

# REPORT ON THE SPECIAL COMMISSION OF INQUIRY LGBTIQ HATE CRIMES

Commentary by Barry Charles, 78er and member of First Mardi Gras Inc.

## *Abbreviations throughout*

- *Special Commission of Inquiry – SC*
- *NSW Police Force – NSWPF*
- *Macnimir Strike force – MSF*
- *Strike Force Niewand – SFN*
- *Strike Force Parabell – SFP*
- *Unsolved Homicide Team – UHT*

The Special Commission headed by Mr Justice John Sackar of the NSW Supreme Court published its final report on 19 December 2023. This follows an inquiry which lasted for 19 months from May 2022.

In his final report Mr Sackar referred to the reasons why the Commission was extended from its original tenure of one year. These were chiefly due to delays caused by the NSW Police Force's (NSWPF) tardiness at gathering and presenting the required documents to the Commission. More on this later.

In the Commissioner's Summary he referred to our society's culture of oppression and discrimination against LGBTIQ people and specifically the incidences of violence and in some cases murder.

Quoting the Commissioner: "In many cases the effect of violence was compounded by the response of NSWPF which reflected homophobia and prejudice within NSWPF...The NSWPF have much to reflect on, in particular in the Unsolved Homicide Team (UHT) in respect to their attitude to the crimes".

As well as focussing on 32 individual unsolved murders: re-examining and searching for new, mis-interpreted and ignored evidence, and hoping to make some breakthroughs to solving and determining the perpetrators, the SC was required to examine investigative practices and procedures and records keeping within the NSWPF.

Overall the SC found past and current practices poor. Throughout, the SC found countless instances of lost, un-stored, compromised forensic evidence, missing files, records lost or never made. This was also found in specific cases such as those of Crispin Dye and John Russell. This also meant that only 32 of a believed 88 LGBTIQ-hate murders could be examined in detail.

I will go through some specific recommendations further down, but sticking to the opening summary: The SC reviewed the creation, methodology and performance of previous internal inquiries into these cases.

The Macnimir Strike Force (MSF) was criticised for adhering to a view of suicide in the Scott Johnson case.

Strike Force Niewand (SFN) (2015-18) was found to be "wholly secretive and inadequate."

And Strike Force Parabell (SFP) (2015-17), which was held due to pressure from our community groups such as ACON to review 88 deaths, was found by the SC to be "purely designed to refute suggestions of significant numbers of LGBTIQ hate crimes". In addition, the academic review of SFP "was not at arms-length or conducted with rigour and independence".

All were clearly more PR exercises to dampen community criticism than genuine reviews.

The Commissioner, John Sackar's conclusions were that attitudes within the NSWPF led to:

- MSF "absurdly" maintained that the Scott Johnson matter was a suicide.
- SFN directly contradicted the Coroner's findings.
- SFP claimed 23 of the 88 deaths were not bias crime.

In each case there was a "resistance to accept the extent of hostility to LGBTIQ people."

Also in John Sackar's summary he found that NSWPF:

- failed in its responsibility to properly investigate cases, and
- has not properly acknowledged past wrongs.

**Acknowledgement of past wrongs and failures to protect and deliver justice is necessary.**

## **Systems and Storage**

The SC also found the NSWPF's systems and storage methods unsatisfactory.

As well as leading to poor results in solving individual cases which I do not have the space to detail here, the SC itself was severely hampered in its work and this led to the delays and extensions in the length of the SC.

## **NSWPF response to SC**

Throughout the SC, Mr Sackar repeatedly criticised the late tabling of documents by NSWPF. There was more than one instance where hundreds of pages of information relevant to a particular individual murder were sent after business hours on the night before the hearing making it impossible for Counsel assisting to examine the material.

In his closing summary Mr Sackar declared that the overall response from NSWPF was "adversarial and unnecessarily defensive".

The NSWPF even went to the Supreme Court to try to stop the Scott Johnson case being discussed at the SC.

Late in the piece the Counsel for the Police, Simon Tedeschi SC, submitted that the inquiry ought not to proceed and was without balance or justice in that it had not

questioned hundreds more potential witnesses and other sources of information. Mr Sackar rejected this claim as baseless.

For our LGBTIQ and the general NSW community this is a crucial matter to be taken up. I will have more to say on this "them against us" mindset within the NSWPF.

### **Nineteen Specific Recommendations**

Don't worry I will only deal with half of them.

***Recommendation 1: The NSWPF should request new inquests into four of the deaths.***

Two months have already passed and there has been no word on this.

***Recommendation 3: NSWPF should re-investigate the Cuthbert death due to availability of new forensic evidence.***

***Recommendation 4: NSWPF must continue to study DNA databases to watch for new matches in all unsolved cases.***

***Recommendation 8: New additional forms of mandatory training in LGBTIQ issues should be implemented.***

***Recommendation 9: The NSW Government should amend the State Records Act so that it applies to exhibits held by the NSWPF.***

A response from the relevant Minister could have already been made.

### ***Recommendations 10 through 15***

These were directed at the UHT where the biggest problems persist.

***Recommendation 10: There should be a systematic audit of ALL unsolved deaths.***

***Recommendation 12: NSWPF should report on progress on recommendations 10 and 11 within 3 months.***

Time is ticking on this one. The Police Minister should call for a complete overhaul at the UHT.

***Recommendation 14: Additional resources should be directed for forensic analysis.***

Another one for the Minister.

***Recommendation 15: There should be a full review of practices at the UHT.***

See my response to Recommendation 12.

***Recommendation 19: NSWPF should engage with experts in bias crimes.***

OK! More than half, I lied.

### **NSWPF Commissioner's Response**

The Police Commissioner Karen Webb issued a press statement on the day of the final report. The statement was another PR piece and frankly appalling.

In her statement, the Commissioner claimed that the NSWPF "**fully supported the inquiry**"

**This is demonstrably untrue.** I have already mentioned some of these, including:

- That the NSWPF went to Supreme Court, trying to stop the Inquiry discussing the Scott Johnson case
- The late tabling of relevant documentation which restricted Counsel Assisting from examining and posing questions
- In addition they complained frequently about their inability to adhere to the timetable and their lack of resources to gather material BUT did so belatedly and when it was too late to do anything about it.

**The extended time and cost of the SC was entirely caused by the NSWPF delays.**

Ah yes! Costs!

The NSWPF also complained about how much this was costing them in resources and financially. This while engaging one of the most expensive Counsel they could find to represent them before the SC.

But this further illustrated how they approached the matter: "**Unnecessarily adversarial**" as Mr Sacker concluded.

The UHT is a real problem. The past and current officers in this team showed irritation that their methodology (such as it was) and their attitudes to LGBTIQ hate crimes should be questioned.

The current leader of UHT made the claim that ALL unsolved homicide investigations were being curtailed because of dealing with requests from the SC. This was shown as entirely untrue and absurd the following day when the internal legal counsel of the NSWPF revealed that only one officer from the team was assigned to the SC tasks for the first eight months and then two for the remaining period. This is out of a full complement of 32 on the UHT.

In the Police Commissioner's statement the claim was made that: "While there has been a significant advancement in training, forensic technology, management of records and exhibits, and greatly enhanced investigative practices, the NSWPF recognises that there are areas where further improvements can be made.

"It is also pertinent to highlight the significant initiatives and reforms undertaken by the NSWPF in recent years to improve the organisation's relationship with the LGBTIQ+ community.

"The implementation of these initiatives is not only aimed at ensuring an inclusