimination law

- 4.52. In 1977 “homosexuality” was added as a protected attribute under the *Anti-Discrimination Act 1977* (the ***Anti-Discrimination Act***). Discrimination on “transgender grounds” was additionally prohibited by a 1996 amendment.³⁰³ The *Anti-Discrimination Act* also prohibits “vilification” (defined to mean a public act which “incites hatred towards, serious contempt for, or severe ridicule for, a person or group of persons”) on the basis of homosexuality or on “transgender grounds”,³⁰⁴ or on the basis that a person is or is thought to be “HIV/AIDs infected”.³⁰⁵
- 4.53. The *Anti-Discrimination Act* does not extend to prohibit discrimination on the basis of gender identity or intersex status; nor does it regard sexualities other than “homosexuality” as a protected attributes (“homosexual” being defined as “male or female homosexual”).³⁰⁶ This is to be contrasted with the greater protection available under Victorian anti-discrimination law, which since 2000 has prohibited discrimination on the grounds of “sexual orientation” and “gender identity”,³⁰⁷ and since 2021 on the ground of “sex characteristics”.³⁰⁸ There is evidently a need to re-evaluate the language deployed in NSW legislation.
- 4.54. There are now LGBTIQ anti-discrimination protections in every State, albeit of narrower scope in Queensland,³⁰⁹ the Northern Territory,³¹⁰ and Western Australia,³¹¹ and broader in South Australia,³¹² Tasmania,³¹³ and the ACT.³¹⁴
- 4.55. There is a parallel set of anti-discrimination protections available to LGBTIQ people under federal law. In 1986, the federal government created the Human Rights and Equal Opportunity Commission, an independent statutory agency charged with administering federal anti-discrimination legislation, including the *Sex Discrimination Act 1984* (Cth) (the ***Sex Discrimination Act***), and with hearing complaints concerning discrimination on specified grounds in an employment context or in other areas of public life.³¹⁵ That body was replaced by the Australian Human Rights Commission (the **AHRC**) in 2009.

³⁰³ *Anti-Discrimination Act 1977* s. 38B.

³⁰⁴ *Anti-Discrimination Act 1977* ss. 38S, 49ZT.

³⁰⁵ *Anti-Discrimination Act 1977* s. 49ZXB.

³⁰⁶ *Anti-Discrimination Act 1977* s. 4(1) (definition of “homosexual”).

³⁰⁷ *Equal Opportunity (Gender Identity and Sexual Orientation) Act 2000* (Vic) s. 5 inserted s 6(ac) “gender identity” and s. 6(l) “sexual orientation” into the *Equal Opportunity Act 1995* (Vic). These protected attributes are now provided for by *Equal Opportunity Act 2010* (Vic) ss. 6(p) and 6(d), respectively.

³⁰⁸ *Equal Opportunity Act 2010* (Vic) s. 6(oa).

³⁰⁹ *Anti-Discrimination Act 1991* (Qld) ss. 7(m) (“gender identity”), 7(n) (“sexuality”), with “sexuality” defined as “heterosexuality, homosexuality or bisexuality” (ch 1).

³¹⁰ *Anti-Discrimination Act 1992* (NT) s. 19(1)(c) (“sexuality”), with “sexuality” defined as “the sexual characteristics or imputed sexual characteristics of heterosexuality, homosexuality, bisexuality or transsexuality (s. 4(1)).

³¹¹ *Equal Opportunity Act 1984* (WA) ss. 35AB (“gender history grounds”), 35O (“sexual orientation”), with “sexual orientation” defined as “heterosexuality, homosexuality, lesbianism or bisexuality and includes heterosexuality, homosexuality, lesbianism or bisexuality imputed to the person” (s. 4(1)).

³¹² *Equal Opportunity Act 1984* (SA) ss. 29(2a) (“gender identity”), 29(3) (“sexual orientation”), 29(4) (“intersex status”).

³¹³ *Anti-Discrimination Act 1998* (Tas) ss. 16(c) (“sexual orientation”), 16(e) (“gender”), 16(ea) (“gender identity”), 16(eb) (“intersex variations of sex characteristics”).

³¹⁴ *Discrimination Act 1991* (ACT) ss. 7(1)(g) (“gender identity”), 7(1)(v) (“sex characteristics”), 7(1)(w) (“sexuality”).

³¹⁵ *Human Rights and Equal Opportunity Commission Act 1986* (Cth). See some early recommendations on the point in *Royal Commission into Human Relationships* (Final Report, 21 November 1977), Volume 6, Recommendations [95]–[99].

- 4.56. The *Sex Discrimination Act* as originally enacted only prohibited discrimination on the grounds of “sex”, marital status, or pregnancy. Only in 2013 did the federal government amend the Act to broaden its scope substantially, making it unlawful to discriminate on the basis of “sexual orientation, gender identity, intersex status, marital or relationship status”.³¹⁶

Defamation

- 4.57. One aspect of the law which draws on social expectations is defamation. The imputation of homosexuality was still considered to be defamatory in the UK in the mid-20th century.³¹⁷ Despite the process of decriminalisation in the late 20th century, defamation cases in Australia in this period “proceeded on the basis that imputations relating to homosexuality were not only legally capable of being defamatory but were inherently actually defamatory,”³¹⁸ although an imputation concerning homosexuality was frequently accompanied by other imputations.³¹⁹
- 4.58. In the early 21st century there was some divergence in the authorities concerning whether or not an imputation of homosexuality was defamatory per se.³²⁰ In the case of *Gluyas v Canby*, Justice Forrest concluded that whether an implication that a person was homosexual was defamatory would turn on the circumstances of the case (in that case, the plaintiff was heterosexual and married).³²¹

The “homosexual advance” defence

- 4.59. It took until the early 21st century for the so called “gay panic” or “homosexual advance” defence to be abolished by statute. This defence to murder was available where a person responded with lethal violence to a non-violent “homosexual advance”.³²² The homosexual advance defence was the subject of extensive and well-founded criticism from academics, jurists, activists and politicians for many years.³²³

³¹⁶ *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* (Cth), introducing relevant definitions in s. 4(1) and prohibitions in ss 5A–5C.

³¹⁷ *Kerr v Kennedy* [1942] 1 KB 409, 412–413.

³¹⁸ Theodore Bennett, ‘Not So Straight Talking: How Defamation Law Should Treat Imputations of Homosexuality’ (2016) 35(2) *University of Queensland Law Journal* 313, 315; *Harrison v Galuszko* (Unreported, Supreme Court of Western Australia, Acting Master Adams, 8 November 1991); *Cruise v Express Newspapers plc* [1998] EWCA Civ 1269; [1999] QB 931.

³¹⁹ See, e.g., *Australian Broadcasting Corporation v Hanson* [1998] QCA 306, which concerned the playing of the satirical song “Back Door Man” on national radio.

³²⁰ See *Rivkin v Amalgamated Television Services Pty Limited* [2001] NSWSC 432 at [26], [30]; *John Fairfax Publications Pty Ltd v Rivkin* (2003) 201 ALR 77 at [10]; *Kelly v Fairfax Publications Ltd* [2003] NSWSC 586.

³²¹ *Gluyas v Canby* [2015] VSC 11, [45]–[46]. See also *Tassone v Kirkham* [2014] SADC 134.

³²² See, generally, Kerstin Braun and Anthony Gray, ‘Green and Lindsay: Two Steps Forward - Five Steps Back Homosexual Advance Defence - Quo Vadis’ (2016) 41(1) *University of Western Australia Law Review* 91.

³²³ *Green v The Queen* (1997) 191 CLR 334, 415 (Kirby J); Ben Golder, ‘The Homosexual Advance Defence and the Law/Body Nexus: Towards a Poetics of Law Reform’ (2004) 11(1) *Murdoch University Electronic Journal of Law* [18]; Santo De Pasquale, ‘Provocation and the Homosexual Advance Defence: The Deployment of Culture as a Defence Strategy’ (2002) 26(1) *Melbourne University Law Review* 110, 117.

- 4.60. Although referred to as the “homosexual advance defence” or the “gay panic” defence, arguments of this nature did not constitute a stand-alone defence but could be raised as a component of the pleas of self-defence or provocation.³²⁴ In the context of the partial defence of provocation as it previously applied in every Australian State and Territory, the result of successful invocation of the homosexual advance defence was that a murder charge was downgraded to manslaughter.
- 4.61. Australian jurisdictions did not abolish it until 2003 in Tasmania,³²⁵ 2004 in the ACT,³²⁶ 2005 in Victoria,³²⁷ 2008 in Western Australia,³²⁸ 2014 in NSW,³²⁹ 2017 in Queensland,³³⁰ and 2020 in South Australia.³³¹

Family law

- 4.62. There have also been significant developments over the last century in the sphere of family law. One of the most well-known of these is that on 9 December 2017, the *Marriage Act 1961* (Cth) was amended to give same sex/gender couples the same right to marry as heterosexual couples.³³² Only in 2008 did the federal government amend the *Family Law Act 1975* (Cth) and other basic laws to accord rights to same sex/gender couples in a *de facto* or registered relationship on an equal footing to heterosexual couples. That included recognition of a consenting female *de facto* partner as the parent of a child born to a woman as a result of an artificial conception procedure.³³³
- 4.63. Some legal recognition of same sex/gender relationships was available at a State level prior to this time: for example, in 2010 in NSW the *Relationships Register Act 2010* was introduced, allowing adult couples of any sex/gender to register their relationship with the Registry of Births, Deaths and Marriages.
- 4.64. Same-sex/gender couples have been allowed to adopt children by joint petition (as distinguished from an application as a step-parent) since 2002 in Western Australia;³³⁴ 2004 in the Australian Capital Territory,³³⁵ 2010 in New South

³²⁴ Mention should also be made of the ‘trans panic defence’, which may be relied upon in situations where a defendant kills a trans person and claims by way of defence that their discovery of the victim’s gender identity being different from their outward presentation provokes a loss of control. See Cynthia Lee, ‘The Trans Panic Defense: Masculinity, Heteronormativity, and the Murder of Transgender Women’ (2014) 66 *Hastings Law Journal* 77.

³²⁵ *Criminal Code Amendment (Abolition of Defence of Provocation) Act 2003* (Tas).

³²⁶ *Crimes Act 1900* (ACT) s. 13(3).

³²⁷ *Crime (Homicide) Act 2005* (Vic).

³²⁸ *Criminal Law Amendment (Homicide) Act 2008* (WA).

³²⁹ *Crimes Amendment (Provocation) Act 2014*.

³³⁰ *Criminal Code 1899* (Qld) s. 304, as amended by the *Criminal Law Amendment Act 2016* (Qld).

³³¹ *Statutes Amendment (Abolition of Defence of Provocation and Related Matters) Act 2020* (SA), s. 6, inserting a new s 14B into the *Criminal Law Consolidation Act 1935* (SA).

³³² *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cth). See some early discussions of this point in *Royal Commission into Human Relationships* (Final Report, 21 November 1977), Volume 6, Chapter 6, [70].

³³³ *Family Law Act 1975* (Cth) s. 60H(2).

³³⁴ *Acts Amendment (Lesbian and Gay Law Reform) Act 2002* (WA), amending the *Adoption Act 1994* (WA).

³³⁵ *Parentage Act 2004* (ACT) Sch 1, amending the *Adoption Act 1993* (ACT).

Wales,³³⁶ 2013 in Tasmania,³³⁷ 2016 in Queensland and Victoria,³³⁸ 2017 in South Australia,³³⁹ and 2018 in the Northern Territory.³⁴⁰ The first adoption by two men in Australia occurred in Western Australia in June 2007.

- 4.65. Even then, progress has not been linear. As recently as August 2007, the federal government announced it would legislate to prevent same-sex/gender couples from adopting a child overseas, and would not recognise the adopted children of same-sex/gender couples.³⁴¹ While, as matters turned out, that bill was never tabled owing to a change in government, it serves only to illustrate the precarity which has attended efforts to unwind the systemic discrimination faced by the LGBTIQ community.

The relevance of legal developments

- 4.66. These legal developments are set out to provide further contextual background to the evidence given by witnesses before the Inquiry concerning NSW during the period of the Terms of Reference. As can be seen from the matters set out above, the 20th century was a period of significant legal developments concerning the LGBTIQ community. This brief history should not be understood as suggesting that the LGBTIQ community does not continue to experience discrimination, including in spheres of law.

The social and historical evolution of the LGBTIQ community

- 4.67. The opening portion of this chapter has focused largely on legal developments concerning the regulation of same sex/gender relationships and sexual activity. It is important to acknowledge that many significant social, political and historical developments occurred over this period. The discriminatory and unjustified oppression of the LGBTIQ community through the criminal law and its enforcement did not prevent the evolution of diverse and thriving LGBTIQ communities, and there is a wide body of scholarship dealing with the social and political history of the LGBTIQ community. While detailed consideration of this topic is outside the scope of this Report, it is important to acknowledge the history of resistance, pride and advocacy in the LGBTIQ community.
- 4.68. Before turning to the evidence I heard at the Context Hearing, there are some other important contextual matters I wish to address.

³³⁶ *Adoption Amendment (Same Sex Couples) Act 2010* (NSW), amending the *Adoption Act 2000* (NSW).

³³⁷ *Adoption Amendment Act 2013* (Tas), amending the *Adoption Act 1988* (Tas).

³³⁸ *Adoption and Other Legislation Amendment Act 2016* (Qld); *Adoption Amendment (Adoption by Same-Sex Couples) Act 2015* (Vic) (entered into force 1 September 2016).

³³⁹ *Adoption (Review) Amendment Act 2016* (SA).

³⁴⁰ *Adoption of Children Legislation Amendment (Equality) Act 2018* (NT).

³⁴¹ See Family Law (Same Sex Adoption) Bill 2007 (Cth).

Unknown victims and unreported violence

Aboriginal and Torres Strait Islander victims

- 4.69. There are no known Aboriginal or Torres Strait Islander victims among the cases considered by the Inquiry.
- 4.70. As I explain below, the Inquiry received evidence from Dr Eloise Brook concerning the bureaucratic erasure of trans and gender diverse people. While it is important to avoid conflating gender with cultural or racialised identities, it is appropriate to consider whether it is possible that there were Aboriginal and/or Torres Strait Islander people whose deaths had not come to the attention of the Inquiry.
- 4.71. Advice from members of the LGBTIQ Aboriginal community supports this possibility and highlights a number of reasons why this may be the case, including:
- a. Historical fear and/or distrust among Aboriginal communities in approaching and working with police;
 - b. People hiding their Aboriginal and/or Torres Strait Islander identity in order to keep themselves safe;
 - c. People not knowing their Aboriginal and/or Torres Strait Islander heritage as a direct result of the impacts of colonisation and the Stolen Generations; and
 - d. Deaths being reported as a bias crime based on race and not due to a person's sexuality or gender identity, or not recorded as bias-motivated at all.
- 4.72. I consider it probable that bureaucratic erasure has occurred, and that there were deaths of Aboriginal and/or Torres Strait Islander people which, for a variety of reasons, have not been identified by the Inquiry. As observed above, a significant reason for this is likely to be that the possibility that a crime was motivated by LGBTIQ bias was not recorded in the NSWPF documents, and consequently that possibility has been lost to history.

Culturally and linguistically diverse victims

- 4.73. Accurate identification of a victim as having a culturally and linguistically diverse (**CALD**) background can be complex and fraught. However, on the evidence before the Inquiry, very few victims from CALD backgrounds were identified in the cases that are within the scope of this Inquiry.
- 4.74. While it is important not to conflate the experiences of Aboriginal and Torres Strait Islanders with those of people from CALD backgrounds, feedback from members of LGBTIQ CALD communities suggests that there may be similar issues, such as bureaucratic erasure, fear of contacting the police, people not identifying as CALD, or deaths being reported as a bias crime based on race or cultural background rather than gender or sexuality, or perceived gender or sexuality.

Observations on victims from marginalised communities

- 4.75. The communities mentioned above are not the only marginalised communities which, for differing reasons, may be underrepresented in the victims known to the Inquiry. Other such communities may include, for example, people living with disability.
- 4.76. Many marginalised communities face both shared and unique challenges which may affect their presence in the evidence available to the Inquiry. As noted, those experiences should not be conflated, even if there are similar consequences for the visibility of those communities in official records.
- 4.77. The interaction between membership of the LGBTIQ community and membership of other marginalised communities is a complex one. It is not one that I am in a position to deal with in the context of this Report. However, it is important for me to recognise the likelihood that Aboriginal and Torres Strait Islander persons, those from CALD backgrounds and persons from other marginalised communities were also victims of violence motivated by LGBTIQ bias.

Interactions between the LGBTIQ community and police

- 4.78. The witnesses who gave evidence at the Context Hearing dealt extensively with the relationship, and particularly the historical relationship, between the LGBTIQ community and the NSWPF.
- 4.79. This evidence raised two related questions. The *first* was what mechanisms are available to a person who wishes to make a complaint about police conduct in NSW (and how they compare to those available in other jurisdictions). The *second* is what steps have been taken, in NSW and in other jurisdictions, to facilitate the education of police in relation to the LGBTIQ community, and a better relationship between police and the LGBTIQ community.

Complaint mechanisms available in NSW

- 4.80. There are at least two avenues open to members of the LGBTIQ community in NSW to complain about the conduct of a police officer; and two additional avenues by which to complain about discrimination on the basis of gender identity, intersex status or sexuality in the context of employment, education, the provision of goods and services, or other areas of public life. These are summarised in the following table.

Mechanism	Enabling statute
NSWPF Review Mechanisms	
Internal complaint to Commissioner of Police	<i>Police Act 1990</i>
Complaint to Law Enforcement Conduct Commission	<i>Law Enforcement Conduct Commission Act 2016</i>
Human Rights Complaints Mechanisms	
Complaint to the Australian Human Rights Commission	<i>Australian Human Rights Commission Act 1986 (Cth)</i>
Complaint to Anti-Discrimination NSW	<i>Anti-Discrimination Act 1977</i>

- 4.81. It is important to acknowledge that the fact a complaint mechanism is available does not mean that members of the LGBTIQ community (or members of other marginalised groups) will feel comfortable using that mechanism, or that it will be accessible to all people within that group. This is particularly true of formal or legal/quasi-legal processes.

Internal complaint to the Commissioner of Police

- 4.82. Members of the public may make complaints about the NSWPF or its officers to the Commissioner of the NSWPF by lodgement of a complaint form.³⁴² That complaint can be anonymous.³⁴³ All complaints are registered in a “misconduct matters information system” administered by the Commissioner of Police.³⁴⁴ The complaint must be forwarded to the Commissioner of Police as soon as practicable after it is received.³⁴⁵ Thereafter, the Commissioner of Police may decide to investigate the matter, refer the matter to the Law Enforcement Conduct Commission (the **LECC**) (see below), or take no further action.³⁴⁶

³⁴² *Police Act 1990*, ss. 124, 125.

³⁴³ *Police Act 1990*, s. 126.

³⁴⁴ *Police Act 1990*, ss. 128–129; *Police Regulation 2015*, r. 56.

³⁴⁵ *Police Act 1990*, s. 130(1).

³⁴⁶ *Police Act 1990*, s. 131(1).

- 4.83. If the Commissioner of Police decides to investigate, the investigation must be conducted in an “effective and timely” manner.³⁴⁷ If the matter under investigation is “indicative of a systemic problem involving the NSW Police Force generally, or a particular area of the NSW Police Force”, the investigation may extend beyond any officer who is the subject of the complaint and to the NSWPF generally or the relevant area.³⁴⁸ If it appears to a police officer conducting an investigation that sufficient evidence exists to warrant the prosecution of a police officer for an offence, the police officer is to refer the matter to the Commissioner of Police for consideration.³⁴⁹
- 4.84. The Inquiry is not aware of any publicly available information concerning the number, substance or outcome of complaints made to the Commissioner of Police via this mechanism. In light of the history of police conduct in relation to the LGBTIQ community in NSW, it would be entirely reasonable for members of the LGBTIQ community to have reservations about the efficacy of this complaint system.

Complaint to the Law Enforcement Conduct Commission

- 4.85. Members of the public may also lodge a formal complaint with the LECC. This mechanism replaced that previously available under Pt 8A of the *Police Act 1900*.
- 4.86. The LECC is a statutory body responsible for (among other things) providing for the independent detection, investigation and exposure of serious misconduct and serious maladministration within the NSWPF.³⁵⁰ Any person may make a complaint to the LECC in writing about a police officer’s conduct which could amount to police misconduct or maladministration.³⁵¹ That complaint can be anonymous.³⁵² Before considering the complaint, the LECC may request further information about the complaint, or request that the complainant verify the complaint by making a statutory declaration.³⁵³
- 4.87. Depending on the nature of the complaint, the LECC may decide to refer the matter to the Commissioner of Police for investigation (possibly subject to the oversight of LECC officers); to investigate the matter itself; or to refer the matter to some other body such as the ODPP.³⁵⁴ In investigating the matter itself, the LECC has powers to obtain information and documents, to enter public premises, to conduct public or private examinations, to compel the attendance of witnesses, and to issue search warrants and seek the issue of surveillance device warrants.³⁵⁵

³⁴⁷ *Police Act 1990*, s. 136(1)(a).

³⁴⁸ *Police Act 1990*, s. 136(2).

³⁴⁹ *Police Act 1990*, s. 139(1).

³⁵⁰ *Law Enforcement Conduct Commission Act 2016*, s. 3(b).

³⁵¹ *Law Enforcement Conduct Commission Act 2016*, s. 35(1).

³⁵² *Law Enforcement Conduct Commission Act 2016*, s. 37(1).

³⁵³ *Law Enforcement Conduct Commission Act 2016*, s. 40(1).

³⁵⁴ *Law Enforcement Conduct Commission Act 2016*, Pt. 5 Div 3.

³⁵⁵ *Law Enforcement Conduct Commission Act 2016*, Pt. 6.

- 4.88. Where the LECC has held an examination by way of public hearing, it must prepare a report and provide it to the Presiding Officer of each House of Parliament.³⁵⁶ The report must include a statement as to any findings, opinions and recommendations made and the corresponding reasons.³⁵⁷ Otherwise, if the LECC decides to investigate a misconduct matter itself, it must prepare a report at the conclusion of its investigation, including comments and recommendations as it considers appropriate, and must provide a copy of the report to the complainant, the responsible Minister and the Commissioner of Police, and (unless the LECC deems it inappropriate) the officer who was the subject of the complaint.³⁵⁸
- 4.89. Where the matter is referred by the LECC to the NSWPF for investigation, the LECC can monitor that investigation, including by requesting information or a review of a decision made by the Commissioner of Police;³⁵⁹ and may (but is not obliged to) prepare a report on that investigation, including by making comments and recommendations.³⁶⁰

Complaint under NSW anti-discrimination legislation

- 4.90. Any person can complain to the President of the Anti-Discrimination Board (now known as Anti-Discrimination New South Wales (**ADNSW**)) that another person has contravened a provision of the *Anti-Discrimination Act*.³⁶¹
- 4.91. The *Anti-Discrimination Act* relevantly prohibits discrimination “on transgender grounds”³⁶² or on grounds of “homosexuality”³⁶³ in various contexts, including employment, education, provision of goods and services, accommodation and registered clubs.³⁶⁴ It also prohibits a person from inciting hatred towards, serious contempt for, or severe ridicule of a person on the ground that they are trans or “homosexual”,³⁶⁵ or on the basis that they are or are thought to be HIV/AIDS infected.³⁶⁶
- 4.92. The President of ADNSW is to determine whether or not to accept the complaint,³⁶⁷ and may decline it if (among other things) the conduct complained of occurred more than 12 months before the complaint, or if no part of the conduct complained of could amount to a contravention of the Act.³⁶⁸

³⁵⁶ *Law Enforcement Conduct Commission Act 2016*, s. 132.

³⁵⁷ *Law Enforcement Conduct Commission Act 2016*, s. 133.

³⁵⁸ *Law Enforcement Conduct Commission Act 2016*, s. 135.

³⁵⁹ *Law Enforcement Conduct Commission Act 2016*, ss. 103–105.

³⁶⁰ *Law Enforcement Conduct Commission Act 2016*, s. 134.

³⁶¹ *Anti-Discrimination Act 1977* s. 87A(1).

³⁶² As defined by *Anti-Discrimination Act 1977* s. 38B.

³⁶³ As defined by *Anti-Discrimination Act 1977* s. 49ZG.

³⁶⁴ *Anti-Discrimination Act 1977* ss 38K–38O; ss. 49ZO–49ZR.

³⁶⁵ *Anti-Discrimination Act 1977* ss. 38S, 49ZT.

³⁶⁶ *Anti-Discrimination Act 1977* s. 49ZXB.

³⁶⁷ *Anti-Discrimination Act 1977* s. 89B(1).

³⁶⁸ *Anti-Discrimination Act 1977* s. 89B(2).

- 4.93. Otherwise the President is to investigate each complaint they have accepted, and to that end may request information or documents from the complainant or the person against whom the complaint is made.³⁶⁹ The President may undertake to resolve the complaint by conciliation.³⁷⁰ The President can also refer the complaint to the New South Wales Civil and Administrative Tribunal (**NCAT**) either on their own initiative or at the request of a complainant.³⁷¹
- 4.94. Upon hearing the matter, NCAT may dismiss the complaint; or if it finds the complaint to be substantiated, may make a number of orders including that the person the subject of the complaint pay the complainant up to \$100,000 by way of compensation for any loss or damage suffered as a result of the offending conduct, or that the respondent publish an apology.³⁷²
- 4.95. NCAT’s decision on the merits of a complaint is internally appealable to NCAT’s Appeal Panel as of right on a question of law or with leave on other grounds,³⁷³ and the Appeal Panel’s decision is appealable on a question of law to the Supreme Court.³⁷⁴
- 4.96. In the 2021-2022 reporting period, 29 (1%) of the 2,894 inquiries received by ADNSW related to discrimination on “transgender grounds”, 30 (1%) to discrimination on the basis of “homosexuality”, eight (0.3%) for homosexual vilification and four (0.1%) for transgender vilification.³⁷⁵ Of the 1,626 complaints received during the same period, 14 (0.9%) related to discrimination on the basis of “homosexuality”, 18 (1.1%) to discrimination on transgender grounds”, five (0.3%) for homosexual vilification and four (0.2%) for transgender vilification.³⁷⁶ These figures tend to suggest that this mechanism is underutilised by members of the LGBTIQ community and generally.

Complaint under federal anti-discrimination legislation

- 4.97. Any person may make a complaint to the AHRC alleging discrimination on the basis of “sexual orientation”, “gender identity” or “intersex status” in an employment context or in relation to education, the provision or acquisition of goods and services, accommodation or land, or membership of clubs.³⁷⁷

³⁶⁹ *Anti-Discrimination Act 1977* s. 90B.

³⁷⁰ *Anti-Discrimination Act 1977* s. 91A.

³⁷¹ *Anti-Discrimination Act 1977* ss. 93A–93C.

³⁷² *Anti-Discrimination Act 1977* s. 108.

³⁷³ *Civil and Administrative Tribunal Act 2013* ss. 32, 80(1), 80(2)(b); Sch 3, cl 3, 15.

³⁷⁴ *Civil and Administrative Tribunal Act 2013* s. 83(1).

³⁷⁵ Anti-Discrimination NSW, *Annual Report 2021–22*, (Report, 2022) 42 <<https://antidiscrimination.nsw.gov.au/anti-discrimination-nsw/about-us/reports-and-submissions/annual-reports/annual-report-2021-22.html>>.

³⁷⁶ Anti-Discrimination NSW, *Annual Report 2021–22*, (Report, 2022) 43 <<https://antidiscrimination.nsw.gov.au/anti-discrimination-nsw/about-us/reports-and-submissions/annual-reports/annual-report-2021-22.html>>.

³⁷⁷ See *Sex Discrimination Act 1984* (Cth) ss. 5–5C, 14–27; *Australian Human Rights Commission Act 1986* (Cth) s. 46P.

- 4.98. Where they consider a complaint to be meritorious, the President of the AHRC will typically hold a conciliation conference with the complainant and/or respondent in the first instance.³⁷⁸ If the complaint is unable to be resolved, and the AHRC terminates the complaint on one of the grounds in s 46PH of the *Australian Human Rights Commission Act 1986* (Cth), the complainant may bring an application in the Federal Court or Federal Circuit and Family Court of Australia (Division 2).³⁷⁹ Matters raised during conciliation are not admissible if the case proceeds in court.³⁸⁰
- 4.99. The AHRC received 3,736 complaints in the 2021-2022 reporting period, conducting 1,819 conciliation processes and resolving 1128 of the complaints.³⁸¹ That included 597 (16%) lodged under the *Sex Discrimination Act*; of which 82 complaints alleged discrimination on the basis of gender identity, three on the basis of intersex status and 50 on the basis of sexual orientation.³⁸²
- 4.100. Of those complaints, 15 were terminated without inquiry, 142 were terminated after inquiry (the majority on the basis that there was no reasonable prospect of conciliation), 89 were discontinued by the complainant, 71 were withdrawn by the complainant, and 218 were conciliated. Of those conciliated complaints, 64% were successfully resolved and 36% unable to be resolved.
- 4.101. It has also been argued by some scholars that the conciliation model, particularly in light of its confidential nature, is not appropriate for hate crimes or serious instances of discrimination. Dominique Allen and Alisia Blackham argue, “[the Australian] jurisdictions are consistent in treating discrimination as a personal wrong, which is best settled quickly and quietly behind closed doors. Rather than seeking ‘confrontation’, the various statutes were designed to be more conciliatory, while still intending to offer individual remedies.”³⁸³
- 4.102. Margaret Thornton observes that the individual, complaint-driven model of equality law, while embodying a view that discrimination is wrong, “chooses not to exert the punitive force of the law”, the justification being that “discriminators should be treated gently, preferably in a confidential setting, by means of conciliation and persuasion, as their conduct invariably arises out of unconscious racism or sexism, rather than from a conscious animus”.³⁸⁴

³⁷⁸ *Australian Human Rights Commission Act 1986* (Cth) s. 46PJ.

³⁷⁹ *Australian Human Rights Commission Act 1986* (Cth) s. 46PO.

³⁸⁰ *Australian Human Rights Commission Act 1986* (Cth) ss. 46PK(2), 46PKA.

³⁸¹ Australian Human Rights Commission, *Annual Report 2021-22* (Report, November 2022) 29 <<https://humanrights.gov.au/our-work/commission-general/publications/annual-report-2021-2022>>

³⁸² Australian Human Rights Commission, *2021-22 Complaints Statistics* (Report, 2022).

³⁸³ See, e.g., Dominique Allen and Alysia Blackham, 'Under Wraps: Secrecy, Confidentiality and the Enforcement of Equality Law in Australia and the United Kingdom' (2019) 43(2) *Melbourne University Law Review* 384, 395.

³⁸⁴ Margaret Thornton, *The Liberal Promise: Anti-Discrimination Legislation in Australia* (Oxford University Press, 1990) 37–38.

Observations in relation to the complaint models

- 4.103. The Inquiry's Terms of Reference concern the manner and cause of hate crime deaths. The evidence received by the Inquiry in the Context Hearing, however, contained shocking examples of the treatment of the LGBTIQ community by the NSWPF.
- 4.104. I would observe that robust and accessible complaint mechanisms are important to ensure accountability and oversight. The evidence before the Inquiry demonstrates that members of the LGBTIQ community have good reason to be cautious in their actions with the NSWPF, even if it is accepted that the historical attitude of some within the NSWPF no longer prevails.
- 4.105. I consider it would be beneficial for the NSWPF to take steps to ensure that members of the LGBTIQ community are empowered to raise any concerns about the conduct of the NSWPF. This can only assist in strengthening the relationship between the LGBTIQ community and the NSWPF: a matter that was acknowledged by the NSWPF witnesses in the Investigative Practices Hearing as beneficial to the work of the NSWPF. Such steps should acknowledge and accommodate the reasons that members of the LGBTIQ community may feel unease, reluctance or distrust about the prospect that their complaints will be taken seriously and dealt with appropriately.
- 4.106. The New South Wales Law Reform Commission is presently conducting a review of the *Anti-Discrimination Act*.³⁸⁵ I consider it would be valuable if an aspect of that review comprised consideration of the accessibility and efficacy of the complaint mechanisms available under the *Anti-Discrimination Act*. Having regard to the existence of this review, I will not make any specific recommendation in relation to the *Anti-Discrimination Act*.

Speaking Out Against Anti-Trans Violence: A Call For Justice

- 4.107. As set out in **Chapter 3**, in recognition of historical marginalisation of the trans and gender diverse community, the Inquiry commissioned an independent community engagement project led by the Gender Centre and SWOP. The project focused on hearing about the experiences of the trans and gender diverse community. On 23 June 2023, the Inquiry was provided with the report, titled *Speaking Out Against Anti-Trans Violence: A Call For Justice (A Call for Justice)*. I return to the report, and the recommendations contained in it, in **Chapter 16**.
- 4.108. I take this opportunity to thank all those who participated in the process that led to *A Call For Justice*. The report that has been produced, recording the lived experiences of people within the trans and gender diverse community, is a significant part of the Inquiry's work, and something that should be considered in the implementation of **Recommendation 8**.

³⁸⁵ New South Wales Law Reform Commission, 'Terms of reference', *Anti-Discrimination Act review*, (Web Page, 29 August 2023) <<https://www.lawreform.nsw.gov.au/current-projects/anti-discrimination-act-review/anti-discrimination-act-review-terms-of-reference.html>>.

- 4.109. I acknowledge the work of Dr Brook, Chantell Martin (SWOP) and Professor Noah Riseman in facilitating the report. *A Call For Justice* will remain available to the public after the conclusion of the Inquiry's work.
- 4.110. *A Call For Justice* sets out a long history of violence and oppression targeting the trans and gender diverse community in NSW, which continues to the present day. In addition, it names three people who may have fallen within Category B of the Inquiry's Terms of Reference. The Inquiry reviewed each of those cases, but determined that none fell within the Inquiry's Terms of Reference.

Witnesses at the Context Hearing

Garry Wotherspoon

- 4.111. Garry Wotherspoon provided the Inquiry with a statement dated 14 November 2022,³⁸⁶ and gave oral evidence at the public hearing on 21 November 2022.

Mr Wotherspoon's early life and academic work

- 4.112. Mr Wotherspoon is a writer, historian and former University of Sydney academic. In 2001, he was awarded Australia's Centenary of Federation Medal for his work as an academic, researcher and activist. In 1995–1996, he was the co-director of the Australian Centre for Lesbian and Gay Research at the University of Sydney. He has written extensively on aspects of gay life in NSW over the last century, and has published several books on gay history.³⁸⁷
- 4.113. Mr Wotherspoon was born in Waverley in 1940 and grew up in Maroubra. He described his teenage experiences in this way:³⁸⁸

I reached my teenage years in the 1950s. Although I knew by then that I had homoerotic inclinations I would not yet have identified as 'camp' or 'gay' or even 'homosexual'. I just liked men, I didn't care what the word was!

In the 1950s, exploring one's emerging sexuality was a fraught and dangerous process. Homosexual conduct was still illegal. I soon learned to live an important part of my life below the radar of public awareness. Socialising was very different for me than it was for my heterosexual friends – it was surreptitious and cautious.

³⁸⁶ Exhibit 2, Tab 1, Statement of Garry Wotherspoon, 14 November 2022 (SCOI.77300).

³⁸⁷ Exhibit 2, Tab 1, Statement of Garry Wotherspoon, 14 November 2022 [1]–[4] (SCOI.77300). See also Transcript of the Inquiry, 21 November 2022, T180.42–181.39 (TRA.00004.00001).

³⁸⁸ Exhibit 2, Tab 1, Statement of Garry Wotherspoon, 14 November 2022, [8]–[10]. See also Transcript of the Inquiry, 21 November 2022, T181.41–182.10 (TRA.00004.00001).

I started using ‘beats’ in my late teens. I explain the concept of beats, and discuss my use of them, ... below. Using the beats introduced me to older people who had already established a gay social life that I could tap into. I learned how to quickly read what was going on at a bar and where the gay bars were. Being in Sydney’s eastern suburbs made this easier, as I lived close to and was familiar with Oxford Street. By the late 1960s, Oxford Street had begun to take on a vibrant ‘camp’ life, elements of which had originally emerged in Kings Cross but subsequently moved to Oxford Street

...

- 4.114. In his oral evidence, Mr Wotherspoon expanded on the difficulties of meeting other men.³⁸⁹

The gay world is very different. Most straight people have time to meet others at church socials or the pub or sports club. We couldn’t do that sort of thing. How could you be open, because you didn’t know whether a response might be violence against you?

- 4.115. Although Mr Wotherspoon found that academia was a welcoming environment for a gay man, he felt able to write about gay history only once he had been awarded tenure. The fact he was writing in a field that was not considered “well-regarded subject matter” posed obstacles to his promotion.³⁹⁰
- 4.116. However, he found that the gay community was very receptive to his work on gay history and culture. Until the 1970s, the majority of records about “camp life” came from court reports and newspapers, which meant that the focus was on the criminality of homosexual life. Mr Wotherspoon, by contrast, conducted interviews with gay men about their lives.³⁹¹
- 4.117. In 1994, the Australian Centre for Gay and Lesbian Research was launched at the University of Sydney, as one of the only three such research institutions in the world. In early 1997, Mr Wotherspoon was appointed a NSW History Fellow, a position he held until late 1998. In that time, Mr Wotherspoon and a colleague, Clive Faro, conducted research that led to the publication of their book *Street Seen: A History of Oxford Street*.³⁹² Mr Wotherspoon has also worked as a speechwriter for several NSW politicians, and has been commissioned by a number of bodies to document their history.³⁹³

³⁸⁹ See also Transcript of the Inquiry, 21 November 2022, T182.12–18 (TRA.00004.00001).

³⁹⁰ Exhibit 2, Tab 1, Statement of Garry Wotherspoon, 14 November 2022 [13]–[14] (SCOI.77300). See also Transcript of the Inquiry, 21 November 2022, T183.23–29, T183.35–184.2 (TRA.00004.00001).

³⁹¹ Exhibit 2, Tab 1, Statement of Garry Wotherspoon, 14 November 2022 [18] (SCOI.77300).

³⁹² Exhibit 2, Tab 1, Statement of Garry Wotherspoon, 14 November 2022, [21] (SCOI.77300).

³⁹³ Exhibit 2, Tab 1, Statement of Garry Wotherspoon, 14 November 2022, [22] (SCOI.77300).

The LGBTIQ communities

4.118. Mr Wotherspoon commenced his statement by explaining that, while expressions like “the LGBTIQ community” are often used, there are many distinct groups, or communities, encompassed by such general expressions. Mr Wotherspoon said these communities are different to cultural or ethnic communities because people are not “born into” them but seek them out after having developed a sense of sexual or gender identity.³⁹⁴

4.119. Mr Wotherspoon observed that the LGBTIQ community is a “non-contiguous community”. He went on to say, specifically addressing the emergence of the word “gay” and the idea of a gay identity:³⁹⁵

... there has not always been a ‘gay’ identity. In the 1950s and 1960s, it became increasingly common to talk about ‘the homosexual’, as a person. This reflected a clear change from the pre-war period, where people spoke of individuals who would indulge in certain acts or commit various crimes. However, it was only after gay activism developed, in Sydney from around 1970, that many gay men developed a sense of being proud of being different, willing to openly identify as ‘gay’ and not live closeted lives.

Using the term ‘gay’ to describe same-sex-attracted people was popularised by the gay liberation movement that started in America. While the term ‘camp’ was used by many older same-sex-attracted men in the 1970s, the term ‘gay’ was more popular amongst the younger generation and tended to signify a pride in your sexual orientation.

...

Finally, the construct of an ‘LGBTIQ community’ (or some variation on the acronym) only started to emerge in the late 1970s. There is a great diversity within the LGBTIQ community, but there is an interest in creating a sense of political unity amongst our different identities. It conveys the sense that there are many of ‘us’, and that we can’t be ignored by politicians or lawmakers.

4.120. In his oral evidence, Mr Wotherspoon explained:³⁹⁶

It is a terminology that’s evolved. In the early 1970s, we just talked about ‘gay’, ‘gay liberation’, and that covered women and men. Over time, different sub-groups have asserted their own separate identity, so it’s gradually grown from, you know, gay, lesbian, bi - bisexual, trans, queer, and non-binary are some of the later ones, [and] people who don’t want to identify in any way in terms of their sexuality or gender identity.

³⁹⁴ Exhibit 2, Tab 1, Statement of Garry Wotherspoon, 14 November 2022, [23]–[24] (SCOI.77300).

³⁹⁵ Exhibit 2, Tab 1, Statement of Garry Wotherspoon, 14 November 2022, [26]–[29] (SCOI.77300).

³⁹⁶ Transcript of the Inquiry, 21 November 2022, T185.25–32 (TRA.00004.00001).

Beats

4.121. Mr Wotherspoon gave evidence about the nature and operation of beats in Sydney. He explained that “[b]eats have long been important in the lives of sexually active men with homoerotic desires, denied the many ways in which heterosexuals could meet each other.”³⁹⁷ Mr Wotherspoon explained:³⁹⁸

They were also quite often simply a place to meet other people of similar sexual orientation, which was important in a world where your values and lifestyle were often suspect and for a long time illegal. Sometimes beats would open the door to informal friendship networks, or were even a place to fall in love. Some people have met their life partners at beats.

4.122. Any place known to be a place for “picking up” other men could be described as a beat, but Mr Wotherspoon observed that the term usually, though not always, referred to outdoor areas. However, a beat could also refer to indoor settings, such as toilets in train stations, hotels, restaurants or coffee shops.³⁹⁹ In his oral evidence, Mr Wotherspoon explained, in relation to public toilets, that “[t]he illegality of homosexual contact or a way for meeting people meant that we had to be quite subversive in how we viewed what you might call the institutions of broader society.”⁴⁰⁰

4.123. He said there had always been a large number of outdoor beats in Sydney, and the locations were selected because they were secluded and provided a legitimate reason for men to visit casually.⁴⁰¹ Beats were, and remain, important for men who wanted to have sex with other men, but who did not want to be identified as “homosexual”, or were coming to terms with their sexuality. Those men might avoid areas like Oxford Street where gay men were well-known to congregate.⁴⁰²

4.124. Mr Wotherspoon began using beats in the late-1950s. By the 1960s he was aware of a range of beats in locations such as Rushcutters Bay, Moore Park, Marks Park, Alexandria Park, North Head and Giles Baths, often as a result of discussion at gay bars. Mr Wotherspoon’s personal knowledge of these beats spanned from the 1960s to the 1980s.⁴⁰³ He gave up attending beats in the mid-1980s, both because he had met his partner, and because HIV/AIDS made using beats less safe.⁴⁰⁴ Mr Wotherspoon also gave evidence about bars and hotels where men would meet one another.⁴⁰⁵

³⁹⁷ Exhibit 2, Tab 1, Statement of Garry Wotherspoon, 14 November 2022, [31] (SCOI.77300).

³⁹⁸ Exhibit 2, Tab 1, Statement of Garry Wotherspoon, 14 November 2022, [32] (SCOI.77300). See also Transcript of the Inquiry, 21 November 2022, T187.7–17 (TRA.00004.00001).

³⁹⁹ Exhibit 2, Tab 1, Statement of Garry Wotherspoon, 14 November 2022, [33] (SCOI.77300).

⁴⁰⁰ Transcript of the Inquiry, 21 November 2022, T189.25–43 (TRA.00004.00001).

⁴⁰¹ Exhibit 2, Tab 1, Statement of Garry Wotherspoon, 14 November 2022, [34] (SCOI.77300).

⁴⁰² Exhibit 2, Tab 1, Statement of Garry Wotherspoon, 14 November 2022, [35] (SCOI.77300). See also Transcript of the Inquiry, 21 November 2022, T190.5–17 (TRA.00004.00001).

⁴⁰³ Exhibit 2, Tab 1, Statement of Garry Wotherspoon, 14 November 2022, [37] (SCOI.77300). See also Transcript of the Inquiry, 21 November 2022, T182.26–44, T190.19–191.8 (TRA.00004.00001).

⁴⁰⁴ Exhibit 2, Tab 1, Statement of Garry Wotherspoon, 14 November 2022, [44] (SCOI.77300).

⁴⁰⁵ Transcript of the Inquiry, 21 November 2022, T191.10–45 (TRA.00004.00001).

- 4.125. Mr Wotherspoon said there had always been dangers associated with beats, and that “[t]here were and still are groups of young men, now known as ‘poofter bashers’. They were invariably young men, and they often frequented beats and bashed men they suspected of being homosexuals.”⁴⁰⁶ He observed it was difficult to know when “poofter bashing” became common, but he had not been aware of the dangers of bashings when he first started using beats, though that was not to say they were not occurring.⁴⁰⁷ His research suggested that “poofter bashing” was common from at least the 1960s.⁴⁰⁸
- 4.126. Mr Wotherspoon observed that a gay man who had been bashed at a beat would typically not report the matter to police, because doing so would draw unwanted attention and unwanted questioning. He said that “[f]or as long as homosexual conduct was criminal, there was a general sense among gay men that police were not there to protect them.”⁴⁰⁹ He said that in the 1980s and 1990s, the gay newspapers published information about attacks at beats, but it was unusual for this information to be reported in the mainstream media. He observed that it was only in the 21st century that the scale of violence came to be fully appreciated.⁴¹⁰

The LGBTIQ community and police

- 4.127. In his oral evidence, Mr Wotherspoon was asked by Senior Counsel Assisting whether the police attitude to men who had been bashed had changed in the 1980s and 1990s. Mr Wotherspoon said:⁴¹¹

I think there was a couple of answers to that. Institutions take a lot of time to change culture, and so certainly the attitude of much of the gay community, even after the law had changed in 1984, wasn't necessarily, “Oh, you can go to the police now, they will all be different.” And, to be quite honest, our general experience was that the police weren't particularly interested in gay bashings. And so, eventually we set up our own anti-violence project in 1990–91 to monitor what was actually going on, what was being reported, and what action was being taken in response to those reportings.

⁴⁰⁶ Exhibit 2, Tab 1, Statement of Garry Wotherspoon, 14 November 2022, [47] (SCOI.77300).

⁴⁰⁷ Exhibit 2, Tab 1, Statement of Garry Wotherspoon, 14 November 2022, [48] (SCOI.77300).

⁴⁰⁸ Exhibit 2, Tab 1, Statement of Garry Wotherspoon, 14 November 2022, [49] (SCOI.77300). See also Transcript of the Inquiry, 21 November 2022, T192.6–193.22 (TRA.00004.00001). The final report of the *Royal Commission Appointed to Inquire into and Report upon Matters relating to Homosexuality in Western Australia* also refers to “abundant and sickening proof” that physical assaults against gay men did occur, and heard evidence from one witness that such assaults were “regarded as the sport of ‘poofter-bashing’” during that period: see discussed in *Royal Commission into Human Relationships* (Final Report, 21 November 1977), Volume 6, Chapter 6, [34].

⁴⁰⁹ Exhibit 2, Tab 1, Statement of Garry Wotherspoon, 14 November 2022, [51] (SCOI.77300). See also Transcript of the Inquiry, 21 November 2022, T194.27–41 (TRA.00004.00001).

⁴¹⁰ Exhibit 2, Tab 1, Statement of Garry Wotherspoon, 14 November 2022, [52]–[54] (SCOI.77300).

⁴¹¹ Transcript of the Inquiry, 21 November 2022, T194.46–195.9 (TRA.00004.00001).

- 4.128. Mr Wotherspoon identified the police as a “second source of danger” for men who used beats.⁴¹² He said that “[t]he police, as enforcers of the laws and embodiments of prevailing social attitudes, had little tolerance for what they saw as perverts, degenerates, effeminates and paedophiles.”⁴¹³ He explained that police would often set out to trap gay men by acting as *agent provocateurs*.⁴¹⁴ Mr Wotherspoon observed that after 1952, and the introduction of laws against soliciting homosexual acts, police engaged in this conduct were themselves committing a criminal offence.⁴¹⁵
- 4.129. Mr Wotherspoon gave detailed evidence about Sydney’s gay history, which has been considered as part of the material the subject of **Chapter 2**.

Greg Callaghan

- 4.130. Greg Callaghan gave evidence on 21 November 2022.

Mr Callaghan’s background and involvement in the LGBTIQ community

- 4.131. Mr Callaghan is a journalist who currently holds a position as senior adviser and deputy editor of the *Good Weekend* magazine.⁴¹⁶ Mr Callaghan grew up in the southern suburbs of Sydney and lived, at various times, on the North Shore, and in the Inner West.
- 4.132. Mr Callaghan has been active in LGBTIQ community and social groups since the 1980s, and from 1979 he frequented Oxford Street and regularly attended Mardi Gras.⁴¹⁷ Mr Callaghan observed that, at times, police officers were involved in assaults on men at beats.⁴¹⁸
- 4.133. In 2007, Mr Callaghan published a book entitled *Bondi Badlands*, and in 2021 he hosted a podcast of the same name.⁴¹⁹ In the process of researching and producing both the book and the podcast, Mr Callaghan interviewed around 50 people, including witnesses, family members and survivors of violence.⁴²⁰ Mr Callaghan’s primary focus was on the deaths of Mr Warren and Mr Russell.⁴²¹

⁴¹² Exhibit 2, Tab 1, Statement of Garry Wotherspoon, 14 November 2022, [56] (SCOI.77300).

⁴¹³ Exhibit 2, Tab 1, Statement of Garry Wotherspoon, 14 November 2022, [56] (SCOI.77300).

⁴¹⁴ Exhibit 2, Tab 1, Statement of Garry Wotherspoon, 14 November 2022, [57] (SCOI.77300). Transcript of the Inquiry, 21 November 2022, T196.3–13 (TRA.00004.00001).

⁴¹⁵ Transcript of the Inquiry, 21 November 2022, T196.16–21 (TRA.00004.00001).

⁴¹⁶ Transcript of the Inquiry, 21 November 2022, T220.28–30, 220.47–221.3 (TRA.00004.00001).

⁴¹⁷ Exhibit 2, Tab 4, Statement of Gregory Callaghan, 17 November 2022, [6]–[7] (SCOI.77303).

⁴¹⁸ Exhibit 2, Tab 4, Statement of Gregory Callaghan, 17 November 2022, [58]–[59] (SCOI.77303).

⁴¹⁹ Exhibit 2, Tab 4, Statement of Gregory Callaghan, 17 November 2022, [8] (SCOI.77303).

⁴²⁰ Exhibit 2, Tab 4, Statement of Gregory Callaghan, 17 November 2022, [9] (SCOI.77303); Transcript of the Inquiry, 21 November 2022, T222.25–34 (TRA.00004.00001).

⁴²¹ Transcript of the Inquiry, 21 November 2022, T222.36–45 (TRA.00004.00001).

Sydney in the 1980s and onwards

- 4.134. Mr Callaghan gave evidence about gay culture and violence in Sydney from the 1980s onwards. He described the 1980s as being “the best of times and the worst of times for the LGBTQ community in Sydney.”⁴²² On the one hand, the community and businesses were thriving, and many gay bars emerged along Oxford Street, in addition to the Mardi Gras becoming the “go-to party of the year in Sydney”.⁴²³ However, the emergence of HIV/AIDS in Sydney came with increased stigmatisation of the gay community. The greater visibility of the gay community also increased the risk of violence at locations known to be frequented by gay men.⁴²⁴
- 4.135. In his oral evidence before the Inquiry, Mr Callaghan described the situation in this way:⁴²⁵

They were the best of times because the community came into its own in the 1980s. As a result of the Mardi Gras, that first demonstration in 1978, in terms of the growth of businesses within the LGBT community, from the early 80s onwards, social groups, community groups. Oxford Street itself, the number of venues in the 1970s. Gay bars were tucked away, they were behind blackened windows, they were upstairs. What happened in the 1980s is the signage came down to street level. Basically, the community came into its own. There was a blossoming of [LGBT] culture. Venues, as I say, businesses, social groups; that was the best of times.

...

The worst of times was that this also coincided with the HIV/AIDS epidemic. From around 1981 by the mid-to-late-1980s, young men, full of promise, full of youth with their whole lives ahead of them, were dying. The community, to its credit, through organisations like the Bobby Goldsmith Foundation at that time, set up support services. It also – we also became a lot more sophisticated in dealing, or the community groups did, I should say, in dealing with the media.

- 4.136. Mr Callaghan described the increased violence in this way:⁴²⁶

There were reports and stories that gangs of men – numbering from three to as many as a dozen – were targeting gay and transgender people, and this increased as the decade progressed. So-called ‘poofster bashing’, which had been a recreational sport among young men since the 1960s or earlier, had now become a blood sport.

⁴²² Exhibit 2, Tab 4, Statement of Gregory Callaghan, 17 November 2022, [10] (SCOI.77303).

⁴²³ Exhibit 2, Tab 4, Statement of Gregory Callaghan, 17 November 2022, [11] (SCOI.77303).

⁴²⁴ Exhibit 2, Tab 4, Statement of Gregory Callaghan, 17 November 2022, [12] (SCOI.77303).

⁴²⁵ Transcript of the Inquiry, 21 November 2022, T224.4–27 (TRA.00004.00001).

⁴²⁶ Exhibit 2, Tab 4, Statement of Gregory Callaghan, 17 November 2022, [14] (SCOI.77303).

- 4.137. He said that, by the late 1980s, the southern headland at Bondi, topped by Marks Park, had become an “epicentre of the violence and killings of gay men”.⁴²⁷ In his oral evidence, Mr Callaghan said that “...wherever there was a beat, there was violence and quite a significant up-tick.”⁴²⁸ He described the situation as being one where:⁴²⁹

Everyone in the LGBTQ community at the time – or so it seemed – knew what was happening with the bashing and murder of gay men. Missing persons were popping up in LGBTQ and mainstream newspapers, although many disappearances went unreported by the media unless there was a ‘story’ around it.

Cases were being dismissed as suicides by police, when friends and family of the victims knew this wasn’t the case.

I heard anecdotal reports that some of the same gang members were recognised at different bashings, suggesting these were serial offenders. There were a lot of young people who saw ‘poofter bashing’ as a form of entertainment on a Saturday night, especially after they had been out together for a few drinks.

- 4.138. Mr Callaghan said he had interviewed men who used beats, and some men attended beats for “community and company”.⁴³⁰ He also observed that gay men did not feel confident going to police in the 1980s, and that if they did, they “didn’t hold out a lot of hope the police would do anything.”⁴³¹ He referred to a “deep historical distrust of the police”, and noted the use of entrapment in the 1950s and the 1960s, and a story he was responsible for breaking concerning the involvement of police officers in attacks on gay men in Centennial Park in the early 1980s.⁴³²
- 4.139. That story concerned Senior Sergeant Mark Higginbotham of Victoria Police, who commenced his career as a young officer in NSW. Mr Callaghan described Senior Sergeant Higginbotham as the first person to come forward in relation to violence perpetrated on the gay community by police officers.⁴³³ When Senior Sergeant Higginbotham was a young officer, he tried to arrest a man for bashing a gay man. He was told by “the station brass”: “Oh, we don’t arrest poofter bashers.”⁴³⁴ Mr Callaghan observed that at the very end of the 1980s and early 1990s, the relationship between the gay community and the NSWPF started to change, but he said that until then, there was “enormous distrust” between the gay community and the NSWPF.⁴³⁵

⁴²⁷ Exhibit 2, Tab 4, Statement of Gregory Callaghan, 17 November 2022, [15] (SCOI.77303). See also Transcript of the Inquiry, 21 November 2022, T232.11–37 (TRA.00004.00001).

⁴²⁸ Transcript of the Inquiry, 21 November 2022, T227.9–21 (TRA.00004.00001).

⁴²⁹ Exhibit 2, Tab 4, Statement of Gregory Callaghan, 17 November 2022, [16]–[18] (SCOI.77303).

⁴³⁰ Exhibit 2, Tab 4, Statement of Gregory Callaghan, 17 November 2022, [20] (SCOI.77303).

⁴³¹ Exhibit 2, Tab 4, Statement of Gregory Callaghan, 17 November 2022, [21] (SCOI.77303).

⁴³² Exhibit 2, Tab 4, Statement of Gregory Callaghan, 17 November 2022, [22] (SCOI.77303).

⁴³³ Transcript of the Inquiry, 21 November 2022, T243.14–47 (TRA.00004.00001).

⁴³⁴ Transcript of the Inquiry, 21 November 2022, T233.34–40, T243.14–32 (TRA.00004.00001).

⁴³⁵ Transcript of the Inquiry, 21 November 2022, T233.42–47 (TRA.00004.00001).

- 4.140. Mr Callaghan identified that beats were “especially dangerous places”, both for gay men and for men who happened to be there and were assumed to be gay.⁴³⁶ He said he was often asked why gay men went to beats, and explained:⁴³⁷

...they were dangerous places, but they were also places of community, and for some men who are still in the closet, bisexual men, it was a place where they could go without – they clearly couldn’t go to Oxford Street where they might likely be seen, so they’d go to beats. So beats were often frequented by bisexual married men as well, but also people went there for community, for conversation, for company. They weren’t just about sexual activity.

The impact of HIV/AIDS

- 4.141. Mr Callaghan identified that “[a]t the height of the AIDS crisis, a lot of attackers claimed that they were doing the community a service by killing gay people.” He noted that terms like “gay cancer” and “gay plague” appeared in media articles, and that the Grim Reaper advertising campaign “resulted in a backlash against gay men and people living with HIV”.⁴³⁸ He described his experience of living through this period as a young man as a “scary time”.⁴³⁹

- 4.142. Mr Callaghan also identified a wide range of articles concerning violence against gay men in the 1980s and early 1990s.⁴⁴⁰ During his examination by Counsel Assisting, he explained that the coverage of HIV/AIDS, particularly against the background of things such as Mardi Gras, was “patchy”.⁴⁴¹ Mr Callaghan said he considered there was a nexus between the coverage of HIV/AIDS and the violence directed at gay men, saying:⁴⁴²

...I think that in their minds they were given kind of a perverse moral justification to bash and kill gay men because they were perceived at that time as the disease spreaders. So I don’t think the bashers needed much of an excuse, but this gave them kind of, if you like, a social justification; they’re doing society a favour by, you know, punishing gay men in various forms.

- 4.143. Mr Callaghan was taken in his evidence to an article from May 1991, where a person described as a “former poofter basher” expressed his motivation as being to “teach them a lesson”.⁴⁴³ Mr Callaghan said that the relevant article was a “nice microcosm of the attitudes in as much as it sums up one thing was that the nature of these crimes... was to ... “teach them a lesson”, to knock the, you know, the homosexuality out of them.”⁴⁴⁴

⁴³⁶ Transcript of the Inquiry, 21 November 2022, T232.39–233.22 (TRA.00004.00001); Exhibit 2, Tab 4, Statement of Gregory Callaghan, 17 November 2022, [19] (SCOI.77303).

⁴³⁷ Transcript of the Inquiry, 21 November 2022, T233.13–22 (TRA.00004.00001).

⁴³⁸ Exhibit 2, Tab 4, Statement of Gregory Callaghan, 17 November 2022, [23] (SCOI.77303).

⁴³⁹ Exhibit 2, Tab 4, Statement of Gregory Callaghan, 17 November 2022, [24] (SCOI.77303).

⁴⁴⁰ Exhibit 2, Tab 4, Statement of Gregory Callaghan, 17 November 2022, [42]–[44] (SCOI.77303).

⁴⁴¹ Transcript of the Inquiry, 21 November 2022, T224.44–224.4 (TRA.00004.00001).

⁴⁴² Transcript of the Inquiry, 21 November 2022, T225.19–25 (TRA.00004.00001).

⁴⁴³ Transcript of the Inquiry, 21 November 2022, T230.40–231.5 (TRA.00004.00001).

⁴⁴⁴ Transcript of the Inquiry, 21 November 2022, T231.15–20 (TRA.00004.00001).

- 4.144. Mr Callaghan distinguished between people he described as “recreational bashers”, who might act spontaneously in the context of a group, particularly having had “a few drinks”, and the “hardcore people ... who went out to seriously do damage to gay men and anybody else who sort of crossed their path within the LGBT community.”⁴⁴⁵
- 4.145. Mr Callaghan described the LGBTIQ media and its role in reporting potential hate crimes in this way:⁴⁴⁶

I should say that the LGBT media at that time, which consisted of, in Sydney, the Sydney Star Observer, the broadsheet newspaper that later became a tabloid, Campaign, and other publications that kind of came and went from between the late 1980s and the early 1990s were at the forefront of reporting these crimes. As I said earlier, it's a shame we don't have the archival material now, but they were certainly – because they were inside the community, they had the contacts, they weren't shy about reporting what was going on. You know, the stories like this [referring to Exhibit 2, Tab 120], again, are representative of what was being unveiled in the media at the time, the LGBT media at the time.

Community response to violence

- 4.146. For Mr Callaghan, the death of Kritchikorn Rattanjurathaporn was a turning point for the gay community.⁴⁴⁷ He described activism and advertisements decrying the violence against gay men, in addition to steps such as patrols by Dykes on Bikes and other gay volunteers around Oxford Street and Darlinghurst Road on Friday and Saturday nights.⁴⁴⁸
- 4.147. Mr Callaghan described the LGBTIQ community as being “a community under siege” at this point in time.⁴⁴⁹ He also expressed the view that the peak of the violence occurred between 1988 and 1991.⁴⁵⁰ Mr Callaghan identified that “by around 1990, the police were starting to step up to the plate and actually try and do something about the crime wave.” By that time, he said the NSWPF and the LGBTIQ community were liaising better and working together for the first time.⁴⁵¹

⁴⁴⁵ Transcript of the Inquiry, 21 November 2022, T231.26–44 (TRA.00004.00001).

⁴⁴⁶ Transcript of the Inquiry, 21 November 2022, T228.24–36 (TRA.00004.00001).

⁴⁴⁷ Exhibit 2, Tab 4, Statement of Gregory Callaghan, 17 November 2022, [25] (SCOI.77303).

⁴⁴⁸ Exhibit 2, Tab 4, Statement of Gregory Callaghan, 17 November 2022, [26]–[30] (SCOI.77303).

⁴⁴⁹ Transcript of the Inquiry, 21 November 2022, T230.3–4. See also T235.22–237.10, 239.5–29 (TRA.00004.00001).

⁴⁵⁰ Transcript of the Inquiry, 21 November 2022, T238.19–27, T241.23–32 (TRA.00004.00001).

⁴⁵¹ Transcript of the Inquiry, 21 November 2022, T228.47–229.7 (TRA.00004.00001).

- 4.148. Mr Callaghan was approached by Allen & Unwin to write a book that became *Bondi Badlands* after *The Weekend Australian Magazine* published his story on gay hate crime in the Bondi/Tamarama area.⁴⁵² In the course of Mr Callaghan’s research, he identified three factors that were common to reports and accounts of gay hate violence: (a) the protracted nature of the attack; (b) the perpetrator’s level of contempt for their victims; and (c) the pleasure taken in tormenting the victims. He noted that sometimes victims were robbed in addition to being attacked, but that this appeared to be “almost an afterthought, rather than the primary reason for the violence.”⁴⁵³
- 4.149. In 2017, Mr Callaghan was invited by ACON to conduct walks around the Bondi Headland. He described the importance of this work in these terms:⁴⁵⁴

The younger LGBT community should be aware of what went on here, that these people – lives should not be forgotten, and also, you know, there was stating to – things were cranking up in the media as well. ... I wanted to, you know, share the stories of these people and the community at that time, and you know what, what was actually very rewarding was a lot of people would come on those walks, not just younger members of the LGBT community, but a lot of heterosexual people as well ... who may have been locals and they knew what went on there, or they wanted to, you know, find out, with respect, what happened there.

Brent Mackie

- 4.150. Brent Mackie gave evidence on 22 November 2022.

Mr Mackie’s early life and work with the LGBTIQ community

- 4.151. Mr Mackie is presently employed as the Director of Policy, Strategy and Research at ACON. He has held a range of positions with ACON, in addition to working as a Youth Worker at the Twenty10 Refuge Association,⁴⁵⁵ and for the NSW Ministry of Health and the South Eastern Sydney Local Health District. Those positions focused on matters including drug and alcohol policy, HIV/AIDS and sexual health programs and policy. He moved to Australia in 1985, and has lived in Sydney and been an active member of the LGBTIQ community since that time.⁴⁵⁶
- 4.152. Mr Mackie arrived in Australia from New Zealand in 1985. He was asked by Counsel Assisting whether he had engaged in the gay scene in Sydney at that time, and he said:⁴⁵⁷

Yes, I did. I did. And it was a bit per chance. I hadn’t done a lot of research about what Sydney was like before arriving, and so we wandered up to Oxford Street, and Oxford Street in 1985, it was getting into the

⁴⁵² Exhibit 2, Tab 4, Statement of Gregory Callaghan, 17 November 2022, [32]–[33] (SCOI.77303).

⁴⁵³ Exhibit 2, Tab 4, Statement of Gregory Callaghan, 17 November 2022, [35] (SCOI.77303).

⁴⁵⁴ Transcript of the Inquiry, 21 November 2022, T240.45–241.15 (TRA.00004.00001).

⁴⁵⁵ Transcript of the Inquiry, 22 November 2022, T257.29–258.26 (TRA.00005.00001).

⁴⁵⁶ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [3]–[9] (SCOI.77301).

⁴⁵⁷ Transcript of the Inquiry, 22 November 2022, T255.9–20 (TRA.00005.00001).

summer, I think, and it was a wonderful place. It was full of people. It was very alive. There were bars and clubs opening, and it was dramatically different to my experience in New Zealand at the time, which was kind of a little bit more conservative and obviously a lot smaller, and I think before I left, I think a law reform in New Zealand happened in the year after I left. So homosexuality was still illegal in New Zealand at that time.

- 4.153. When asked by Counsel Assisting about whether he was aware of violence towards the gay and lesbian communities, Mr Mackie said he had become aware over time. He said: “You saw it. You saw it. And you had to be careful out there, I think.”⁴⁵⁸ Later, having referred to the personal experiences of violence described below, Mr Mackie said: “[i]t was like an inevitability that violence would happen, because we were young and going out.”⁴⁵⁹

The establishment of ACON and the impact of HIV/AIDS

- 4.154. Mr Mackie’s evidence explained the establishment of ACON in 1985 as the AIDS Council of NSW, as set out in **Chapter 2**.⁴⁶⁰ In his examination by Counsel Assisting, Mr Mackie summarised the formation of ACON in this way:⁴⁶¹

Yep. So ACON started in early 1985, and it really came about as a community response to the impact of the HIV epidemic on the gay community. Rates of infection were increasing quite rapidly. People saw their friends, their lovers, people who were close to them, becoming sick. Some were dying. They saw that there needed to be a response in order to help and support these people, in order to educate people about possible prevention strategies, and so a group of people came together – I think it was in the Midnight Shift Bar of the Midnight Shift Hotel on that first night, I think it was in March 1985, and they formed this idea to bring together a range of different community groups but also individuals to form what was then known as the AIDS Council of New South Wales.

- 4.155. Mr Mackie emphasised, in his evidence, the harmful impact of the Grim Reaper campaign run by the government. He said that this campaign, “while important in raising awareness of HIV within the broader Australian community, also greatly contributed to distress and increased discrimination and stigma towards people living with HIV/AIDS and towards gay men.”⁴⁶² Mr Mackie said:⁴⁶³

The Grim Reaper campaign, with its images of a Grim Reaper figure bowling down men and women and even babies, exaggerated the real threat of infection with AIDS to the general population while providing no actual information on how HIV was transmitted. The campaign contributed to a belief that it was possible to catch HIV from sharing a

⁴⁵⁸ Transcript of the Inquiry, 22 November 2022, T255.29–34 (TRA.00005.00001).

⁴⁵⁹ Transcript of the Inquiry, 22 November 2022, T257.1–3 (TRA.00005.00001).

⁴⁶⁰ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [10]–[15] (SCOL.77301).

⁴⁶¹ Transcript of the Inquiry, 22 November 2022, T252.44–253.1 (TRA.00005.00001).

⁴⁶² Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [16] (SCOL.77301).

⁴⁶³ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [17] (SCOL.77301). See also Transcript of the Inquiry, 22 November 2022, T260.7–30 (TRA.00005.00001).

toothbrush or being spat on, or the like. This poor understanding of HIV transmission contributed to fear and stigma against people with HIV/AIDS and gay men.

- 4.156. Mr Mackie observed that half of the 88 deaths considered in the preparation of *In Pursuit of Truth and Justice* occurred between 1987 and 1993, when misinformation was at its peak.⁴⁶⁴ In his oral evidence, Mr Mackie said that he believed the media coverage of HIV/AIDS “certainly contributed” to the violence.⁴⁶⁵
- 4.157. Mr Mackie contrasted the approach taken in the Grim Reaper campaign with ACON’s work developing “community-led campaigns that provided clear and accurate sex positive information using community language and imagery.”⁴⁶⁶ ACON and the Victorian AIDS Council (as it was known at that time) issued a joint press statement stating that the Grim Reaper campaign was confusing and potentially dangerous. In addition, Mr Mackie said that the Grim Reaper campaign dramatically disrupted ACON’s work as “the phones continually rang with ‘worried well’ callers wanting to know if they had AIDS.”⁴⁶⁷
- 4.158. In his examination by Counsel Assisting, Mr Mackie said, of the Grim Reaper campaign:⁴⁶⁸

And it was pretty devastating, if you had HIV, to be represented like this on TV. So it kind of had an impact in the gay community of – there was a big issue at the time around testing, whether or not we would get tested, because there weren’t treatments available at that time. Treatments were really something that came very slowly over the next few years, but at that time, you know, you got an HIV test and that was it, you know? You were basically told you’re going to, you know, die sometime in the next while and there’s not a lot can be done that. So there was a big decision within ACON whether or not we would encourage people to get tested at all, because why? It could have a devastating impact on your life, and we don’t know enough of where this disease was going or what impact it would have. And so, for a lot of people in the gay community, seeing that campaign, you know, scared them. They wouldn’t go and get tested because of the horrificness of the images.

⁴⁶⁴ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [19] (SCOI.77301).

⁴⁶⁵ Transcript of the Inquiry, 22 November 2022, T260.36–38 (TRA.00005.00001).

⁴⁶⁶ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [20] (SCOI.77301).

⁴⁶⁷ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [21] (SCOI.77301).

⁴⁶⁸ Transcript of the Inquiry, 22 November 2022, T259.15–25 (TRA.00005.00001).

- 4.159. Mr Mackie explained that “it was a different world then in terms of HIV medication”.⁴⁶⁹ He also reflected on his time working for ACON in a volunteer position, providing home nursing care for people with HIV/AIDS. He said:⁴⁷⁰

It was really – it was quite a difficult job, because people died quite quickly, especially when they were that sick ... It was really very difficult, because he – you know, you go into this person’s place, you think, really, that he had this great life, but it had come to this.

- 4.160. Mr Mackie commenced work as a Youth Worker at ACON in 1988. Part of his role was to set up and run the Esteem Youth Project (**Youth Project**), which still runs today. The Youth Project “delivered safe sex education workshops to young gay men between 18 and 26 years of age.”⁴⁷¹ Mr Mackie described the participants in this way:⁴⁷²

We worked with young men living in refuges and crisis accommodation, culturally and linguistically diverse young men, young men who had experienced homophobia, sex workers, young men who had been thrown out of their homes because of their sexuality and young men living with HIV. In our first year, around 150 young men attended our workshops or drop-in groups in Surry Hills.

Many of the men participating in the Youth Project had been victims of stigma, discrimination and abuse. The project offered them a space to support and learn from each other about sex, safe sex and HIV prevention, but also to form social connections and build friendship networks.

- 4.161. As a Youth Worker, Mr Mackie came across many young men and co-workers who became sick and died of HIV/AIDS. He described that as “extremely difficult and painful.”⁴⁷³ Mr Mackie also explained the dangers associated with the workshops:⁴⁷⁴

Once at one meeting in Harris Park, a couple of the participants were attacked by a group of men while on their way to the workshop. As a result, after they arrived, we locked ourselves and the participants inside the building, deeply frightened, while the assailants lingered outside, yelling abuse. They ultimately left after getting bored several hours later. Sadly, two of the group participants left the meeting and never returned. Ultimately, we stopped offering the workshops in Harris Park as the streets were too unsafe.

⁴⁶⁹ Transcript of the Inquiry, 22 November 2022, T259.39–40 (TRA.00005.00001).

⁴⁷⁰ Transcript of the Inquiry, 22 November 2022, T261.8–43 (TRA.00005.00001).

⁴⁷¹ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [22] (SCOI.77301). See also Transcript of the Inquiry, 22 November 2022, T262.3–32 (TRA.00005.00001).

⁴⁷² Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [23]–[24] (SCOI.77301).

⁴⁷³ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [26] (SCOI.77301).

⁴⁷⁴ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [28] (SCOI.77301).

4.162. Mr Mackie described the situation in the 1980s and 1990s in this way:⁴⁷⁵

The 1980s and 1990s was a time of increased violence towards LGBTQ people. While living in Surry Hills and Darlinghurst during this period, I became increasingly aware of the potential threat of violence in the streets, especially if you were out at night. Stories of friends or people you knew of having experienced violence were common. Stories of violence at beats, in parks and in dark streets were often shared.

Mr Mackie's experiences of violence

4.163. In addition to Mr Mackie's evidence about violence directed towards the LGBTIQ community, he also experienced violence. On one occasion in 1985 or 1986, a young man spat in his face and abused him. Mr Mackie said:⁴⁷⁶

At first, I couldn't think why he would have done that. It was only later, when I thought about it, I realised it was because I looked and was gay. It was a shocking and deeply disturbing experience.

4.164. He described the second incident, which occurred on New Years' Eve in 1998, in this way:⁴⁷⁷

I was with my partner walking up Oxford Street before Palmer Street just after midnight. I passed a group of young men and women in order to hurry up. One of the men in the group turned to me and suddenly king hit me in the head. I fell to the ground. The people with him laughed. Fortunately, it was not hard enough to do serious damage, and the group of men and women continued walking. My partner came to my assistance and picked me up. My night was over at that point, and we both went home and stayed there for several days. It was a horrible experience, one that made me feel totally powerless. I remember my partner saying at the time, "I knew one of us would get it sooner or later." After that, we were far more careful when we went out.

4.165. Like Mr Callaghan, Mr Mackie described community-led safety campaigns in response to this violence.⁴⁷⁸

⁴⁷⁵ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [30] (SCOI.77301).

⁴⁷⁶ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [55] (SCOI.77301).

⁴⁷⁷ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [56] (SCOI.77301).

⁴⁷⁸ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [32] (SCOI.77301).

ACON's Beats Project

4.166. Mr Mackie explained that the Beats Project began in 1988. The purpose of the Beats Project was to provide education to men who used beats. Up until this time, ACON's HIV/AIDS prevention program had focused on the gay community.⁴⁷⁹ However, research conducted as part of the Westmead Hospital Beats Study found that:⁴⁸⁰

[a] large number of men using beats did not identify with or participate in the gay community at the time, and therefore had limited access to clear, accurate and sex positive HIV prevention information.

4.167. The Beats Project operated at all regional ACON sites including Northern Rivers, Hunter, Mid North Coast, Illawarra and Western Sydney. In 1991–1992, for example, the Hunter beat workers provided information at 67 beats and contacted 536 users, and the Illawarra and Northern Rivers teams each spoke to around 240 men. Mr Mackie said that these figures increased throughout the early 1990s.⁴⁸¹

4.168. Mr Mackie said beats workers worked in pairs for safety and were trained in self-defence.⁴⁸²

They would discuss HIV transmission with men at beats, provide condoms, written information, and, where appropriate, referrals to ACON's peer education programs.

4.169. Project officers also produced campaign material, such as stickers with information and phone numbers, to leave at beat locations. This was done collaboratively with local councils and the NSWPF, although, on occasion, council policies made these campaigns more difficult.⁴⁸³

The establishment of the Lesbian and Gay Anti-Violence Project

4.170. The Lesbian and Gay Anti-Violence Project (**AVP**) was founded in 1990. Mr Mackie described the AVP as “a grassroots response to homophobic violence and abuse in the Inner City where LGBTQ people congregated and socialised”.⁴⁸⁴ The AVP produced reports on instances of violence, ran campaigns focused on safety, and produced a quarterly journal.⁴⁸⁵

⁴⁷⁹ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [45] (SCOI.77301).

⁴⁸⁰ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [45] (SCOI.77301).

⁴⁸¹ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [54] (SCOI.77301).

⁴⁸² Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [48] (SCOI.77301). See also Transcript of the Inquiry, 22 November 2022, T268.11–31 (TRA.00005.00001).

⁴⁸³ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [48] (SCOI.77301).

⁴⁸⁴ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [34] (SCOI.77301).

⁴⁸⁵ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [34], [36], [37] (SCOI.77301).

- 4.171. In addition, during this period ACON engaged in advocacy work targeted at reducing experiences of homophobia, transphobia and discrimination.⁴⁸⁶ The AVP also implemented practical programs, including self-defence programs and the Whistle Project, which involved handing out whistles to people, which they could then use in the event they were attacked to shock an attacker or attract attention.⁴⁸⁷
- 4.172. In 1992, the AVP began the Safe Place Project in response to high levels of street-based violence being experienced by LGBTIQ people. This program established physical refuges (usually shops, bars or cafés) by displaying a Safe Place symbol.⁴⁸⁸ In 2002, the AVP was absorbed into ACON.⁴⁸⁹ In that year, the AVP launched a campaign called “On Any Street” to promote strategies for protecting personal and community safety. This project built strong relationships with the Surry Hills, Bondi and Waverley police.⁴⁹⁰

Police and beats

- 4.173. In 1993, ACON published a report entitled *Beats, Police, Homophobia and HIV*.⁴⁹¹ Mr Mackie said this report was in response to increasing NSWPF and council surveillance of beats. He explained:⁴⁹²

This suppressed beats, encouraged social stigmatisation of them and disempowered the men who used them. This made users of beats more reluctant to report complaints and seek redress for experience of violence at beats.

- 4.174. Surveillance of beats also interfered with the Beats Outreach Project.⁴⁹³
- 4.175. The *Beats Report* described instances where the NSWPF “made an example” of men who were arrested at beats, including a case in 1991 where men were “paraded” in a shopping plaza near a beat after they were apprehended. Beat workers were also often stopped and questioned by police officers.⁴⁹⁴ In addition, police officers would habitually tell family members or employers that beat men had been found at a beat, which could be “quite shocking and devastating for the people involved, really devastating.”⁴⁹⁵
- 4.176. The *Beats Report* recommended promotion of beats as a public health issue and development of mechanisms to improve the policing of beats, in order to minimise the impact on the Beats Outreach Project. In 1995–1996, the NSWPF produced guidelines for policing beats to facilitate less adversarial contact.⁴⁹⁶

⁴⁸⁶ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [35] (SCOI.77301).

⁴⁸⁷ Transcript of the Inquiry, 22 November 2022, T26522–46 (TRA.00005.00001).

⁴⁸⁸ Transcript of the Inquiry, 22 November 2022, T266.14–30, T266.41–267.7 (TRA.00005.00001).

⁴⁸⁹ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [41] (SCOI.77301).

⁴⁹⁰ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [41] (SCOI.77301).

⁴⁹¹ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [49] (SCOI.77301).

⁴⁹² Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [49]–[50] (SCOI.77301).

⁴⁹³ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [51] (SCOI.77301).

⁴⁹⁴ Transcript of the Inquiry, 22 November 2022, T270.1–271.20 (TRA.00005.00001).

⁴⁹⁵ Transcript of the Inquiry, 22 November 2022, T271.41–43 (TRA.00005.00001).

⁴⁹⁶ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [52]–[53] (SCOI.77301).

Relaunch of the Safe Place program and AVP reporting

- 4.177. The Safe Place program was relaunched in 2002 in partnership with the South Sydney Council and ACON. It has now evolved into the “Welcome Here” program. Participating businesses “display a sticker to alert community to the fact that LGBTQ diversity is welcomed and celebrated by that organisation”. In 2021–2022, the project grew by 747 businesses, and it now has 1958 participating businesses on 3603 sites.⁴⁹⁷
- 4.178. The AVP also had a reporting service where members of the LGBTIQ community were encouraged to report instances of violence. Mr Mackie had access to these statistics as they had been published in the *Lifesaver* newsletter. They are as follows:⁴⁹⁸

November 1988–April 1989: 67

1992: 90

1993: 94

1997: 250

2003–2004: over 130

2004–2005: over 90

2006–2007: 62

2007–2008: 122

2008–2009: 70

2009–2010: 80

The situation in the 1990s

- 4.179. By 1994, HIV/AIDS prevention and combination therapy had emerged and changed the experience for people living with HIV/AIDS.⁴⁹⁹ Mr Mackie described two big campaigns run around this time that focused on HIV/AIDS prevention, and described Australia as one of the first places, or possibly the first place, in the world where there was a campaign that raised the possibility of returning to unprotected sex within a sexual relationship following a three-month period of testing and an agreement around sex outside that relationship.⁵⁰⁰
- 4.180. Mr Mackie gave evidence that violence and the threat of violence were still a reality for him and his friends in the 1990s. He noted initiatives such as the Whistle Project, and said that “it was really heartening to see the community coming behind strategies to tackle [the violence], so I obviously got a whistle and was keen to carry that on my key ring.”⁵⁰¹

⁴⁹⁷ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [38]–[40] (SCOI.77301).

⁴⁹⁸ Exhibit 2, Tab 2, Statement of Brent Mackie, 16 November 2022, [44] (SCOI.77301). Transcript of the Inquiry, 22 November 2022, T267.36–268.2 (TRA.00005.00001).

⁴⁹⁹ Transcript of the Inquiry, 22 November 2022, T264.12–16 (TRA.00005.00001).

⁵⁰⁰ Transcript of the Inquiry, 22 November 2022, T264.12–32 (TRA.00005.00001).

⁵⁰¹ Transcript of the Inquiry, 22 November 2022, T265.1–7 (TRA.00005.00001).

Barry Charles

4.181. Barry Charles gave evidence on 22 November 2022.

Mr Charles' early life and involvement in the LGBTIQ Community

4.182. Mr Charles is a gay man who has spent many years participating in activism for the gay rights and gay liberation movements. He described himself as a “beat queen” in his statement, due to his regular use of beats in previous years, and immersion in gay social life.⁵⁰² In his oral evidence, Mr Charles explained the term “beat queen” in this way:⁵⁰³

Well, it is a pejorative term that is used by a lot of people in the gay community for someone who has predominantly been engaged in visiting beats and having sex in parks and all that sort of thing, and actually enjoying that as an activity, and continuing to do that for some time.

4.183. He agreed that he used the term for himself with “some pride and tongue in cheek”, noting “I don’t see anything wrong with it”.⁵⁰⁴

4.184. Mr Charles grew up in Punchbowl in the 1950s and 1960s, before moving to the Inner West of Sydney after he came out to his family in 1972.⁵⁰⁵ Mr Charles “came out” to his parents by accident, after disclosing his sexuality to most of his friends. He became estranged from his mother for six months, before she reached out to him, having been accustomed to the idea of homosexuality by Mr Charles’ grandfather, who “saw a lot of it during the war in New Guinea” and assured her “he’ll grow out of it”.⁵⁰⁶

4.185. Mr Charles gave evidence that it was difficult to meet other members of the LGBTIQ community while growing up in the suburbs around Punchbowl, despite knowing he was gay from the age of around 16 years.⁵⁰⁷ He learned about gay communities and gay social scenes from films and television shows, but did not know where to find such places in his local area, or elsewhere.⁵⁰⁸ He recalled that gay men were portrayed in such films as effeminate, comic characters, the objects of fun.⁵⁰⁹ Mr Charles gave evidence of the absence of information and support networks that exist today when he came to terms with his sexuality in 1960s Punchbowl, recalling that “it was just an unspoken thing”.⁵¹⁰

⁵⁰² Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [2] (SCOI.77304).

⁵⁰³ Transcript of the Inquiry, 22 November 2022, T277.24–29 (TRA.00005.00001).

⁵⁰⁴ Transcript of the Inquiry, 22 November 2022, T277.23–277.35 (TRA.00005.00001).

⁵⁰⁵ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [3] (SCOI.77304).

⁵⁰⁶ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [9]–[10] (SCOI.77304).

⁵⁰⁷ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [5]–[6] (SCOI.77304).

⁵⁰⁸ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [7]–[8], [11] (SCOI.77304).

⁵⁰⁹ Transcript of the Inquiry, 22 November 2022, T278.23–278.28 (TRA.00005.00001).

⁵¹⁰ Transcript of the Inquiry, 22 November 2022, T278.9–278.21 (TRA.00005.00001).

Beats

- 4.186. Mr Charles described beats as “gay men’s way of connecting, congregating and having sex when you couldn’t go to more ‘normal’ social gatherings”.⁵¹¹ His first experience at a beat was in January 1969 in the toilets of the Anthony Hordern building on George Street:⁵¹²

When I saw the graffiti on the wall, I immediately understood that this was the kind of place that if you hung around, something would happen. And it did.

- 4.187. Mr Charles explained that the people he met at beats would share tips about other beats, and that they drove all over the Sydney suburbs to attend different beats.⁵¹³ Beat users would also look out for one another, and Mr Charles described how he would keep watch while other men engaged in sexual activities.⁵¹⁴ He said there was otherwise not a great deal of conversation at beats, which enabled fairly anonymous sexual encounters, noting the danger of legal or violent repercussions.⁵¹⁵ There was the risk of assault from “bashers”, but also the risk that a person you took home might rob, blackmail or violently assault you, including if they were insecure about their own sexuality.⁵¹⁶
- 4.188. Mr Charles gave extensive examples of violence at beats. He described witnessing a carload of youths chasing men at a beat in Cahill Park, Tempe, in 1971. The assailants used weapons, including a length of car bumper.⁵¹⁷ He also witnessed men being chased from St Leonard’s Park in around 1971 or 1972.⁵¹⁸
- 4.189. In around 1982, Mr Charles avoided a group of young men harassing beat users at Regent Street, Central.⁵¹⁹ In 1973 or 1974, Mr Charles was harassed and chased at a very active beat in McDougall Street, Kirribilli. Two youths asked for a lighter, before chasing and shouting at him.⁵²⁰ At Centennial Park in around 1997, a group of young boys on BMX bikes chased beat users, something that regular users of that beat informed Mr Charles was a regular occurrence.⁵²¹

⁵¹¹ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [11] (SCOI.77304).

⁵¹² Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [12] (SCOI.77304); Transcript of the Inquiry, 22 November 2022, T279.14–279.34 (TRA.00005.00001).

⁵¹³ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [14] (SCOI.77304).

⁵¹⁴ Transcript of the Inquiry, 22 November 2022, T290.47–291.8 (TRA.00005.00001).

⁵¹⁵ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [14], [18] (SCOI.77304); Transcript of the Inquiry, 22 November 2022, T279.41–280.5 (TRA.00005.00001).

⁵¹⁶ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [20] (SCOI.77304); Transcript of the Inquiry, 22 November 2022, T280.21–280.38 (TRA.00005.00001).

⁵¹⁷ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [122]–[124] (SCOI.77304); Transcript of the Inquiry, 22 November 2022, T285.7–285.30 (TRA.00005.00001).

⁵¹⁸ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [125] (SCOI.77304).

⁵¹⁹ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [145]–[147] (SCOI.77304).

⁵²⁰ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [126]–[128] (SCOI.77304).

⁵²¹ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [153]–[156] (SCOI.77304).

- 4.190. On another occasion in the 1990s, Mr Charles recalled a car driving into Rushcutters Bay Park with bright headlights and then chasing after people. Mr Charles expressed his view that the car would have had to enter the park via a padlocked gate, which was only opened for council workers mowing the lawn, and so the raid was likely by the NSWPF.⁵²²
- 4.191. Mr Charles recalled an assault in 1987 at Alexandria Park, where a number of deaths considered by the Inquiry occurred. On this occasion, a group of five or six youths, mostly aged 14 or 15 years, and one older blond boy in his late teens, accosted Mr Charles, shouting “Are you a poofter? Are you a faggot?” They carried lengths of white PVC pipe and began beating Mr Charles to the ground. Four men from a nearby house intervened, and Mr Charles made a report to the NSWPF. However, after a five-minute search, the officers advised the assailants had gone, and took no further steps.⁵²³
- 4.192. In the early hours of the morning on Easter Saturday in 1988, Mr Charles was again bashed in Alexandria Park. Two boys aged approximately 14 or 15 years began shouting at him. Mr Charles described one of them as being particularly angry. This youth chased Mr Charles and, when he caught him, began to beat him with a sapling from a young tree. Passers-by intervened, but Mr Charles recalls the boy was “completely frenzied” and appeared “emotionally disturbed”. The attacker shouted “[h]e’s a faggot, he raped my little sister”. Mr Charles recalled that this made no sense.⁵²⁴
- 4.193. Mr Charles also witnessed an attack at Alexandria Park on a third occasion but was unable to recall the date.⁵²⁵
- 4.194. Mr Charles described the use of beats despite their illegality as a demonstration of the resilience of the LGBTIQ community:⁵²⁶

Even though it was “criminal” to use beats, what we as gay men were doing by using beats is instinctive human sexuality. We’ve been treated as outcasts and criminals, in some cases for centuries, but we’re still going to be whoever we are. So, the effect of the laws criminalising us was for gay people to develop our own culture and ways of associating. I think of beats as showing our “indomitable spirit”.

⁵²² Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [151]–[152] (SCOI.77304).

⁵²³ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [131]–[136] (SCOI.77304); Transcript of the Inquiry, 22 November 2022, T286.20–288.10 (TRA.00005.00001).

⁵²⁴ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [138]–[140] (SCOI.77304); Transcript of the Inquiry, 22 November 2022, T288.12–288.13 (TRA.00005.00001).

⁵²⁵ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [144] (SCOI.77304).

⁵²⁶ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [16] (SCOI.77304); Transcript of the Inquiry, 22 November 2022, T281.5–281.20 (TRA.00005.00001).

- 4.195. Though beats were a significant feature of LGBTIQ life in the 20th century, Mr Charles noted that they no longer hold such an important role in gay culture today. He described how this shift “illustrates the difference between not having any way of connecting ... or knowledge of what kind of social situation existed”, and the modern era, with a developed and open LGBTIQ community.⁵²⁷
- 4.196. Mr Charles described police stakeouts and police acting as *agent provocateurs* at beats was more common in the 1930s to the 1950s, than in the decades when he used beats.⁵²⁸ He heard of young police officers being assigned to attend beats as a form of initiation or “hazing”.⁵²⁹ Mr Charles gave evidence of a number of encounters with police at beats.⁵³⁰

Activism

- 4.197. While studying at the University of NSW (**UNSW**), Mr Charles became aware of the criminal penalties associated with homosexuality.⁵³¹

I learned that under our criminal law, ‘the abominable act of buggery’ carried a longer term of imprisonment than armed robbery – so we as gay people were apparently seen as more serious criminals than armed robbers. From my perspective, that shaped my awareness of how we were treated by police.

- 4.198. In additions to anti-LGBTIQ legislation, Mr Charles became aware of psychiatric and psychological theories that indicated LGBTIQ people were “sick, psychologically dysfunctional individuals”.⁵³² Mr Charles gave evidence that all major social structures, including the law, the medical profession and the church, perpetuated ideas of LGBTIQ people as “evil, sick or criminal”.⁵³³
- 4.199. Mr Charles became involved in activism through the Campaign Against Moral Persecution (**CAMP**), which was formed in 1970, which he joined in early 1971.⁵³⁴ Mr Charles became one of three founding members of the UNSW branch: UNSW Campus CAMP.⁵³⁵ While there was little chance of legislative changes in the early 1970s, with opposition to LGBTIQ rights across the political spectrum, gay rights activism began to grow, particularly among universities.⁵³⁶

⁵²⁷ Transcript of the Inquiry, 22 November 2022, T28122–281.42 (TRA.00005.00001).

⁵²⁸ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [23] (SCOI.77304).

⁵²⁹ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [22] (SCOI.77304).

⁵³⁰ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [25] (SCOI.77304).

⁵³¹ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [28]–[29] (SCOI.77304).

⁵³² Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [30] (SCOI.77304).

⁵³³ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [31] (SCOI.77304).

⁵³⁴ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [33] (SCOI.77304); Transcript of the Inquiry, 22 November 2022, T276.44–277.3 (TRA.00005.00001).

⁵³⁵ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [33]–[34] (SCOI.77304).

⁵³⁶ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [35]–[37] (SCOI.77304).

- 4.200. In 1972, Mr Charles became the Secretary of UNSW Campus CAMP. In 1972–1973, the organisation changed to the UNSW Gay Liberation movement (**Gay Lib**).⁵³⁷ UNSW Gay Lib was an active group, involved in demonstrations on and off campus, talks with trade unions, and more.⁵³⁸ This included a “zap”, which may now be known as a flash mob, where a group spontaneously formed a circle and began to sing in Martin Place.⁵³⁹ Mr Charles recalled another demonstration that involved dumping sheep brains outside the office of a university professor who practised aversion therapy to “reprogram” LGBTIQ people, in a way “treating them like sheep”.⁵⁴⁰
- 4.201. As the Secretary of UNSW Gay Lib, Mr Charles attempted to strike a balance between members who preferred to sit down with lawyers and gradually lobby and persuade politicians, and those who preferred a more radical approach, and saw the issue of LGBTIQ rights as part of a wider liberation movement involving the rights of women, workers, Indigenous people and others.⁵⁴¹
- 4.202. On 15 September 1973, a rally took place in Sydney to commemorate the Stonewall Uprising in the US. The demonstrators obtained a permit to hold a rally on the steps of Town Hall and planned to march to the intersection of George Street and Martin Place. However, plain-clothes police officers were stationed in the crowd, and began pushing back once the march commenced, and displaying violence, including targeting well known left-wing activist Brian McGahen.⁵⁴²
- 4.203. Mr Charles stated that one of the leaders shouted “Pitt Street!” and the demonstrators ran to the Government Post Office building. At this point, a stand-off commenced, until the demonstrators ran to Hyde Park. The police chased the demonstrators and made a number of arrests. Mr Charles recalled:⁵⁴³
- The police behaviour that I saw was very traumatic for me. I regarded it as brutality. I was only a young man at the time, 23 years old. I carried the emotional scars from that event for a long time.*
- 4.204. Mr Charles believed the discrimination experienced by LGBTIQ people in Australia stood in stark contrast to the supportive community of LGBTIQ people that he witnessed on a trip to the US in 1978. Despite the illegality of homosexuality in the US at that time, gay bars and venues there operated openly. These bars were run by the gay community, whereas the gay bars in Sydney were run by underworld figures. Mr Charles attended a demonstration led by Harvey Milk and was re-energised to return to activism when he returned to Australia.⁵⁴⁴

⁵³⁷ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [37]–[39] (SCOI.77304); Transcript of the Inquiry, 22 November 2022, T295.46–296.10 (TRA.00005.00001).

⁵³⁸ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [40]–[43] (SCOI.77304).

⁵³⁹ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [40] (SCOI.77304); Transcript of the Inquiry, 22 November 2022, T296.32–296.40 (TRA.00005.00001).

⁵⁴⁰ Transcript of the Inquiry, 22 November 2022, T296.18–296.30 (TRA.00005.00001).

⁵⁴¹ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [39] (SCOI.77304).

⁵⁴² Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [44]–[52] (SCOI.77304).

⁵⁴³ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [44]–[52] (SCOI.77304).

⁵⁴⁴ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [53]–[60] (SCOI.77304).

- 4.205. Mr Charles helped to organise the first annual Mardi Gras, which took place on 24 June 1978. The plan was to march down Oxford Street in the style of a party, rather than a rally, and encourage people to come out and stand up for themselves, with the chant, “out of the bars, into the streets”.⁵⁴⁵ The organisers obtained a permit and the march started with 600 participants, with more joining as it progressed.⁵⁴⁶ Halfway through the march, police began pushing the marchers to go faster, displeased with the disruption to traffic. Demonstrators were pushed off the road onto the footpath, but did not fit, and the driver of the truck leading the march was dragged out of the cabin and arrested.⁵⁴⁷
- 4.206. Police directed the marchers to disperse, but had blocked them from doing so in a pincer movement, and had their truncheons out.⁵⁴⁸ A marcher yelled “to the Cross” and people began to run towards Kings Cross to avoid the risk of being beaten by police.⁵⁴⁹ Remembering his previous traumatic encounter with police at a rally in 1973, Mr Charles made his way home, but later heard that police brutality had occurred on Darlinghurst Road, Kings Cross.⁵⁵⁰
- 4.207. Mr Charles said that following the first Mardi Gras, the gay scene in Sydney became more visible. LGBTIQ people more openly demanded rights in the community, and in turn faced growing violence.⁵⁵¹ Mr Charles was an early member of the Gay Rights Lobby, established in October 1980, which worked to influence politicians open to making changes to improve LGBTIQ rights, and lobbied for law reform.⁵⁵²
- 4.208. In March 1981, a bill was introduced to amend the *Crimes Act 1900*, creating an offence of sexual assault without consent. The maximum penalty was seven years’ imprisonment, whereas the maximum penalty for consensual sex between adult men was 14 years’ imprisonment.⁵⁵³ The Gay Rights Lobby supported amendments seeking to resolve this anomaly. Mr George Petersen MP attempted to introduce these in April 1981, and, when this failed, again in November 1981.⁵⁵⁴ The November 1981 bill was defeated when the Lobby refused to compromise on an unequal age of consent.⁵⁵⁵

⁵⁴⁵ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [61]–[62], [64] (SCOI.77304).

⁵⁴⁶ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [63]–[64] (SCOI.77304).

⁵⁴⁷ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [65]–[67] (SCOI.77304).

⁵⁴⁸ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [68] (SCOI.77304).

⁵⁴⁹ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [69] (SCOI.77304).

⁵⁵⁰ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [70]–[72] (SCOI.77304).

⁵⁵¹ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [74]–[76] (SCOI.77304).

⁵⁵² Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [77] (SCOI.77304).

⁵⁵³ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [81] (SCOI.77304).

⁵⁵⁴ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [82] (SCOI.77304).

⁵⁵⁵ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [83] (SCOI.77304).

- 4.209. In January 1982, the Gay Rights Lobby, along with the Gay Solidarity Group, the Gay Business Association and the Gay Counselling Service, formed the Homosexual Law Reform Coalition. The broad range of stakeholders from across the community empowered the Coalition to lobby across the political spectrum, including the Liberal Party.⁵⁵⁶
- 4.210. In February 1982, Mr Charles was elected Co-Convenor of the Gay Rights Lobby, a position in which he served until 1984. In 1982, Barrie Unsworth, a Labor politician and leader of the Upper House, introduced a bill that would decriminalise homosexual acts between consenting adults in private, but left the burden on the accused to prove the behaviour was in private. The Gay Rights Lobby again opposed the bill, and it was defeated in the Legislative Assembly.⁵⁵⁷ In 1982, however, an amendment was passed by the Labor government to amend the *Anti-Discrimination Act*.⁵⁵⁸
- 4.211. The Gay Rights Lobby met with the Police Minister, Peter Anderson, in July 1982, and proposed a Police Gay Liaison Committee. To Mr Charles's surprise, Mr Anderson was empathetic to the concerns voiced, particularly regarding the behaviour of Darlinghurst Police.⁵⁵⁹
- 4.212. In January 1983, the Darlinghurst Police raided Club 80, an Oxford Street sex-on-premises venue, and paraded those arrested along Oxford Street. The Gay Rights Lobby campaigned for the charges to be dropped, and the raid increased the drive within the community for law reform, including bringing out previously unhelpful business owners who had likely been in league with the police.⁵⁶⁰ Further raids on Club 80 took place on 26 February 1983 and 27 August 1983, which were again met with significant backlash from the community.⁵⁶¹
- 4.213. In May 1984, a bill was passed that decriminalised sexual activities between consenting gay males over the age of 18. The Gay Rights Lobby and the Homosexual Law Reform Coalition both voted to neither support nor oppose this bill, noting the continuing issue of the unequal age of consent.⁵⁶² Mr Charles recalled:⁵⁶³

The passage of law reform gave me and many others more of a feeling of exhausted relief than anything. Day to day, we still had to get on with our lives in a world which held negative attitudes to gay people. It was still many years before equal age of consent changes were made, and decades before marriage equality. And anti-gay violence continued to escalate.

⁵⁵⁶ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [84], [90] (SCOI.77304).

⁵⁵⁷ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [86]–[87] (SCOI.77304).

⁵⁵⁸ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [91] (SCOI.77304).

⁵⁵⁹ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [89], [92]–[96] (SCOI.77304).

⁵⁶⁰ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [89], [92]–[96] (SCOI.77304).

⁵⁶¹ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [98]–[100] (SCOI.77304).

⁵⁶² Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [106] (SCOI.77304).

⁵⁶³ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [107] (SCOI.77304).

- 4.214. On 11 March 1984, a Community Relations Bureau was established in the Police Department, with a Police Gay Liaison Unit. Mr Charles expressed that this was a wholly unexpected step prior to law reform.⁵⁶⁴ In October of that year, Mr Charles was elected to represent the Gay Rights Lobby in the Police Gay Liaison Group but did not remain long in the group due to the sense that he and his fellow activists were “just being managed”.⁵⁶⁵
- 4.215. Mr Charles stepped back from his work in activism after 1984, when the Gay Rights Lobby was replaced by the Gay and Lesbian Rights Lobby (**GLRL**), which dealt with wider issues than law reform.⁵⁶⁶

Interactions with police

- 4.216. In addition to the descriptions of police violence and harassment during his activism, Mr Charles described a number of instances of police harassment at beats. He stated that such harassment was “very common” and beat users had to constantly look out for police.⁵⁶⁷ Mr Charles recalled that he chose not to wait for police to arrive after he called them to attend circumstances of violence at beats, due to fear of experiencing legal repercussions himself from hostile police officers who may question his presence in the vicinity of a beat.⁵⁶⁸
- 4.217. Mr Charles recalled that it was worrying and frightening to be treated like a criminal by police, but that he was forced to accept that situation as the *status quo*.⁵⁶⁹
- [Y]ou were, in their eyes, a criminal, a very serious criminal. A criminal who, if you engaged in homosexual sodomy, would go to prison for 14 years. And so, their attitude was to treat you like a very, very serious criminal, worse than a bank robber. And so you just had to live with it because that was the law; that was the way things were.*
- 4.218. When giving evidence before the Inquiry, Mr Charles explained why he did not go to the police after being assaulted by two teenage boys on the basis of his perceived sexuality.⁵⁷⁰

[I]t was just the culture. This is '87, after all the improvements that had been going on in the '80s. But what we knew as the culture was that you couldn't expect help from the police in these situations. It was just general knowledge that you wouldn't get a good reception.

⁵⁶⁴ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [105] (SCOI.77304).

⁵⁶⁵ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [108] (SCOI.77304).

⁵⁶⁶ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [109]–[110] (SCOI.77304).

⁵⁶⁷ Transcript of the Inquiry, 22 November 2022, T281.44–284.21 (TRA.00005.00001).

⁵⁶⁸ Transcript of the Inquiry, 22 November 2022, T285.32–39 (TRA.00005.00001).

⁵⁶⁹ Transcript of the Inquiry, 22 November 2022, T284.3–10 (TRA.00005.00001).

⁵⁷⁰ Transcript of the Inquiry, 22 November 2022, T289.29–45 (TRA.00005.00001).

- 4.219. On another occasion, on Christmas Eve 1987, Mr Charles attended Newtown Police Station after being chased and kicked down King Street. The police “weren’t interested”, and questioned Mr Charles on his reasons for being in the area, apparently believing he had been at a nearby beat, despite his explanations that he had been simply walking down King Street.⁵⁷¹
- 4.220. Mr Charles did, however, note that the heavy-handed actions of police worked to the advantage of the LGBTIQ movement:⁵⁷²

It activated people to say, you know, “This is not right. We’re entitled to basic human rights and we’re entitled to protest to gain those basic human rights”. But it also activated a section of the gay community which had never taken a political stand. Now they saw that their whole social life and so on could be under threat if the police were going to react in that way to what, again, was intended to be a peaceful, happy, parade.

- 4.221. Mr Charles described how the raids on Club 80 helped to engage previously politically disinterested members of the LGBTIQ community and helped them “to understand that at that point the police were really our enemy here”, being “unable to cope with the obvious changes that were occurring in society” and the “inevitable rise of a gay community being established”.⁵⁷³

The impact of HIV/AIDS

- 4.222. Noting that he does not have the expertise on community responses to the HIV/AIDS crisis, Mr Charles commented that he considered “a little too much is made” of the relationship between HIV/AIDS and anti-LGBTIQ violence. In his opinion, gangs of suburban youths were unlikely to have been engaged in, or been informed about HIV/AIDS or made the necessary connections. Mr Charles’ personal experiences of violence and discrimination did not relate to HIV/AIDS. Rather, he considered the increase in violence to correspond with the increasing visibility of gay life in the media and popular culture.⁵⁷⁴

Additional comments

- 4.223. In his statement, Mr Charles praised the LGBTIQ liberation movement for breaking down stereotypes and broadening representation in the community. He recalled that there was one “type” of gay person in his youth, always “a little bit effeminate, all about fashion, all about partying”. Thanks to the work of activists over the decades, Mr Charles stated there are “so many different tribes within the LGBTIQ community, and everyone can find their own tribe”.⁵⁷⁵ However, he noted:⁵⁷⁶

⁵⁷¹ Transcript of the Inquiry, 22 November 2022, T289.39–290.14 (TRA.00005.00001).

⁵⁷² Transcript of the Inquiry, 22 November 2022, T303.45–304.6 (TRA.00005.00001).

⁵⁷³ Transcript of the Inquiry, 22 November 2022, T305.4–19 (TRA.00005.00001).

⁵⁷⁴ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [111]–[117] (SCOI.77304).

⁵⁷⁵ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [162] (SCOI.77304).

⁵⁷⁶ Exhibit 2, Tab 5, Statement of Barry Charles, 14 November 2022, [162]–[165] (SCOI.77304).

But our fight isn't over. The progress is not even, or shared across the board. It's still not safe for many people to come out – for example, working-class people or people from certain ethnic communities.

And I always worry that it all could be taken away. I never let myself get too comfortable about our rights. Over history there have been other periods of partial or relative acceptability for gay people – for example, in the 1790s when the Prince of Wales had many gay friends; in the Oscar Wilde era about a hundred years after that; and the gay subculture in Germany in the 1920s – but none of those lasted. I'm 72 now but I still think, don't sit on your laurels, the work isn't done.

Les Peterkin

4.224. Les Peterkin gave evidence on 22 November 2022.

Mr Peterkin's background and early life

4.225. Mr Peterkin is a retired teacher and potter.⁵⁷⁷ In 1970, Mr Peterkin and William, his partner, who had been a ballet dancer, opened a studio of ballet, arts and crafts in Spit Junction, called The STUDIO 52A. It was a “very successful venture” until the premises were destroyed by fire in 1980.⁵⁷⁸ After this, Mr Peterkin set up and ran a pottery workshop and gallery called Bakehouse Pottery in Tweed Valley until he retired in 1999. Shortly after moving to Tweed Valley, Mr Peterkin also got a job teaching art and craft casually in the local public school.⁵⁷⁹

4.226. Mr Peterkin was born in 1934 and realised he was gay in the 1940s.⁵⁸⁰ He said he had felt guilty for many years:⁵⁸¹

Well, you know, you were taught that it – to be hard, to be gay, to be homosexual was bad, it was a sin, it was not the right thing to do, and naturally you felt guilty about the feelings that you had, you felt shame in doing this, and that became quite a problem, as far as I was concerned, because I knew that that was what I wanted to do.

⁵⁷⁷ Exhibit 2, Tab 3, Statement of Leslie Peterkin, 14 November 2022, [1] (SCOI.77302).

⁵⁷⁸ Exhibit 2, Tab 3, Statement of Leslie Peterkin, 14 November 2022, [10] (SCOI.77302).

⁵⁷⁹ Exhibit 2, Tab 3, Statement of Leslie Peterkin, 14 November 2022, [11]–[12] (SCOI.77302).

⁵⁸⁰ Transcript of the Inquiry, 22 November 2022, T310.3–30 (TRA.00005.00001).

⁵⁸¹ Transcript of the Inquiry, 22 November 2022, T310.24–30 (TRA.00005.00001).

- 4.227. When Mr Peterkin was around 23 years old, he sought assistance from a psychiatrist, whom he described as “very supportive”. The psychiatrist “explained that this was not an illness or a severe aberration, it was something reasonably normal for men.” Mr Peterkin explained that this made him feel “a lot better” and that he “subsequently pursued [his] gay life.”⁵⁸² The psychiatrist told Mr Peterkin to “be careful”, which he understood to be a reference to the fact that “men were going to beats and there was a possibility there would be problems with harassment, homophobia and that sort of thing.”⁵⁸³

Beats

- 4.228. Mr Peterkin moved to Sydney in 1951 and “quickly found out, purely by accident, about some ... places where men would meet for sex.” He described these as being public toilets and the newsreel cinemas.⁵⁸⁴ He said he started “doing the beats” (i.e., attending beats) in 1952 or 1953.⁵⁸⁵ Mr Peterkin described beats at a range of locations, and explained that:⁵⁸⁶

You learnt about beats often by exchange of information with other “Beat Goers”. It was possible to meet someone anytime day or night, but doing beats at night-time seemed to be more popular.

Going to a beat was always fraught with an element of danger, as you quickly learnt that you could be the victim of two risks: “Poofster Bashing”, as it was called, or police entrapment, which was a well-known hazard back then.

- 4.229. In 1961, Mr Peterkin attended a well-known beat at Neutral Bay, where he met a man who would become a lifelong friend, Barry Day. Mr Day introduced Mr Peterkin to the “gay scene” in Sydney. Mr Peterkin observed that he “began to feel more at ease and accepting of [his] sexuality, knowing [he] was not alone in this way.” He said he had “many long-lasting friendships with fellows I met at [parties] back then.”⁵⁸⁷ In his oral evidence, Mr Peterkin described the gay scene in Sydney in this way:⁵⁸⁸

In 1961, there was the beginnings of the gay bars, where men would meet other men, and gay clubs and gay saunas began to become obvious in those days. Places like the Purple Onion, which was a wonderful gay venue where you could go and have a very pleasant social occasion there and see shows, and places like that. That was the gay scene.

⁵⁸² Transcript of the Inquiry, 22 November 2022, T310.37–42 (TRA.00005.00001).

⁵⁸³ Exhibit 2, Tab 3, Statement of Leslie Peterkin, 14 November 2022, [24] (SCOI.77302); Transcript of the Inquiry, 22 November 2022, T310.44–311.10 (TRA.00005.00001).

⁵⁸⁴ Exhibit 2, Tab 3, Statement of Leslie Peterkin, 14 November 2022, [13]–[14] (SCOI.77302); Transcript of the Inquiry, 22 November 2022, T311.12–312.5 (TRA.00005.00001).

⁵⁸⁵ Exhibit 2, Tab 3, Statement of Leslie Peterkin, 14 November 2022, [26] (SCOI.77302).

⁵⁸⁶ Exhibit 2, Tab 3, Statement of Leslie Peterkin, 14 November 2022, [27]–[28] (SCOI.77302).

⁵⁸⁷ Exhibit 2, Tab 3, Statement of Leslie Peterkin, 14 November 2022, [16]–[18] (SCOI.77302).

⁵⁸⁸ Transcript of the Inquiry, 22 November 2022, T315.14–21 (TRA.00005.00001).

- 4.230. Mr Peterkin explained that there were beats in both city and rural areas.⁵⁸⁹ He said that beat users would use signals to indicate that they were interested in sexual activity.⁵⁹⁰ On one occasion in 1956, Mr Peterkin went to a beat at North Sydney Oval. He described the following events:⁵⁹¹

I was standing at the urinal when a very good-looking fellow in a dark suit came in and stood beside me. There was a brief exchange of signals of the kind I have described above, and then he grabbed me by the scruff of the neck and said: "You're under arrest!"

He took me out to a waiting unmarked Holden Sedan, in which was sitting a Detective from North Sydney Police Station. I was roughly shoved into the back seat. I was accused of soliciting for sex in a public place and was questioned extensively about my name, personal details, and motives. I was to be taken back to North Sydney Police Station to be charged and imprisoned.

I was totally gripped with fear and worry about what this effect this charge would have on my career and standing in the community. I broke down and explained to the detective in charge that my father was Sergeant Peterkin at Chatswood Police Station.

The detective, whose name I cannot recall, to my great relief told me that he would let me off but said "Put five pounds in your hand and go to Kings Cross and fuck a woman!"

- 4.231. In the late 1970s, Mr Peterkin was attacked by a man in a public toilet that was a well-known beat. He went to the North Sydney Police Station and said that he was treated well by the police officers.⁵⁹² He said, in relation to using beats:⁵⁹³

The moment you walked into a toilet, you were aware that you could become a victim of homophobic assault. The risk of violence was always in the back of your mind if you went to a beat. Homophobic people knew that homosexual men would attend a public toilet and would lie in wait. You had to be careful and look out for yourself and be ready to leave quickly if something seemed wrong.

⁵⁸⁹ Transcript of the Inquiry, 22 November 2022, T312.33–313.2 (TRA.00005.00001).

⁵⁹⁰ Exhibit 2, Tab 3, Statement of Leslie Peterkin, 14 November 2022, [14]–[15] (SCOI.77302).

⁵⁹¹ Exhibit 2, Tab 3, Statement of Leslie Peterkin, 14 November 2022, [37]–[40] (SCOI.77302).

⁵⁹² Exhibit 2, Tab 3, Statement of Leslie Peterkin, 14 November 2022, [43]–[45] (SCOI.77302); See also Transcript of the Inquiry, 22 November 2022, T316.21–41 (TRA.00005.00001).

⁵⁹³ Exhibit 2, Tab 3, Statement of Leslie Peterkin, 14 November 2022, [46] (SCOI.77302).

Mr Peterkin's reflections on the relationship between the gay community and police

- 4.232. Mr Peterkin was invited to reflect on the changing relationship between police and the gay community in his oral evidence and observed that there had been a “significant change”. In his view, things began to improve after decriminalisation, and that “as the years have gone by, such things as the gay liaison, police gay liaison, and there has been acceptance generally, I think the attitudes of the police has improved considerably.”⁵⁹⁴ Concerning the relationship between police and the gay community going forward, Mr Peterkin said:⁵⁹⁵

Well, my hope is that it continues as it is now. I think I can say safely now that there is a very good rapport between the police and the gay community, from what I can gather, and I do keep in touch with all this sort of thing, and hopefully it will continue. I'm sure it will. But don't forget homophobia is always present. We mustn't ever forget that. ... there will always be an element of hatred and homophobia. It is not only for gay people, it is for [Aboriginal people], it's for people who are different, people whose skin colour is different.

Experiences in rural NSW

- 4.233. Mr Peterkin lived in both Sydney and in rural NSW. He said that “in a small country town, you do take the risk that there will be a homophobic element present”, and that he had been subject to some homophobic activity.⁵⁹⁶ He described the HIV/AIDS epidemic as a “great setback” to acceptance of the gay community.⁵⁹⁷ He related an incident where one of his neighbours told him that people at the pub were “saying you've got AIDS and they're going to stop you from teaching at the school.”⁵⁹⁸ Mr Peterkin responded by telling his neighbour that he would sue anyone who said anything threatening or derogatory, and while he recalled there was a meeting at the school, nothing came of that meeting.⁵⁹⁹
- 4.234. Mr Peterkin also explained that if children used derogatory language about him, he would go to the parents and insist their child apologise and “that they do something about teaching their children some manners and respect for elderly people.” When Counsel Assisting asked him whether he had been successful in dealing with such incidents, he said:⁶⁰⁰

⁵⁹⁴ Transcript of the Inquiry, 22 November 2022, T319.47–320.13 (TRA.00005.00001).

⁵⁹⁵ Transcript of the Inquiry, 22 November 2022, T320.37–321.5 (TRA.00005.00001).

⁵⁹⁶ Transcript of the Inquiry, 22 November 2022, T317.30–33 (TRA.00005.00001).

⁵⁹⁷ Transcript of the Inquiry, 22 November 2022, T317.35–40 (TRA.00005.00001).

⁵⁹⁸ Transcript of the Inquiry, 22 November 2022, T318.6–11 (TRA.00005.00001).

⁵⁹⁹ Transcript of the Inquiry, 22 November 2022, T318.14–23 (TRA.00005.00001).

⁶⁰⁰ Transcript of the Inquiry, 22 November 2022, T318.13–21 (TRA.00005.00001).

Very much so, yes. Yes. And I had very little problems there. You know, I was very well respected in that community. I was the president – I was elected president of the Progress Association in Tyalgum at one stage and I received an Australia Day Medal for public service while I was in that country town. And that’s one of the things I want to stress in this, in my statement, that it is possible to be a successful and well-respected person even though you are gay.

Dr Gary Cox

4.235. Dr Gary Cox gave evidence on 23 November 2022.

Dr Cox’s background and early life

4.236. Dr Cox is an urban planner and public policy specialist who was involved in a number of LGBTIQ organisations in the 1980s and 1990s.⁶⁰¹

4.237. Dr Cox moved from London to Sydney in April 1982. After he attended a rally to peacefully protest a visit from a homophobic US tele-evangelist, Jerry Falwell, Dr Cox became involved in a number of LGBTIQ groups, and took a leading role in community activism.⁶⁰²

4.238. Dr Cox’s involvement in activism includes the establishment of the University of Sydney Gay and Lesbian Collective in 1982, being a founding member of the Committee of ACON in 1984–1985, serving as president and later male co-convenor of the GLRL from 1988–1989, authoring various reports in association with the GLRL AVP, serving as a committee member of Sydney Pride from 1991–1995, and acting as Director of the Sydney 2002 Gay Games, among other roles.⁶⁰³

4.239. In 1983–1984, Dr Cox was actively involved in the Homosexual Law Reform Coalition (**HLRC**), a community organisation established by existing groups, including the Gay Rights Lobby, a precursor to the GLRL.⁶⁰⁴ Dr Cox worked with the HLRC to contribute to the inclusion of “homosexuality” as a ground under the *Anti-Discrimination Act* in 1983, and the partial decriminalisation of male homosexual acts by amendment to the *Crimes Act 1900* in 1984.⁶⁰⁵

4.240. Dr Cox participated in the Police Gay and Lesbian Liaison Committee, established in around 1984 to foster relations between police and the LGBTIQ community. The committee was chaired by the Anti-Discrimination Board, and Fred Miller of the NSWPF was a key liaison figure.⁶⁰⁶

⁶⁰¹ Exhibit 2, Tab 7, Statement of Dr Gary Cox, 15 November 2022, [1], [3], [5] (SCOI.77306).

⁶⁰² Transcript of the Inquiry, 23 November 2022, T325.12–30 (TRA.00006.00001).

⁶⁰³ Exhibit 2, Tab 7, Statement of Dr Gary Cox, 15 November 2022, [5] (SCOI.77306).

⁶⁰⁴ Exhibit 2, Tab 7, Statement of Dr Gary Cox, 15 November 2022, [11] (SCOI.77306).

⁶⁰⁵ Exhibit 2, Tab 7, Statement of Dr Gary Cox, 15 November 2022, [12]–[13] (SCOI.77306).

⁶⁰⁶ Transcript of the Inquiry, 23 November 2022, T329.18–37 (TRA.00006.00001).

- 4.241. Following a change of government in NSW from Labor to Liberal in March 1988, and increasing concerns that the amendments to the *Anti-Discrimination Act* might be reversed, the GLRL was established at a community public meeting around May 1988.⁶⁰⁷ Dr Cox was elected to serve as the GLRL’s first president, a role which soon changed to male co-convenor, alongside Ms Jane Clements.⁶⁰⁸

The work of the GLRL

- 4.242. The GLRL was a community organisation with limited funds, run by volunteers who sought to advance LGBTIQ rights in NSW. It was considered that HIV/AIDS issues would largely be taken up by organisations such as ACON, while the primary focus of the GLRL soon became violence against members of the LGBTIQ community.⁶⁰⁹
- 4.243. The goal of the GLRL to end violence against LGBTIQ people came in response to increasing reports of public attacks. This included violence in the environs of Oxford Street and other areas frequented by LGBTIQ people. Dr Cox recalled that perpetrators were often young boys in gangs, “teenagers with baseball bats, that kind of thing”.⁶¹⁰ In his oral evidence Dr Cox discussed violent graffiti in public places, such as Moore Park toilet block, where words such as “Poofs are dead” had been inscribed.⁶¹¹ Dr Cox commented that:⁶¹²

[T]hese are kind of quite horrific incidents. They weren’t sort of people being pushed around on the street. They were quite – there was a lot of intent behind the hate crime.

- 4.244. Dr Cox stated in his oral evidence that violence towards gay men was compounded by public fears surrounding the HIV/AIDS crisis in the 1980s.⁶¹³

[T]he stage was the embedded discrimination, hostility, prejudice, stereotypes against gays and lesbians, but then there was a backdrop of HIV/AIDS and the kind of hysteria and ignorance and blame around that. So that was kind of the perfect storm of what we were seeing in 1988.

⁶⁰⁷ Exhibit 2, Tab 7, Statement of Dr Gary Cox, 15 November 2022, [7]–[8] (SCOI.77306); Transcript of the Inquiry, 23 November 2022, T328.5–25 (TRA.00006.00001).

⁶⁰⁸ Exhibit 2, Tab 7, Statement of Dr Gary Cox, 15 November 2022, [9] (SCOI.77306); Transcript of the Inquiry, 23 November 2022, T327.36–38 (TRA.00006.00001).

⁶⁰⁹ Exhibit 2, Tab 7, Statement of Dr Gary Cox, 15 November 2022, [8]–[10] (SCOI.77306); Transcript of the Inquiry, 23 November 2022, T328.27–34 (TRA.00006.00001).

⁶¹⁰ Transcript of the Inquiry, 23 November 2022, T329.4–7 (TRA.00006.00001).

⁶¹¹ Transcript of the Inquiry, 23 November 2022, T334.1–18 (TRA.00006.00001).

⁶¹² Transcript of the Inquiry, 23 November 2022, T335.5–9 (TRA.00006.00001).

⁶¹³ Transcript of the Inquiry, 23 November 2022, T339.15–33 (TRA.00006.00001).

- 4.245. In September 1988, Dr Cox attended a meeting of the Police Gay and Lesbian Liaison Committee. He told the Inquiry that at this meeting, the police indicated that because reports of LGBTIQ violence referred to in *The Sydney Morning Herald* had not come to police, the violence was not in fact occurring.⁶¹⁴ Following the meeting, Dr Cox drew up an outline for a project to enable reporting of violence by members of the LGBTIQ community to a trusted third party. This project became known as the Streetwatch Project and was established by the Sydney Gay and Lesbian Mardi Gras Workshop, the GLRL and other community organisations.⁶¹⁵
- 4.246. A key driver of this project was concern around the dearth of police reports being made by victims of violent assaults, despite an “obvious growth in the problem of street violence and hate crimes” against LGBTIQ people.⁶¹⁶ Dr Cox gave evidence that “[t]here was a long-standing suspicion of law enforcement agencies in the 1980s within the LGBTIQ community”, and low expectations across the LGBTIQ community of police action and clear-up rates.⁶¹⁷ He stated that: “It was obvious to us that the police in NSW were not seeing the patterns in this type of hate crime that were self-evident to us”.⁶¹⁸

The Streetwatch Report

- 4.247. *The Streetwatch Report: A Study into Violence Against Lesbians and Gay Men (Streetwatch Report)*⁶¹⁹ was publicly launched in April 1990 by then-Minister for Police and Emergency Services, the Hon Ted Pickering MLC. Dr Cox noted the significance of Mr Pickering’s willingness to publicly launch the report, being an indication to the wider community that anti-LGBTIQ violence was unacceptable and required a government response.⁶²⁰ Dr Cox noted the instrumental efforts of Clover Moore in alerting Mr Pickering to the issues, including taking him to “hot spots” in her electorate of Sydney.⁶²¹
- 4.248. The *Streetwatch Report* collected data directly from victims of anti-LGBTIQ attacks via a confidential survey administered by the Gay and Lesbian Counselling Service and Lesbian Lines.⁶²² Participants were encouraged to make reports to the police, and services were provided to support victims in liaising with police, noting the historic tensions between law enforcement agencies and the LGBTIQ community.⁶²³

⁶¹⁴ Transcript of the Inquiry, 23 November 2022, T330.41–331.12 (TRA.00006.00001).

⁶¹⁵ Exhibit 2, Tab 7, Statement of Dr Gary Cox, 15 November 2022, [18]–[21] (SCOI.77306).

⁶¹⁶ Exhibit 2, Tab 7, Statement of Dr Gary Cox, 15 November 2022, [31] (SCOI.77306).

⁶¹⁷ Exhibit 2, Tab 7, Statement of Dr Gary Cox, 15 November 2022, [32] (SCOI.77306).

⁶¹⁸ Exhibit 2, Tab 7, Statement of Dr Gary Cox, 15 November 2022, [56] (SCOI.77306).

⁶¹⁹ Exhibit 2, Tab 22, Gary Cox, ‘The Streetwatch Report: A Study into Violence Against Lesbians and Gay Men’ (Streetwatch Series Report No 1, Lesbian and Gay Anti-Violence Project, 1990) (SCOI.76806).

⁶²⁰ Exhibit 2, Tab 7, Statement of Dr Gary Cox, 15 November 2022, [26]–[27] (SCOI.77306).

⁶²¹ Transcript of the Inquiry, 23 November 2022, T341.40–47 (TRA.00006.00001).

⁶²² Transcript of the Inquiry, 23 November 2022, T342.21–26 (TRA.00006.00001).

⁶²³ Transcript of the Inquiry, 23 November 2022, T341.14–32 (TRA.00006.00001).

- 4.249. Reports from women through the Lesbian Line were low, with only four responses noted in the *Streetwatch Report*. Dr Cox gave oral evidence that the reasons for this were “discussed a lot in the committee meetings”. He suggested that the way the issues were portrayed, particularly through the media, would have resonated more as a gay male issue. He noted that 50% of the committee were women, and so the committee was aware that anti-lesbian violence was in fact a real and ongoing issue. Dr Cox noted the different nature of violence against women, occurring more predominantly in the workplace or home and from people known to the victim, as opposed to the street crime men tended to principally experience.⁶²⁴
- 4.250. The *Streetwatch Report* demonstrated that violent assaults were not confined to inner-city suburbs that were identifiable LGBTIQ neighbourhoods, and that the assaults were a more widespread issue. Most assaults occurred between Thursday and Sunday from 6:00pm–3:00am, with victims tending to be leaving pubs or moving to clubs. Over 80% of assailants were perceived to be under 30 years old, and almost half were judged to be under 20 years of age, with over two-thirds of assaults involving three or more attackers.⁶²⁵ In 83% of assaults, no weapons were used, rather fists and feet.⁶²⁶ As to the location of attacks, 52% occurred in the street, a further 27% in parks and 28% at beats. Of the reports at beats, 53% occurred at beats in Moore Park.⁶²⁷
- 4.251. The *Streetwatch Report* was widely dispersed to the Attorney General, the Minister for Police, the Federal Minister for Justice, the State Member for Bligh, the Anti-Discrimination Board and a number of other organisations and politicians.⁶²⁸
- 4.252. In the *Streetwatch Report*, Dr Cox noted that so long as there was reluctance in the police to acknowledge gay and lesbian officers, there would continue to be an attitude of viewing LGBTIQ people as “‘different’ or alien”.⁶²⁹ Dr Cox emphasised in his oral evidence that:⁶³⁰

[T]he Police Service needs to reflect the community, and if you are going to address issues in the community, whether it be First Nations community or the gay and lesbian community, then the Police Service need to reflect that in their own personnel so that you had people you could identify with, but also they could influence the issues around stereotyping and prejudice.

⁶²⁴ Transcript of the Inquiry, 23 November 2022, T343.33–344.8 (TRA.00006.00001).

⁶²⁵ Exhibit 2, Tab 7, Statement of Dr Gary Cox, 15 November 2022, [30] (SCOI.77306).

⁶²⁶ Transcript of the Inquiry, 23 November 2022, T347.12–14 (TRA.00006.00001).

⁶²⁷ Transcript of the Inquiry, 23 November 2022, T345.31–43 (TRA.00006.00001).

⁶²⁸ Exhibit 2, Tab 7, Statement of Dr Gary Cox, 15 November 2022, [36] (SCOI.77306).

⁶²⁹ Transcript of the Inquiry, 23 November 2022, T350.30–35 (TRA.00006.00001).

⁶³⁰ Transcript of the Inquiry, 23 November 2022, T350.28–45 (TRA.00006.00001).

- 4.253. Dr Cox noted a number of policing initiatives that emerged as a consequence of the *Streetwatch Report*, including:⁶³¹
- *More on the ground community policing measures were implemented.*
 - *Foot patrols were instituted on Oxford Street and other locations during evenings and night-time hours.*
 - *There was a particular issue around the boundary between Kings Cross Police Station and Surry Hills Police Station in the Oxford Street area, inhibiting joint operations. This was eventually resolved.*
 - *In December 1990, a large police operations van was stationed at Taylor Square to provide assistance to members of the LGBTIQ community and to speed up police response times to incidents. It also improved police-community relations.*
 - *The new Gay and Lesbian Client Group Consultant for the NSW Police, Ms Sue Thompson, took a much more proactive role in monitoring incidents, resolving complaints, and promoting improved policing practices.*

The Off Our Backs Report and the Count and Counter Report

- 4.254. In 1992, the GLRL and AVP published a second report in the Streetwatch series, titled *The Off Our Backs Report: A Study into Anti-Lesbian Violence (Off Our Backs Report)*.⁶³² In 1994, Dr Cox worked on a further report: *The Count and Counter Report: A Study into Hate Related Violence Against Lesbians and Gays (Count and Counter Report)*.⁶³³
- 4.255. The *Count and Counter Report* analysed two sets of data, from 1991–1992 and 1992–1993.⁶³⁴ It noted that violence against lesbians tended to be ongoing in nature, and occurred primarily in settings other than the street, such as workplaces.⁶³⁵ Major differences between the two sets of data indicated that although the profile of incidents was very similar, robbery occurred in far fewer cases, and there was a notable decline in incidents on the street.⁶³⁶

⁶³¹ Exhibit 2, Tab 7, Statement of Dr Gary Cox, 15 November 2022, [37] (SCOI.77306).

⁶³² Exhibit 2, Tab 21, Gay and Lesbian Rights Lobby Inc, 'The Off Our Backs Report: A Study into Anti-Lesbian Violence' (Streetwatch Series Report No 2, Lesbian and Gay Anti-Violence Project, September 1992) (SCOI.76803).

⁶³³ Exhibit 2, Tab 18, Gary Cox, 'The Count and Counter Report: A Study into Hate Related Violence Against Lesbians and Gays' (Streetwatch Series Report No 3, Lesbian and Gay Anti-Violence Project, January 1994) (SCOI.76804).

⁶³⁴ Exhibit 2, Tab 7, Statement of Dr Gary Cox, 15 November 2022, [43] (SCOI.77306).

⁶³⁵ Exhibit 2, Tab 7, Statement of Dr Gary Cox, 15 November 2022, [47] (SCOI.77306).

⁶³⁶ Exhibit 2, Tab 7, Statement of Dr Gary Cox, 15 November 2022, [45]–[46] (SCOI.77306).

4.256. Dr Cox found that reports of physical attacks appeared to be declining, but that there was still a great deal of progress to be made to eradicate the issue of anti-LGBTIQ violence and its consequences.⁶³⁷ He considered that the decline in physical attacks might be attributable to the wider scope of the *Count and Counter Report*, in which verbal and other abuse were encouraged to be reported.⁶³⁸

4.257. Dr Cox gave evidence of the types of incidents reported to the *Count and Counter Report*:⁶³⁹

A gay tourist was bashed around midnight. The survivor suffered nine days in hospital with a brain haemorrhage, fractured skull and major injuries to his eyes and forehead. The motive for the attack – because the survivor was gay.

A lesbian mother and her children were continually harassed for over 2 years. “You lesbian sluts!” was frequently yelled through the letterbox. “Get out. Go home you [effing] dyke!” The children were told by other kids: “We can’t play with you as we’ll get AIDS”. This verbal abuse has led to violence against both parent and children on a number of occasions. The attackers are often younger than 15.

4.258. Dr Cox noted that one aim of the Streetwatch series of reports was to shed light on anti-LGBTIQ violence in the mainstream media. At Exhibit 2 of the material tendered before this Inquiry, there is a significant yet select volume of newspaper articles detailing the increasing media coverage of anti-LGBTIQ violence throughout the 1980s and 1990s.⁶⁴⁰

4.259. Dr Cox observed that he agreed with a statement made by Bruce Grant (see below) that “[i]t is possible to change societal problems when there is consensus for action backed by sustainable financial commitments”.⁶⁴¹

Bruce Grant

4.260. Mr Grant gave evidence on 23 November 2022.

Mr Grant’s background and involvement in GLRL

4.261. Mr Grant is an International Child Protection Adviser and Consultant, who served as co-convenor of the GLRL from 1989–1991, and was the Coordinator of the AVP from 1991–1999.⁶⁴²

⁶³⁷ Exhibit 2, Tab 7, Statement of Dr Gary Cox, 15 November 2022, [49] (SCOI.77306).

⁶³⁸ Transcript of the Inquiry, 23 November 2022, T356.37–357.1 (TRA.00006.00001).

⁶³⁹ Transcript of the Inquiry, 23 November 2022, T356.5–356.25 (TRA.00006.00001).

⁶⁴⁰ Exhibit 2, Tab 7, Statement of Dr Gary Cox, 15 November 2022, [54] (SCOI.77306).

⁶⁴¹ Exhibit 2, Tab 7, Statement of Dr Gary Cox, 15 November 2022, [57] (SCOI.77306).

⁶⁴² Exhibit 2, Tab 6, Statement of Bruce Grant, 15 November 2022, [1]–[3] (SCOI.77305).

- 4.262. Mr Grant explained in his statement that the GLRL was established in NSW in 1988, with a goal of achieving legal equality and social justice for lesbians, gay men and their families. Mr Grant joined the group when it was formed, and was elected as co-convenor in 1989 alongside Carole Ruthchild (whose evidence is set out below).⁶⁴³
- 4.263. The GLRL worked to advance the rights of LGBTIQ communities and achieve legal equality and social justice by providing referral and education resources on gay and lesbian rights to the media, policy makers and the community.⁶⁴⁴
- 4.264. Mr Grant's work with the GLRL primarily focused on advocating for legal and policy reform to guarantee LGBTIQ people access to legal services and protection from violence.⁶⁴⁵ The GLRL progressed a number of key advances in these areas including amendments to the *Anti-Discrimination Act* to include vilification based on perceived or actual homosexuality, equal age of consent legislation in 2003, and the removal of anti-gay and lesbian provisions from NSW legislation in 1999, 2002 and 2008.⁶⁴⁶
- 4.265. Mr Grant oversaw several notable achievements in his role as co-convenor of the GLRL, including the creation of a community legal service to provide legal advice and services to LGBTIQ people.⁶⁴⁷ Mr Grant explained that societal homophobia limited the access of lesbians and gay men to legal services, including around tenancy and parental rights. The GLRL worked with the Inner City Legal Service to establish a phone-in or in-person clinic.⁶⁴⁸

The AVP

- 4.266. The AVP was established in 1990 to mobilise community response to anti-LGBTIQ violence, based on similar projects in the US.⁶⁴⁹ Funded by the NSW Department of Health, NSW Attorney General's Department and community donations, the AVP focused on documentation, advocacy, behaviour change and research.⁶⁵⁰
- 4.267. As explained above, from 1990 to 1994, the GLRL and the AVP conducted three studies on anti-LGBTIQ violence in NSW, collectively known as the Streetwatch series.⁶⁵¹ The first report, the *Streetwatch Report*, was published in 1990,⁶⁵² and the second, in 1992, was titled the *Off Our Backs Report*.⁶⁵³

⁶⁴³ Exhibit 2, Tab 6, Statement of Bruce Grant, 15 November 2022, [11]–[13] (SCOI.77305); Transcript of the Inquiry, 23 November 2022, T362.8–24 (TRA.00006.00001).

⁶⁴⁴ Exhibit 2, Tab 6, Statement of Bruce Grant, 15 November 2022, [11]–[12] (SCOI.77305).

⁶⁴⁵ Exhibit 2, Tab 6, Statement of Bruce Grant, 15 November 2022, [15] (SCOI.77305).

⁶⁴⁶ Exhibit 2, Tab 6, Statement of Bruce Grant, 15 November 2022, [12] (SCOI.77305); Transcript of the Inquiry, 23 November 2022, T376.27–35 (TRA.00006.00001).

⁶⁴⁷ Transcript of the Inquiry, 23 November 2022, T362.36–42 (TRA.00006.00001).

⁶⁴⁸ Transcript of the Inquiry, 23 November 2022, T362.43–363.7 (TRA.00006.00001).

⁶⁴⁹ Exhibit 2, Tab 6, Statement of Bruce Grant, 15 November 2022, [20] (SCOI.77305).

⁶⁵⁰ Exhibit 2, Tab 6, Statement of Bruce Grant, 15 November 2022, [21], [23] (SCOI.77305).

⁶⁵¹ Exhibit 2, Tab 6, Statement of Bruce Grant, 15 November 2022, [16]–[19] (SCOI.77305).

⁶⁵² Exhibit 2, Tab 22, Gary Cox, 'The Streetwatch Report: A Study into Violence Against Lesbians and Gay Men' (Streetwatch Series Report No 1, Lesbian and Gay Anti-Violence Project, 1990) (SCOI.76806).

⁶⁵³ Exhibit 2, Tab 21, Gay and Lesbian Rights Lobby Inc, 'The Off Our Backs Report: A Study into Anti-Lesbian Violence' (Streetwatch Series Report No 2, Lesbian and Gay Anti-Violence Project, September 1992) (SCOI.76803).

- 4.268. These reports respectively provided a snapshot of street-based violence against gay men and lesbians. The third report, the *Count and Counter Report*, published in 1994, used a larger sample size and sought to identify trends in violence.⁶⁵⁴ At this time, the Bureau of Crime Statistics was not collecting data on hate crimes against LGBTIQ people, rendering the data obtained through the Streetwatch series immensely valuable.⁶⁵⁵
- 4.269. The AVP also published a quarterly publication called *Lifesaver*. The publication targeted two groups: people who agreed that anti-LGBTIQ discrimination is wrong, and people who sat in the middle, or “on the fence”, and might agree with the convictions of whoever they were with. The first group was targeted to affirm their positive values, and the second to encourage them to adopt the position of the first. A third group, people who have a strong hatred towards LGBTIQ people, were not targeted by the AVP.⁶⁵⁶
- 4.270. Mr Grant explained that, at the time of the AVP’s formation, there was an upsurge in activism among the LGBTIQ community to combat the ongoing violence and discrimination, which many felt to be increasing.⁶⁵⁷ The AVP responded to growing demand within the LGBTIQ community for practical measures to deal with and combat violence.⁶⁵⁸
- 4.271. While the Streetwatch series documented violence, the AVP sought to facilitate reports of violence to police and provide counselling services to survivors.⁶⁵⁹ The AVP also advocated for education and training for police officers responding to anti-LGBTIQ violence, and for a designated and trained LGBTIQ liaison officer to be employed at every police station.⁶⁶⁰
- 4.272. Mr Grant gave evidence that policing in and around Oxford Street was inadequate, and that in community meetings with the police, members of the LGBTIQ community sought additional patrols to act as a deterrent to violence. Some individuals and organisations filled this gap by establishing civilian street patrols, safe spaces and providing whistles to LGBTIQ people to be used when under threat of public violence (see above).⁶⁶¹

⁶⁵⁴ Exhibit 2, Tab 18, Gary Cox, ‘The Count and Counter Report: A Study into Hate Related Violence Against Lesbians and Gays’ (Streetwatch Series Report No 3, Lesbian and Gay Anti-Violence Project, January 1994) (SCOI.76804).

⁶⁵⁵ Transcript of the Inquiry, 23 November 2022, T368.31–368.35 (TRA.00006.00001).

⁶⁵⁶ Transcript of the Inquiry, 23 November 2022, T372.42–373.16 (TRA.00006.00001).

⁶⁵⁷ Exhibit 2, Tab 6, Statement of Bruce Grant, 15 November 2022, [32] (SCOI.77305); Transcript of the Inquiry, 23 November 2022, T363.36–363.42 (TRA.00006.00001).

⁶⁵⁸ Exhibit 2, Tab 6, Statement of Bruce Grant, 15 November 2022, [32] (SCOI.77305).

⁶⁵⁹ Exhibit 2, Tab 6, Statement of Bruce Grant, 15 November 2022, [24]–[25] (SCOI.77305); Transcript of the Inquiry, 23 November 2022, T363.36–364.8 (TRA.00006.00001).

⁶⁶⁰ Exhibit 2, Tab 6, Statement of Bruce Grant, 15 November 2022, [28] (SCOI.77305).

⁶⁶¹ Exhibit 2, Tab 6, Statement of Bruce Grant, 15 November 2022, [34]–[38] (SCOI.77305); Transcript of the Inquiry, 23 November 2022, T375.13–375.35 (TRA.00006.00001).

Responses to a culture of anti-LGBTIQ violence

- 4.273. Mr Grant explained that the culture of anti-LGBTIQ hate and violence was learned by the community from its forebears, in the same way a parent learns to be a parent, whether good or bad, from their own parents.⁶⁶² The GLRL, AVP and the wider LGBTIQ community used rallies to demonstrate their opposition to this generationally learned violence. Some rallies were held in direct response to anti-LGBTIQ propaganda, such as that propagated by the organisation the Festival of Light, which was known to incite anti-LGBTIQ violence.⁶⁶³
- 4.274. In his oral evidence, Mr Grant discussed one campaign that involved asking people who had been bashed to write their names on a piece of paper and stick it to a church door. Hundreds of people participated, including gay men, lesbians and trans people, and their families, from across Sydney. Mr Grant explained, “[i]t was a very symbolic way to visualise this”.⁶⁶⁴
- 4.275. The AVP also ran awareness campaigns to challenge anti-LGBTIQ norms and behaviours across society, and community education programs to encourage the adoption of protective behaviours, such as reporting hate crimes.⁶⁶⁵
- 4.276. One campaign run by the AVP was “Homophobia: What Are You Scared Of?”, a part of which was a specific campaign focused on violence against LGBTIQ Indigenous Australians. This initiative used leading voices of Indigenous communities to demonstrate support for LGBTIQ Indigenous Australians. It was awarded a Certificate of Merit in the 1997 Australian Violence Prevention Awards.⁶⁶⁶
- 4.277. Mr Grant explained such awareness campaigns were important because, until the 1980s, anti-LGBTIQ violence was a largely unrecognised phenomenon beyond the LGBTIQ community. He observed that “‘poofter bashing’ was considered a national pastime”.⁶⁶⁷ Mr Grant explained that the data collected via the Streetwatch series made it evident that the motivation for assaults on LGBTIQ people was not robbery or “being in the wrong place at the wrong time”, the motivation was hatred.⁶⁶⁸ This became clear through the discriminatory and abusive language used by perpetrators in the course of assaults.⁶⁶⁹

⁶⁶² Transcript of the Inquiry, 23 November 2022, T364.22–364.42 (TRA.00006.00001).

⁶⁶³ Transcript of the Inquiry, 23 November 2022, T364.22–365.41 (TRA.00006.00001).

⁶⁶⁴ Transcript of the Inquiry, 23 November 2022, T366.23–367.30 (TRA.00006.00001).

⁶⁶⁵ Exhibit 2, Tab 6, Statement of Bruce Grant, 15 November 2022, [30] (SCOI.77305).

⁶⁶⁶ Exhibit 2, Tab 6, Statement of Bruce Grant, 15 November 2022, [30]–[31] (SCOI.77305); Transcript of the Inquiry, 23 November 2022, T373.28–41 (TRA.00006.00001).

⁶⁶⁷ Exhibit 2, Tab 6, Statement of Bruce Grant, 15 November 2022, [40]–[41] (SCOI.77305).

⁶⁶⁸ Transcript of the Inquiry, 23 November 2022, T365.43–366.21 (TRA.00006.00001).

⁶⁶⁹ Transcript of the Inquiry, 23 November 2022, T366.10–12 (TRA.00006.00001).

4.278. Mr Grant emphasised the power of anti-violence campaigns:⁶⁷⁰

The campaigns are called, like, social promotion, promoting social change, and there are two sides to that. So there was a general view in terms of these type of campaigns. Silence acts as a curtain, right? What the silence does is people who experience that type of violence often don't report because they don't think anybody is going to take it seriously. So this is part of a campaign saying, 'No', you know, 'You do have rights', 'That's not negotiable', 'If you experience violence, it is really important to report it'.

4.279. Despite the commonality of anti-LGBTIQ violence, a government response was not considered to be warranted or appropriate. Mr Grant noted that violence against women was similarly under-reported and was not granted a government response until 1994.⁶⁷¹

4.280. Mr Grant lamented that, while social acceptance of LGBTIQ people has improved, significant progress still needs to be made.⁶⁷²

While the situation has significantly improved, there is still no NSW or national study on the nature, cause, prevalence and impact of homophobia and transphobia, much less coordinated efforts by national and state governments and territories to prevent it. Such a study, and such responses, were among the main recommendations of the Streetwatch Report. This remains unfinished business.

4.281. Mr Grant concluded his statement with remarks that that he hoped would be heard by the public and policy makers: “Change is possible when there is consensus for action, with predictable and sustainable financial investments in that action.”⁶⁷³

Ulo Klemmer

4.282. Ulo Klemmer gave evidence on 24 November 2022.

Mr Klemmer's background and early life

4.283. Mr Klemmer was born in 1950 in a refugee camp in Bathurst for people displaced after World War II. His family moved to Sydney when he was a baby.⁶⁷⁴

⁶⁷⁰ Transcript of the Inquiry, 23 November 2022, T371.44–372.7 (TRA.00006.00001).

⁶⁷¹ Exhibit 2, Tab 6, Statement of Bruce Grant, 15 November 2022, [41] (SCOI.77305).

⁶⁷² Exhibit 2, Tab 6, Statement of Bruce Grant, 15 November 2022, [42] (SCOI.77305).

⁶⁷³ Exhibit 2, Tab 6, Statement of Bruce Grant, 15 November 2022, [44] (SCOI.77305).

⁶⁷⁴ Exhibit 2, Tab 8, Statement of Ulo Klemmer, 11 November 2022, [7] (SCOI.77307).

- 4.284. Mr Klemmer worked as a beat outreach officer for ACON from 1989 to 1994.⁶⁷⁵ He was involved in volunteer work for the LGBTIQ community from the age of 18 onwards, including for ACON, the Bobby Goldsmith Foundation and Mardi Gras.⁶⁷⁶ Mr Klemmer also managed a gay sauna called “Ken’s Karate Club” in Kensington from 1973 to 1978.⁶⁷⁷
- 4.285. Most recently, Mr Klemmer has done volunteer work for ACON at LGBTIQ+ parties and events as a “Rover”, which involves looking out for the welfare of partygoers.⁶⁷⁸
- 4.286. Mr Klemmer commenced his oral evidence before the Inquiry by reading some introductory remarks he included in his statement concerning the historical treatment of members of the gay community:⁶⁷⁹

I begin by acknowledging the Gadigal people, the traditional custodians of this Eora nations land on which we meet, I pay my respects to the Elders past, present and future. They are this planet’s oldest living/surviving culture and they have cared for the land for over 60,000 years.

In all that time there is no record of ‘homophobia’. This hate was thrust upon this land in 1788, by the British invasions, laws and culture. The laws pertaining to ‘buggery’ were introduced, with the penalty being death. This ‘law’ deprived same sex attracted folk of any sense of belonging, any sense of loving and was mostly the reason that the natural desire for sex, love and companionship was driven underground to what we now still know as ‘beats’.

The penalties were tweaked but the ‘law’ was not changed till 1984, when homosexual conduct between consenting males over the age of 18 was decriminalised. The hate has subsided but still exists to this day.

In the same period, sex between heterosexual persons in any place outside of the home was not frowned upon with the death penalty. In my time, heterosexual ‘parking’ and use of ‘Lover’s Lanes’ etc. were seen as normal and a badge of honour for many.

⁶⁷⁵ Exhibit 2, Tab 8, Statement of Ulo Klemmer, 11 November 2022, [11] (SCOI.77307).

⁶⁷⁶ Exhibit 2, Tab 8, Statement of Ulo Klemmer, 11 November 2022, [9] (SCOI.77307); Transcript of the Inquiry, 24 November 2022, T385.9–386.5 (TRA.00007.00001).

⁶⁷⁷ Exhibit 2, Tab 8, Statement of Ulo Klemmer, 11 November 2022, [9], [12] (SCOI.77307).

⁶⁷⁸ Exhibit 2, Tab 8, Statement of Ulo Klemmer, 11 November 2022, [13] (SCOI.77307).

⁶⁷⁹ Transcript of the Inquiry, 24 November 2022, T382.45–383.31 (TRA.00007.00001).

Mr Klemmer's work as a beat outreach worker

- 4.287. Mr Klemmer started working as a beat outreach worker in 1988, when he was in his late 30s.⁶⁸⁰ Mr Klemmer had personal experience of visiting and using beats over a number of years prior to taking that position.⁶⁸¹ Mr Klemmer was asked by Counsel Assisting about the “Fairy Bower” beat at North Head, and described it in this way:⁶⁸²

Its quite a glorious beat, actually. To get there, you would drive to Manly, to Shelley Beach – there is a carpark above Shelley Beach – park the car, and then there was quite a steep climb, a rocky steep climb, from the carpark to a very imposing sandstone wall where, conveniently, I think one or possibly two of the stones had been pulled out where you could get through to the other side. Once you got to the other side, it was totally, totally private, totally, totally, beautiful, beautiful area. It was low-lying bush, lots of rocky little areas, lots of tracks going through to them. What you could do is walk through the tracks to the bush, find – find a rock, settle down. There was – because it was so private, you could – nudity was fine, nobody worried about that. It was quite social. There were people who went there very, very regularly who you could chat to, and it was just a beautiful, beautiful place to be.

- 4.288. The focus of Mr Klemmer's work as a beat outreach worker initially focused on beats in the western suburbs of Sydney. He explained that this was because “men in that area were not well connected to the broader gay community.”⁶⁸³ He said:⁶⁸⁴

Why it was, it was because there was some research done to get the project going, and it indicated that the men out there who were having sex with other men weren't really connected with the community, the gay community, at the time. So, given that HIV was in its still infancy, the knowledge wasn't really being spread by media or any other facility, really, of how it was contracted, there was quite a bit of confusion. So there was a need by these men who weren't attached to the community to find out actually how and what safe sex is.

- 4.289. During his evidence, Mr Klemmer was taken to an article in the *Eastern Herald* with the headline “Gay beats: our most shameful sexual secret?” In that article, Phillip Keen, another beat outreach worker, said that “[o]verwhelmingly, most men who use beats are very discrete about the way they use them ... people go a long way to avoid being noticed by the general public.”⁶⁸⁵ Mr Klemmer agreed that this was the case, and observed that “[d]uring my time as a beat outreach worker, I'm not sure

⁶⁸⁰ Transcript of the Inquiry, 24 November 2022, T384.17–25 (TRA.00007.00001).

⁶⁸¹ Exhibit 2, Tab 8, Statement of Ulo Klemmer, 11 November 2022, [14]–[18] (SCOI.77307).

⁶⁸² Transcript of the Inquiry, 24 November 2022, T387.12–28 (TRA.00007.00001).

⁶⁸³ Exhibit 2, Tab 8, Statement of Ulo Klemmer, 11 November 2022, [19]–[20] (SCOI.77307).

⁶⁸⁴ Transcript of the Inquiry, 24 November 2022, T338.29–38 (TRA.00007.00001).

⁶⁸⁵ Transcript of the Inquiry, 24 November 2022, T397.38–398.1 (TRA.00007.00001).

that I saw any – any man having sex with another man.”⁶⁸⁶ He also agreed that, as at 1992, beats were commonly represented or talked about in derogatory terms.⁶⁸⁷

- 4.290. Over time, the scope of the project expanded, including to other areas of Sydney and to Newcastle.⁶⁸⁸ Mr Klemmer said that it was “very challenging work”, and that it could be difficult to initiate contact with beat users.⁶⁸⁹ Sometimes, discussions would occur in the car, and sometimes the outreach workers would go to a café to chat to beat users. The outreach workers would leave condoms and pamphlets for men who might be reluctant to engage in a discussion.⁶⁹⁰ The focus was on a “safe sex message”.⁶⁹¹ Outreach workers worked in pairs for safety, and carried mobile phones, which were new at the time, both for safety and in case they came across someone who needed assistance.⁶⁹²

Reports produced by ACON

- 4.291. ACON produced reports in relation to its HIV/AIDS reference work, including the *On the Beat* report by Paul van Reyk (1990) and the *Gangsters, Graffiti and Glory Holes* report by Peter Kerans (1993) (**Kerans Report**). Mr Klemmer described the concerns that men using beats would raise with him in this way:⁶⁹³

There were three main concerns, generally: HIV clearly was – well, the age of AIDS was what I would have thought would have been the front-runner of concerns. There was a definite thirst for knowledge. We fulfilled that thirst, I hope, with – we had pamphlets in many languages with us. We had our own personal knowledge. We could refer them on to people who – for testing, for doctors, for whatever their need was. But what I found equally disturbing was that they also had a fear of police harassment, interactions with them, possibly, and bashings. So it was like there was – they were the three main concerns. Even though we were there to deal with the HIV, the police and the bashings kept on popping up on the same amount of time.

- 4.292. Mr Klemmer was taken to several passages in the Kerans Report, which recorded that outreach workers spent much of their time at beats discussing the times and locations of police activity, and that beat users spoke of witnessing arrests, harassment and the use of undercover officers at beats.⁶⁹⁴ Mr Klemmer said the concerns recorded in the Kerans Report were consistent with the concerns raised with him by beat users. He said:⁶⁹⁵

⁶⁸⁶ Exhibit 2, Tab 8, Statement of Ulo Klemmer, 11 November 2022, [49] (SCOI.77307); Transcript of the Inquiry, 24 November 2022, T398.10–16 (TRA.00007.00001).

⁶⁸⁷ Transcript of the Inquiry, 24 November 2022, T399.3–14 (TRA.00007.00001).

⁶⁸⁸ Exhibit 2, Tab 8, Statement of Ulo Klemmer, 11 November 2022, [22] (SCOI.77307).

⁶⁸⁹ Transcript of the Inquiry, 24 November 2022, T391.17–392.5 (TRA.00007.00001).

⁶⁹⁰ Exhibit 2, Tab 8, Statement of Ulo Klemmer, 11 November 2022, [23]–[24] (SCOI.77307).

⁶⁹¹ Transcript of the Inquiry, 24 November 2022, T388.40–43 (TRA.00007.00001).

⁶⁹² Transcript of the Inquiry, 24 November 2022, T390.36–42 (TRA.00007.00001).

⁶⁹³ Transcript of the Inquiry, 24 November 2022, T392.11–24 (TRA.00007.00001).

⁶⁹⁴ Transcript of the Inquiry, 24 November 2022, T393.15–394.3 (TRA.00007.00001).

⁶⁹⁵ Transcript of the Inquiry, 24 November 2022, T394.8–18 (TRA.00007.00001).

Oh, absolutely. Absolutely. To flesh it out a bit, the harassment was – police would come up to cars – there were many forms. I think for me what was most disturbing was they would come up to cars and talk to people who [were] just sitting in a car doing absolutely nothing. They were – they had their names taken, their addresses, their contact, and they were told that “We’ll be in touch”. So it’s like, why? Why would they do that? That person was doing nothing. And, well, whether they did or didn’t get in touch was like a psychological bit of harassment on top of it.

Policing of beats

- 4.293. Mr Klemmer said there was always a concern that someone going to a beat might encounter police.⁶⁹⁶ Police also sometimes “close[d] down” beats.⁶⁹⁷ He recalled two instances in his own experience where he encountered police targeting patrons at beats, including an instance where a “very, very good looking young man”, who turned out to be a police officer, tried to “entice [him] into the bushes.”⁶⁹⁸ He agreed with a statement in the Kerans Report that “[b]y mid-1991, the situation in western Sydney had deteriorated for men at beats. Outreach workers spoke to beat users who reported an increasing level of harassment and arrests at beats.”⁶⁹⁹
- 4.294. Mr Klemmer said that police practices made the work of the beat outreach workers more difficult because beat outreach workers were seen as potentially being undercover police officers, and that people therefore tried to avoid them. He said “the police action was counteractive to what we were doing. They didn’t stop, knowing that.”⁷⁰⁰
- 4.295. Mr Klemmer recounted his first interaction with police as being in the mid-1960s when he was aged 14 or 15. On that occasion, a police officer stamped on his foot when he was outside a party and told him “Go home fucking poofter.” He said that, from when he first started going to beats in the late 1960s, “there was always a concern that you might encounter the police when going to a beat”, and that “[b]eat users encountered very negative attitudes from some police.”⁷⁰¹

Mr Klemmer’s experiences of violence at beats

- 4.296. Mr Klemmer said he considered himself “one of the lucky ones” as he did not often encounter direct violence at beats. He said he was bashed in 1977 by several men at a beat in Queens Park. He was assisted by a gay man living in a unit nearby who saw what had happened and came to his aid. This man told him that he often stayed up late to help men who were bashed at the beat, which happened often.⁷⁰²

⁶⁹⁶ Transcript of the Inquiry, 24 November 2022, T394.20–26 (TRA.00007.00001).

⁶⁹⁷ Exhibit 2, Tab 8, Statement of Ulo Klemmer, 11 November 2022, [46] (SCOI.77307).

⁶⁹⁸ Transcript of the Inquiry, 24 November 2022, T394.44–395.30 (TRA.00007.00001).

⁶⁹⁹ Transcript of the Inquiry, 24 November 2022, T395.36–47 (TRA.00007.00001).

⁷⁰⁰ Transcript of the Inquiry, 24 November 2022, T400.3–12 (TRA.00007.00001).

⁷⁰¹ Exhibit 2, Tab 8, Statement of Ulo Klemmer, 11 November 2022, [37]–[42] (SCOI.77307).

⁷⁰² Exhibit 2, Tab 8, Statement of Ulo Klemmer, 11 November 2022, [37] (SCOI.77307); Transcript of the Inquiry, 24 November 2022, T402.20–45 (TRA.00007.00001).

- 4.297. Although Mr Klemmer did not recall being attacked at any other time, he said he observed signs of violence at other times, and on occasion heard groups of young men yelling nearby. He said that “[t]he hateful attitude of some members of the public towards beat users was evident at many toilets, which would carry abusive graffiti directed towards gay men.”⁷⁰³

Ongoing relationship with Police

- 4.298. Mr Klemmer had involvement through his work as a beat outreach worker with both Mr Miller and Sue Thompson, police LGBTIQ+ Liaison Officers (formerly known as Gay and Lesbian Liaison Officers or GLLOs). He made the following observations about interactions between the gay community and police:⁷⁰⁴

From my experience more generally in the gay community, I know that there is a lot of mistrust of the police by members of the community. I believe this stems from the attitudes of some, though not all police, that many gay men have encountered going back to previous decades. I still have friends who are reluctant to engage with police, even in unofficial contexts, due to the negative emotions associated with police officers. So many gay men have had bad experiences with police at some point in their lives, so there is still a lot of negative feelings.

My personal view is that it is better to work with police rather than push them aside and ignore them. I have had good experiences with police Gay and Lesbian Liaison Officers (“GLLOs”). After the murder of Richard Johnson in Alexandria in 1990, Sue Thompson asked me to attend schools with her to try to help address homophobic attitudes of high school students. It was an attempt to challenge young people’s homophobic attitudes by getting them to feel more at ease with members of the LGBTIQ community. More generally I worked with both Fred Miller and then Sue Thompson in their roles as GLLOs with the NSW Police Force, and I know some of the current GLLOs as well.

Dr Eloise Brook

- 4.299. Dr Eloise Brook gave evidence on 24 November 2022.

Dr Brook’s academic background and the work of the Gender Centre

- 4.300. Dr Brook is the Health and Communications Manager at The Gender Centre Inc. She has been in that position since April 2021, and served on the board of the Gender Centre from 2015 to 2019.⁷⁰⁵

⁷⁰³ Exhibit 2, Tab 8, Statement of Ulo Klemmer, 11 November 2022, [31]–[35] (SCOI.77307). See also Transcript of the Inquiry, 24 November 2022, T402.19–403.16 (TRA.00007.00001).

⁷⁰⁴ Exhibit 2, Tab 8, Statement of Ulo Klemmer, 11 November 2022, [44]–[45] (SCOI.77307).

⁷⁰⁵ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [2] (SCOI 77309).

- 4.301. Dr Brook is a writer, advocate and academic and has researched and lectured in political science and gender studies at a range of institutions. She is the editor of Australia’s best-known magazine for the trans and gender diverse community, *POLARE*.⁷⁰⁶
- 4.302. In 2019, Dr Brook released a podcast called *Counting the Dead*, which was based on her research into the investigation of homicides against trans people. She has also co-authored publications on the subject of trans women’s experiences of violence and the challenges of accessing health care.⁷⁰⁷
- 4.303. The Gender Centre is the main support service in NSW for the trans and gender diverse community. It provides around 90% of the services in NSW specific to trans people, and has been running for 40 years.⁷⁰⁸
- 4.304. In addition to the services and support it provides to the trans and gender diverse community, the Gender Centre also engages with police. Dr Brook described the work of the Gender Centre in this way:⁷⁰⁹

So the trans and gender diverse community has always generally had a fraught relationship with the New South Wales Police, but the Gender Centre sees the importance of engaging the police service to be able to have a good rapport with the community. Often it’s the case that most disadvantaged sections of the community that we serve are the most likely to be encountering police, and in such a way that is going to potentially jeopardise their health or their ability to function. So the GC, the Gender Centre, sees an important aspect of what we do as building rapport with the police, engaging with them, and breaking down some of the miscommunications that exist.

- 4.305. In her evidence, Dr Brook drew on both her own knowledge and experience in addition to a 2022 report by Professor Noah Riseman commissioned by ACON and the Gender Centre, entitled *New South Wales Trans History*.⁷¹⁰ Dr Brook explained the report was commissioned because “the first instinct in my position is to create as many resources as possible to capture the history of the community”. She explained:⁷¹¹

...when we look at the history, when we look back and try to make sense of things, it’s such an important thing to do because we are always trying to communicate the value of our community to itself. Being able to draw upon history and the context of what it means to be a gender diverse person and reaching back for hundreds, if not even thousands of years, and into Indigenous cultures as well, it’s very important to place ourselves, to be able to place ourselves.

⁷⁰⁶ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [3] (SCOI 77309).

⁷⁰⁷ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [4]–[5] (SCOI 77309).

⁷⁰⁸ Transcript of the Inquiry, 24 November 2022, T405.15–30 (TRA.00007.00001).

⁷⁰⁹ Transcript of the Inquiry, 24 November 2022, T405.47–406.11 (TRA.00007.00001).

⁷¹⁰ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [12]–[13] (SCOI 77309).

⁷¹¹ Transcript of the Inquiry, 24 November 2022, T407.12–21 (TRA.00007.00001).

The evolution of language concerning trans and gender diverse people

4.306. Dr Brook observed that people who broke from or crossed gender norms have existed throughout history, but the language of trans or gender diversity has not, nor has the idea of a trans identity.⁷¹²

4.307. Dr Brook explained that in the 1950s, the medical profession began using the term “transsexual”. Psychiatrists saw being “transsexual” as a clinical problem – “that a person saw themselves as trapped in the wrong body.”⁷¹³ Gender affirmation surgery – referred to in this period as “sex reassignment surgery” – emerged at the same time. For the medical profession, “transsexualism” was a “problem” that could be “treated” in appropriate circumstances by physical transition.⁷¹⁴

4.308. Dr Brook said:⁷¹⁵

The underlying narrative in this period was one of transition being a “correction”, such that body aligned with the gendered “spirit”.

*Dr Harry Benjamin wrote many influential works in this field, including an article “Transsexualism and Transvestism as Psycho-Somatic and Somato-Psychic Syndromes” in 1954, and a book *The Transsexual Phenomenon* in 1966. His work dominated the approach of the medical profession for years to come.*

While Dr Benjamin was sympathetic to the trans community, the consequence of the medical discourse he helped create was that doctors and psychiatrists became the gatekeepers of who was a “true transsexual”, and who had access to hormones and/ or gender affirmation surgery.

Thus medical professionals might refuse options for medical transition to trans women who failed to conform to expected stereotypes for middle class, white, cis women, or if their physical appearance or mannerisms were perceived as too masculine, or if their lifestyles were not sufficiently respectable. The “ideal” trans woman was one who, having undergone a medical transition, would disappear into society and live a “stealth” lifestyle, indistinguishable from cis women.

4.309. Dr Brook explained that, in the 1950s, “there was something particularly fascinating at the time that those doctors saw as an insight into the difference between men and women, and that trans people might somehow explain or be some kind of a missing link.”⁷¹⁶ At the same time, Dr Brook noted that “there was a certain prurient kind of interest in it as well. It was seen as an oddity. It was seen as deviancy as well.”⁷¹⁷

⁷¹² Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [15] (SCOI 77309).

⁷¹³ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [16] (SCOI 77309).

⁷¹⁴ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [17] (SCOI 77309).

⁷¹⁵ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [18]–[21] (SCOI 77309).

⁷¹⁶ Transcript of the Inquiry, 24 November 2022, T407.34–38 (TRA.00007.00001).

⁷¹⁷ Transcript of the Inquiry, 24 November 2022, T407.39–41 (TRA.00007.00001).

- 4.310. As is clear in the extract of Dr Brook’s evidence above, there was a focus on conforming with gender norms. Dr Brook said that:⁷¹⁸

[D]octors who felt or often had the best intention in supporting trans people into transition also made assumptions or felt they had a responsibility to support that transition in a way that didn’t upset gender norms.

- 4.311. Dr Brook explained that trans people she had spoken to from this era talked about having a copy of the guidelines that psychiatrists used to assess “transsexuals”, and “coaching each other on the right things to say in order to be given access to medical transition options”.⁷¹⁹ Dr Brook elaborated on this in her oral evidence:⁷²⁰

I think in this space it is commonly spoken about or reflected about that, you know, you would go to the hospital and you would turn up in front of a desk with a bunch of psychiatrists and doctors there who would assess you based upon how you could walk or how you presented. And they were ruthless. So if in any way you didn’t say the right thing about your identity and your sexuality as well, then you were removed or you were not able to proceed. They particularly were screening for trans women, because that was the predominant trans person who identified, and any of those trans women who didn’t conform to the physical expectations of what a woman was in the ’50s was excluded.

- 4.312. In addition, there was “often a conflation of gender and sexual diversity in the medical profession.” For example, trans women seeking medical support for their transition were often required to demonstrate that they had no physical attraction to women.⁷²¹ This perception also existed in the public eye: “[t]here was a view that being transgender was the natural extreme of being homosexual – that you were so gay that you crossed a threshold.”⁷²²

The 1960s and the camp scene

- 4.313. Dr Brook said that, in the 1960s, there was a growth of new bars and venues along Oxford Street and in Kings Cross and Darlinghurst that catered to the “camp” community.⁷²³ She explained that while “camp” is a word commonly associated with gay men:⁷²⁴

... the camp scene in Kings Cross and Darlinghurst was broader than that and provided a welcoming to anyone who did not fit norms of sexuality or gender. It was a supportive environment to experiment with gender expression.

⁷¹⁸ Transcript of the Inquiry, 24 November 2022, T408.13–17 (TRA.00007.00001).

⁷¹⁹ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [22] (SCOI 77309).

⁷²⁰ Transcript of the Inquiry, 24 November 2022, T408.13–25, T409.6–15 (TRA.00007.00001).

⁷²¹ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [23] (SCOI 77309).

⁷²² Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [24] (SCOI 77309); Transcript of the Inquiry, 24 November 2022, T409.25–38 (TRA.00007.00001).

⁷²³ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [25] (SCOI 77309).

⁷²⁴ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [26] (SCOI 77309). See also Transcript of the Inquiry, 24 November 2022, T410.1–9 (TRA.00007.00001).

4.314. Many of the venues that opened during this period were “drag bars”. Dr Brook explained that drag is not the same as being trans: “Drag is a form of performative gender expression, where a person adopts a persona of someone customarily from a different gender for dramatic performance. Drag performers are often cisgender.”⁷²⁵ Notwithstanding this distinction, Dr Brook explained that the drag scene “often provided (and continues to provide) an environment for trans people, and especially trans women, to experience with gender expressions and explore their gender identity...”.⁷²⁶

4.315. Dr Brook said trans sex workers comprised a significant part of the broader inner-city queer community during this period.⁷²⁷ She observed that when Ms Waine, whose death is considered in **Chapter 5**, was killed, “there was an outpouring of grief from the whole of the queer community” and that “[h]er death was viewed as an attack on the whole community.”⁷²⁸ Dr Brook explained in her oral evidence that:⁷²⁹

...during that period of time, the delineation between the LGBT community was not anywhere near as it is now, and that especially our older community members have really strong ties to the gay community in Sydney and New South Wales, because they all share the same kind of oppression, they all share the same experience of violence, and they, you know, kind of hove together as a community. At the same time, too, I think in the community the understanding of what ‘trans’ was not quite as developed or certainly isn’t where it is now. So the line between the different letters was less kind of clear.

4.316. Dr Brook explained that, in the same way, there was solidarity between the trans and the gay and lesbian communities, the trans community was “swept up” in the violence that occurred in the 1980s and 1990s. She said:⁷³⁰

One of the reasons I would say that trans people were swept up is that – and we even see it today. Often in coming out, a young person might start off as identifying as gay or lesbian, will explore that identity, and then perhaps, in some cases, realise that sexuality was a part of who they are but gender identity was also another part. So I think that certainly in the period that the Commission is examining, the delineation between the communities was a lot less. And also, in regard to sex work, the delineation between a trans sex worker or perhaps someone who identifies as gay but might do sex work in drag, like, all these different kind of nuances of identity and sexuality were not as obvious or evident. So in the experience of violence that, obviously, we’re talking about, there was no distinction between someone – no one took the time to find out whether someone was trans – a trans woman – or gay when they were perpetrating violence against them.

⁷²⁵ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [27] (SCOI 77309).

⁷²⁶ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [28] (SCOI 77309).

⁷²⁷ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [29] (SCOI 77309).

⁷²⁸ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [30] (SCOI 77309).

⁷²⁹ Transcript of the Inquiry, 24 November 2022, T410.19–30 (TRA.00007.00001).

⁷³⁰ Transcript of the Inquiry, 24 November 2022, T410.41–411.11 (TRA.00007.00001).

The 1970s and the 1980s

- 4.317. Trans organisations and activists began to emerge in the 1970s and 1980s, many beginning as social and support groups and growing into “a demand for transgender people to be able to live their life without discrimination, and a recognition of the economic and social disadvantage faced by trans people because of pervasive discrimination.”⁷³¹
- 4.318. In the 1980s, however, there was also an emerging “moral panic” concerning trans people, in particular when the book *The Transsexual Empire* by Janice Raymond was published in 1979.⁷³² Raymond “viewed transitioning as the ‘colonisation’ of the female identity by men”, and Dr Brook observed that “the views of Raymond and others like her justified violence against trans people, and continue to influence media discourse around transgender people today.”⁷³³
- 4.319. Dr Brook noted that trans men and women who could “pass” as their affirmed gender may not have been exposed to the same threat of public violence, but that, for many of those people, “passing may have been a survival strategy in a society that reacted with violence to perceived contraventions of gender expectations.”⁷³⁴ In addition, she said trans people were at a heightened risk of interpersonal violence, even if they were “passing”.⁷³⁵ Violence against trans people often occurred in the form of sexual violence.⁷³⁶
- 4.320. In her evidence, Dr Brook referred to the 1994 report of Roberta Perkins entitled *Transgender Lifestyles and HIV/AIDS Risk*, which recorded a very high level of sexual assault against trans women. Dr Brook said that this accorded with her understanding of the risks faced by the trans and gender diverse community at that time, saying:⁷³⁷

I think the thing to say about this is that the way that trans people were portrayed or continue to be portrayed but certainly were portrayed in this time as being deviant or on the outside of society exposed them to increased violence; exposed them to the types of assaults that are listed within this table, because those people who were perpetrating those violences didn't see trans women as being legitimate or deserving protection, and, thus, were [experiencing] extremely high levels of violence in various ways.

⁷³¹ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [31] (SCOI 77309).

⁷³² Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [37] (SCOI 77309).

⁷³³ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [38] (SCOI 77309).

⁷³⁴ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [39] (SCOI 77309). See also Transcript of the Inquiry, 24 November 2022, T411.46–412.23 (TRA.00007.00001).

⁷³⁵ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [40] (SCOI 77309). See also Transcript of the Inquiry, 24 November 2022, T412.25–45 (TRA.00007.00001).

⁷³⁶ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [41] (SCOI 77309).

⁷³⁷ Transcript of the Inquiry, 24 November 2022, T413.28–37 (TRA.00007.00001).

- 4.321. Dr Brook said that trans and gender diverse people were not likely to approach police if they experienced violence.⁷³⁸ She noted that trans people faced abuse and harassment from the Vice Squad, particularly around Kings Cross, and that sex workers faced “routine harassment and brutality at the hands of police.” One particular danger faced by trans women if they were arrested was being locked in a cell with men.⁷³⁹

The 1990s

- 4.322. The 1990s was a period where there was increasing campaigning for legal recognition of trans people and/or anti-discrimination protections. In 1991, the Transgender Liberation Coalition (**TLC**) was formed. The TLC was the first organisation to use the term transgender, to move away from the medicalised understanding of “the transsexual”.
- 4.323. In 1993, TLC completed a project that collected examples of discrimination and abuse against trans people. In 1996, anti-discrimination protections were introduced in NSW, and amendments were made to the *Births, Deaths and Marriages Registration Act 1995* to allow trans people to change the sex marked on their birth certificates in certain circumstances.⁷⁴⁰

The Transgender Anti-Violence Project

- 4.324. In May 2011, the Gender Centre launched the Transgender Anti-Violence Project (**TAVP**) in response to concern about increasing levels of violence against trans people. As part of this project, the Gender Centre coordinated a survey to learn more about trans people’s experiences of transphobia, and barriers to reporting. A total of 509 responses were completed.⁷⁴¹
- 4.325. Over half the respondents reported that they had experienced a transphobic incident, but only 22% said they had ever reported such an incident – to police, a lawyer, a hospital or any other organisation.⁷⁴² In explaining their choice to not report the incident, 78 people said “I thought it would not be taken seriously/I would be laughed at”, 56 people said “I was afraid of provoking a reprisal or aggravating the situation”, and others said “I was concerned about what the police response would be.”⁷⁴³

⁷³⁸ Transcript of the Inquiry, 24 November 2022, T413.39–47 (TRA.00007.00001).

⁷³⁹ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [44]–[45] (SCOI 77309).

⁷⁴⁰ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [46]–[49] (SCOI 77309).

⁷⁴¹ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [51]–[52] (SCOI 77309).

⁷⁴² Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [53] (SCOI 77309).

⁷⁴³ Transcript of the Inquiry, 24 November 2022, T414.16–415.3 (TRA.00007.00001).

- 4.326. Dr Brook said those figures were still relevant today, particularly among the most disadvantaged members of the trans and gender diverse community. Dr Brook went on to say:⁷⁴⁴

I'd like to acknowledge that the police that we do work with, especially the GLLO officers, do a lot of work towards trying to make themselves more accessible to the community. They put a lot of effort and work into that, which is really appreciated. But they represent the small kind of section of the police, so this is still relevant.

Dr Brook's research on violence against the trans community

- 4.327. Dr Brook began researching the violent deaths of trans and gender diverse people in 2019 in the lead up to Transgender Day of Remembrance (**TDOR**). TDOR honours the memory of trans people who have lost their lives to acts of trans violence, including by suicide.⁷⁴⁵
- 4.328. On TDOR, Transrespect vs Transphobia Worldwide (**TvT**) publishes data about how many trans and gender diverse people were murdered worldwide that year.⁷⁴⁶ In the year leading up to 30 September 2021, there were 375 reported murders of trans and gender diverse people, bringing the total number of reported murders since 1 January 2008 to 4042.⁷⁴⁷ Australia had only reported three names to the project since its inception, and Dr Brook observed that “[t]his figure is remarkable, and likely reflects a dramatic under-reporting of trans and gender diverse people in Australia.”⁷⁴⁸
- 4.329. As a member of the trans community, and in her role at the Gender Centre, Dr Brook said she frequently hears stories about murdered trans and gender diverse people.⁷⁴⁹ She is also aware of factors that would place the trans and gender diverse community at higher risk of violence and homicide than the general population. Dr Brooks, therefore, set out to examine the question of why those risks were not reflected in recorded data.⁷⁵⁰
- 4.330. Dr Brook considers the starting point as being the invisibility of trans and gender diverse people in official data. Dr Brook said:⁷⁵¹

Many forms to collect data include simplistic, binary options such as “male or female” that don't allow trans or gender diverse people to meaningfully articulate who they are or convey important information about themselves. The consequence is that the trans and gender diverse community are pushed into an invisible space.

⁷⁴⁴ Transcript of the Inquiry, 24 November 2022, T415.9–21 (TRA.00007.00001).

⁷⁴⁵ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [56]–[58] (SCOI 77309). See also Transcript of the Inquiry, 24 November 2022, T415.33–416.25 (TRA.00007.00001).

⁷⁴⁶ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [57] (SCOI 77309).

⁷⁴⁷ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [60] (SCOI 77309).

⁷⁴⁸ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [60]–[62] (SCOI 77309).

⁷⁴⁹ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [63] (SCOI 77309).

⁷⁵⁰ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [64]–[66] (SCOI 77309).

⁷⁵¹ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [68]–[69] (SCOI 77309).

This is harmful because it means research does not capture reliable data on these populations, and that services and funding cannot be appropriately targeted to them. This is despite the trans and gender diverse community being one of the most socially disadvantaged groups in Australia. Real numbers would give a sense of the challenge and solutions needed.

- 4.331. Although some efforts have been made to improve data collection in relation to trans and gender diverse people, these efforts have not to date created accurate baseline data about the trans and gender diverse community, which has the effect that the community is unable to accurately report on the rates of victimisation.⁷⁵²
- 4.332. Dr Brook observed that “[t]he problem of invisibility is even worse after death.”⁷⁵³ The Australian Institute of Criminology’s National Homicide Monitoring Program does not record whether victims are trans or gender diverse, and the Coroners Court has no standard way of documenting when a deceased person is trans or gender diverse.⁷⁵⁴ In addition, Dr Brook noted that the recording process around death often focuses on families, and may lead to information about gender diversity being “left out of the conversation”.⁷⁵⁵
- 4.333. Dr Brook said:⁷⁵⁶

One of my greatest fears for our dead is the way they may be harmed through the bureaucratic processes of death. So, often people are buried with their deadname, they are misgendered in Coroner’s reports, and their identities are “corrected” or redacted for their family’s sake. They are not remembered for who they actually were.

Dr Brook’s comments on the work of the Inquiry

- 4.334. Dr Brook noted that the Terms of Reference erroneously refer to the deaths of 88 “men”, when some of those deaths were of trans women or people with intersex characteristics who identified as women. Dr Brook said that “[d]efining those victims as men fails to acknowledge and honour them in death. We need to honour their memories by remembering them as who they were.”⁷⁵⁷ Dr Brook also expressed the view that the three deaths considered by Strike Force Parrabell are not a true reflection of the number of trans and gender diverse people killed between 1970 and 2010.⁷⁵⁸

⁷⁵² Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [70]–[78] (SCOI 77309).

⁷⁵³ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [79] (SCOI 77309).

⁷⁵⁴ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [80]–[81] (SCOI 77309).

⁷⁵⁵ Transcript of the Inquiry, 24 November 2022, T416.28–45 (TRA.00007.00001).

⁷⁵⁶ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [83] (SCOI 77309). See also Transcript of the Inquiry, 24 November 2022, T417.7–25 (TRA.00007.00001).

⁷⁵⁷ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [88]–[89] (SCOI 77309). See also Transcript of the Inquiry, 24 November 2022, T419.11–44 (TRA.00007.00001).

⁷⁵⁸ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [89] (SCOI 77309); Transcript of the Inquiry, 24 November 2022, T418.18–26 (TRA.00007.00001).

- 4.335. Dr Brook said it is important to recognise that violence against the LGBTIQ community is not a purely historical phenomenon, and that “[i]n some ways, the trans and gender diverse community is now at a greater risk of violence than ever before.”⁷⁵⁹ She observed that “[t]ransgender and gender diverse people cannot participate in modern Australian society without the reality and legitimacy of our existence being constantly challenged.”⁷⁶⁰ Trans people, including trans youth, experience a much higher burden of poor mental health.⁷⁶¹
- 4.336. In relation to the Inquiry, Dr Brook said:⁷⁶²

I think my main hope for this Special Commission is to shed a light upon the trans and gender diverse community. We are part of a wider LGBTIQI community, and we are proud to be part of that community and to be in solidarity with our brothers, sisters and siblings. My hope for this Commission is to see that the trans community is a community that exists as part of a wider one, but we have our own needs, we have our own kind of health requirements, that as our gay and lesbian brothers and sisters and siblings were about a decade or two ago, we are in the middle of a civil rights struggle to be able to further the lives of our community. So any chance to speak to that and to have that heard, that’s my hope for this Commission.

Carole Ruthchild

- 4.337. Carole Ruthchild gave evidence on 25 November 2022.

Ms Ruthchild’s background and involvement in the women’s movement

- 4.338. Ms Ruthchild emigrated from the UK in 1988.⁷⁶³ From the 1970s onwards, Ms Ruthchild was active in the women’s movement in the UK, with a particular focus on violence against women. She took part in the first Reclaim the Night march in 1977 and was instrumental in setting up the Leicester Rape Crisis Service in the early 1980s.⁷⁶⁴ In the 1980s, Ms Ruthchild also became involved in the lesbian and gay movement in the UK. She participated in a range of campaigns and marches, and became a member of the Leicester Lesbian and Gay Line, which provided telephone support and advice to lesbians and gay men.⁷⁶⁵

⁷⁵⁹ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [91] (SCOI 77309).

⁷⁶⁰ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [95] (SCOI 77309).

⁷⁶¹ Exhibit 2, Tab 10, Statement of Dr Eloise Brook, 15 November 2022, [101] (SCOI 77309); Transcript of the Inquiry, 24 November 2022, T420.29–421.36 (TRA.00007.00001).

⁷⁶² Transcript of the Inquiry, 24 November 2022, T421.42–422.7 (TRA.00007.00001).

⁷⁶³ Exhibit 2, Tab 9, Statement of Carole Ruthchild, 7 November 2022, [2] (SCOI.77308).

⁷⁶⁴ Exhibit 2, Tab 9, Statement of Carole Ruthchild, 7 November 2022, [7] (SCOI.77308).

⁷⁶⁵ Exhibit 2, Tab 9, Statement of Carole Ruthchild, 7 November 2022, [8] (SCOI.77308).

- 4.339. Ms Ruthchild was employed as a Senior Policy Officer by the NSW Attorney General's Department (later the Department of Justice), providing advice on issues affecting victims of crime, women in the criminal justice system and members of the LGBTIQ community. Ms Ruthchild had carriage of the establishment of the NSW Victims Support Scheme and the changes to NSW legislation required by the 2017 amendments to the *Marriage Act 1961* (Cth) to facilitate marriage equality.⁷⁶⁶
- 4.340. Ms Ruthchild served as a co-convenor of the GLRL (1989-1992), one of the NSW representatives to the Australian Council of Lesbian and Gay Rights (1993-1996), a member of the Managing Committee of the AVP (1992-1994) and as Chair of the *Sydney Star Observer*. She was also involved in Black + White + Pink (1997-1999), a project that promoted reconciliation in the LGBTIQ community.⁷⁶⁷ She has received awards in recognition of her work to promote lesbian and gay rights and has published in the area of violence against the lesbian and gay community.⁷⁶⁸

The obstacles faced by the lesbian community in the 1980s

- 4.341. Ms Ruthchild said that, for lesbians in the UK in the 1980s, “harassment was a thing that happened constantly ... there was – a lot of hostility when it was apparent that you were a lesbian.”⁷⁶⁹ She said that these experiences were in keeping with what she would later hear described in NSW:⁷⁷⁰

So the experiences were very similar: harassment when you were out in public. If you weren't there with a man, you were seen as fair game, really, and even if you were with another woman or even three or four other women, men seemed to think it was their right to come and kind of want to buy you a drink or that kind of thing, as if we were just sitting there waiting to be – to have a man come and buy us a drink. And so – and there weren't many places for lesbians to go. Like, we didn't have any bars of our own. There would be nights in particular bars we could maybe sometimes have that different people would run, and we didn't have the kind of geographical community that gay men did.

- 4.342. Ms Ruthchild explained that lesbians might lose custody of their children in the event of a custody dispute, and that although anti-discrimination provisions existed, there were exemptions for institutions for religious schools.⁷⁷¹ She said “...we didn't have to hide. It wasn't like, you know, in the 1950s, but it still, in a way, being able to be more public could often, you know, draw attention.”⁷⁷²

⁷⁶⁶ Exhibit 2, Tab 9, Statement of Carole Ruthchild, 7 November 2022, [4] (SCOI.77308); Transcript of the Inquiry, 25 November 2022, T425.10-31 (TRA.00008.00001).

⁷⁶⁷ Exhibit 2, Tab 9, Statement of Carole Ruthchild, 7 November 2022, [9] (SCOI.77308).

⁷⁶⁸ Exhibit 2, Tab 9, Statement of Carole Ruthchild, 7 November 2022, [10]-[11] (SCOI.77308).

⁷⁶⁹ Transcript of the Inquiry, 25 November 2022, T426.29-34 (TRA.00008.00001).

⁷⁷⁰ Transcript of the Inquiry, 25 November 2022, T427.12-25 (TRA.00008.00001).

⁷⁷¹ Exhibit 2, Tab 9, Statement of Carole Ruthchild, 7 November 2022, [12] (SCOI.77308); Transcript of the Inquiry, 25 November 2022, T427.30-38 (TRA.00008.00001).

⁷⁷² Transcript of the Inquiry, 25 November 2022, T427.35-38 (TRA.00008.00001).

- 4.343. Ms Ruthchild said that the situation in the UK worsened for gay men and lesbians “as AIDS became more widespread and led to a major backlash against gays and lesbians in the later 1980s.”⁷⁷³ In 1988, following Ms Ruthchild’s emigration to Australia, the GLRL became the leading organisation advocating for lesbian and gay rights in NSW.⁷⁷⁴ Ms Ruthchild said:⁷⁷⁵

The mission of the GLRL was and still is to achieve legal equality of and social justice for lesbians, gay men and their families, by lobbying politicians, government departments, policy makers and the media and empowering the community to take action. It also works closely with bisexual, transgender and intersex organisations to advance the rights of LGBTI communities in NSW.

The 1980s to the 1990s

- 4.344. The magazine *Lesbians on the Loose* was founded in 1990. Prior to this time, there was no lesbian publication. *Lesbians on the Loose* was a monthly publication that included content about events in addition to articles of interest to lesbians.⁷⁷⁶
- 4.345. Ms Ruthchild was taken by Counsel Assisting to an article from the October 1990 edition, which described the difficulties gay men and lesbians could experience in rural NSW or in places smaller than Sydney, such as Wollongong.⁷⁷⁷ Ms Ruthchild agreed with a statement from that article that:⁷⁷⁸

Violence for lesbians is more often on the everyday scale of always being one of a less than accepted minority. On a wider scale violence takes forms such as children being taken from lesbian mothers, lesbians being sent to institutions, and receiving lower marks at Uni if a lesbian is out to certain lecturers.

- 4.346. During Ms Ruthchild’s time co-convening the GLRL, the GLRL worked on the Streetwatch Project, which was initiated in late 1988 in response to a perceived increase in the incidences of violent attacks against gay men and lesbians (discussed above).
- 4.347. A phone-in line was used to collect data by the Gay and Lesbian Counselling Service and the Lesbian Line between November 1988 and April 1989. Of the 67 responses, only four were from women.⁷⁷⁹ Ms Ruthchild explained that there were a number of plausible explanations for this, including the absence of a dedicated lesbian publication at that time through which the survey could be advertised, and limitations on the times when reports could be made.⁷⁸⁰

⁷⁷³ Exhibit 2, Tab 9, Statement of Carole Ruthchild, 7 November 2022, [13] (SCOI.77308).

⁷⁷⁴ Exhibit 2, Tab 9, Statement of Carole Ruthchild, 7 November 2022, [15] (SCOI.77308).

⁷⁷⁵ Exhibit 2, Tab 9, Statement of Carole Ruthchild, 7 November 2022, [16] (SCOI.77308). See also Transcript of the Inquiry, 25 November 2022, T428.23–38 (TRA.00008.00001).

⁷⁷⁶ Transcript of the Inquiry, 25 November 2022, T429.36–42 (TRA.00008.00001).

⁷⁷⁷ Transcript of the Inquiry, 25 November 2022, T430.1–21 (TRA.00008.00001).

⁷⁷⁸ Transcript of the Inquiry, 25 November 2022, T430.42–431.2 (TRA.00008.00001).

⁷⁷⁹ Exhibit 2, Tab 9, Statement of Carole Ruthchild, 7 November 2022, [21] (SCOI.77308).

⁷⁸⁰ Exhibit 2, Tab 9, Statement of Carole Ruthchild, 7 November 2022, [22] (SCOI.77308); Transcript of the Inquiry, 25 November 2022, T432.27–40 (TRA.00008.00001).

- 4.348. Ms Ruthchild explained the difference between violence targeting gay men and violence targeting lesbians in this way:⁷⁸¹

... at that time there were lots of examples of gangs of young men coming in to specifically – especially in Darlinghurst because it was known that that was the kind of centre of the gay community, and seeking out gay men to bash. They would go to other places ... sometimes they would go to gay beats... Whereas with lesbians – no one went out lesbian bashing in the same way. It wasn't – that was more opportunistic. They'd see someone and it might be they thought they were just women and they could try and pick them up ... Or maybe they'd realise, "Oh, they might be lesbians. We will harass them and maybe if we're" – and if they were rebuffed, that's often when things would get more serious.

The lesbian community and violence

- 4.349. Ms Ruthchild was taken to an article from *Lesbians on the Loose* titled “ANTI-GAY VIOLENCE: Is it a lesbian issue?”. The article noted that there was an absence of information about lesbians in the data concerning violence. In addition, the article contained the observation that “[v]iolence against women is something that we have all lived with for so long that we don't have the same reaction to gay men who suddenly wake up to find themselves victims of violence.” Ms Ruthchild agreed with that statement, going on to explain that “... with women, men target women usually in a sexual way so they usually persist in that, in the way they might target lesbians, so it's a different MO.”⁷⁸²
- 4.350. Anecdotally, Ms Ruthchild explained that lesbians were less likely to be assaulted in the street, though sometimes they were physically assaulted if they rebuffed sexual advances from men, “though escalating verbal abuse, threats and physical intimidation were more usual.”⁷⁸³ However, she observed that “in some cases men have been so affronted by ‘out’ lesbians that they will react with greater hostility and physical violence.”⁷⁸⁴ Ms Ruthchild observed:⁷⁸⁵

Anecdotally, then, the type of violence experienced by lesbians and the situations in which it occurs, might appear to have more in common with violence against women generally, than with violence against gay men, with men motivated by exercising their perceived ‘right’ to solicit sexual favours from women who are not in the company of another man or men. But women who definitively demonstrate sexual autonomy appear to be deemed worthy of particularly harsh treatment. In the absence of sufficient data from Streetwatch, however, we were unable to draw too definitive a conclusion.

⁷⁸¹ Transcript of the Inquiry, 25 November 2022, T434.11–26 (TRA.00008.00001).

⁷⁸² Transcript of the Inquiry, 25 November 2022, T437.16–25 (TRA.00008.00001).

⁷⁸³ Exhibit 2, Tab 9, Statement of Carole Ruthchild, 7 November 2022, [31]–[32] (SCOI.77308).

⁷⁸⁴ Exhibit 2, Tab 9, Statement of Carole Ruthchild, 7 November 2022, [34] (SCOI.77308).

⁷⁸⁵ Exhibit 2, Tab 9, Statement of Carole Ruthchild, 7 November 2022, [31] (SCOI.77308).

- 4.351. In 1991, a survey questionnaire was distributed to lesbian groups and venues, and included in *Lesbians on the Loose*. Forty-two responses were received, and these formed the basis of the *Off Our Backs Report*, which was published in September 1992.⁷⁸⁶ The information recorded in the *Off Our Backs Report* was used to justify policy and legislative change, and even policing reform.⁷⁸⁷ The introduction by Clover Moore, the member for Bligh, commences:⁷⁸⁸

In a society in which women are defined in relation to men – as somebody’s wife, daughter or girlfriend – it is hardly surprising that lesbians are rendered all but invisible to the world at large. In a world where heterosexuality is not just the norm, but actively prescribed, and where same-sex relationships have no legal or social standing, lesbians, if acknowledged at all, are institutionally confined to single status and defined merely as women without men. Assumed to be either looking for a man or to have become bitter through a failed (heterosexual) relationship, we are portrayed as unhappy, lonely, tragic. We are seen as ‘available’ and are expected to welcome the advances of men, no matter how intrusive or insensitive, anytime, anywhere. Verbal abuse is a daily reality.

- 4.352. In her evidence, Ms Ruthchild commented on the way the *Off Our Backs Report* demonstrated some of the differences between violence typically directed towards men who were gay or who were perceived to be gay, and violence against lesbians. Ms Ruthchild observed that, while gay men might be targeted by groups of people who had gone out to target gay men, women were more likely to be attacked by a single attacker, some reported ongoing campaigns of harassment, and more than a third of attacks occurred at the woman’s home or place of work or study.⁷⁸⁹
- 4.353. Some women reported serious physical assaults via the questionnaire, and others reported verbal harassment or property damage.⁷⁹⁰ In an article that reported the release of the report, Ms Ruthchild was quoted as saying that “violence against lesbians is specific, and should not be categorised with violence against gay men or heterosexual women.”⁷⁹¹ She considered that this was borne out in the results of the data collected for the *Off Our Backs Report*.⁷⁹²

⁷⁸⁶ Exhibit 2, Tab 9, Statement of Carole Ruthchild, 7 November 2022, [41]–[42] (SCOI.77308).

⁷⁸⁷ Transcript of the Inquiry, 25 November 2022, T439.11–14 (TRA.00008.00001).

⁷⁸⁸ Transcript of the Inquiry, 25 November 2022, T439.25–43 (TRA.00008.00001).

⁷⁸⁹ Transcript of the Inquiry, 25 November 2022, T440.8–39 (TRA.00008.00001).

⁷⁹⁰ Exhibit 2, Tab 9, Statement of Carole Ruthchild, 7 November 2022, [43] (SCOI.77308).

⁷⁹¹ Transcript of the Inquiry, 25 November 2022, T445.25–31 (TRA.00008.00001).

⁷⁹² Transcript of the Inquiry, 25 November 2022, T445.39–45 (TRA.00008.00001).

- 4.354. All of the survivors stated they felt they were attacked because they were a lesbian or perceived to be a lesbian, and in many instances the assailants used specific anti-lesbian abuse.⁷⁹³ Thirty-eight per cent of the assailants were known to the survivor.⁷⁹⁴ Only 10% of survivors reported the incident to police.⁷⁹⁵ The *Off Our Backs Report* made various recommendations, including that police collect prejudice-related information, that more women be appointed, that police be provided with training on anti-lesbian harassment or violence, and that GLOs (or LGBTIQ+ Liaison Officers, as they are now called in the NSWPF) be appointed on a gender-equal basis.⁷⁹⁶
- 4.355. At the conclusion of her evidence, Ms Ruthchild was invited by Counsel Assisting to reflect on any changes that have occurred since the launch of the *Off Our Backs Report*.⁷⁹⁷

I feel that we live in a – it’s like a different world now. And that doesn’t mean to say that hostility, harassment and discrimination have all gone away, but I think that over the – it’s 30 years ago now since that was all taking place. As a result, even though when, perhaps, we saw a spike in attacks and increase in hostility with people coming out, in the long run that’s made people realise, ‘Well gay and lesbians are part of the community, they’re here, they’re like us.’ And it doesn’t mean that there aren’t still people who don’t like that fact, any more than there are still people that, you know, have other groups of people they don’t like, but the fact is we do live in a different world and it’s far better. I mean, you only have to look at when the same-sex Marriage Act went through and the national survey that was taken. Almost two-thirds of people who responded to that national survey agreed that gays and lesbians should be able to be married. So, you know, that’s an indication of just how far we’ve come. I mean, no one was contemplating such a thing back in the early – late 80s or early 90s. So yes, it’s a different place.

Concluding remarks

- 4.356. The evidence given by witnesses at the Context Hearing raised a number of topics for consideration. I adverted to some of those matters in the introduction to this Chapter; for example, the fact that Dr Brook’s evidence about the bureaucratic erasure of trans and gender diverse victims of hate crimes raised the question of whether there were other groups who might be underrepresented in the cases considered by the Inquiry for similar reasons.

⁷⁹³ Exhibit 2, Tab 9, Statement of Carole Ruthchild, 7 November 2022, [44] (SCOI.77308).

⁷⁹⁴ Transcript of the Inquiry, 25 November 2022, T442.29–31 (TRA.00008.00001).

⁷⁹⁵ Exhibit 2, Tab 9, Statement of Carole Ruthchild, 7 November 2022, [45] (SCOI.77308).

⁷⁹⁶ Transcript of the Inquiry, 25 November 2022, T443.43–444.4 (TRA.00008.00001).

⁷⁹⁷ Transcript of the Inquiry, 25 November 2022, T447.11–32 (TRA.00008.00001).

- 4.357. Similarly, the evidence given concerning the attitude of the NSWPF to the LGBTIQ community over the period covered by the Inquiry's Terms of Reference raised the question of what avenues were and are available for members of the community to raise concerns about the conduct of the NSWPF, and whether there is a need for the NSWPF to take more robust steps to assess its institutional approach to the LGBTIQ community.
- 4.358. I should say at the conclusion of this Chapter that I found the evidence given by the witnesses at the Context Hearing of great utility. It allowed me to understand the context in which the deaths I have considered took place, and to appreciate many of the broader social and cultural dynamics at play. It also allowed me to more effectively scrutinise the attitudes and approach of the NSWPF.
- 4.359. In addition, this evidence spoke to the great resilience of the LGBTIQ community. Many of the witnesses spoke of personal experiences of violence and trauma. Their grace and generosity in being willing to assist and educate me, and the Inquiry's staff, was an important cornerstone of the Inquiry's subsequent work. I express my gratitude to the witnesses who gave evidence at the Context Hearing, and I acknowledge all those members of the LGBTIQ community who have had experiences similar to those described in this Chapter.

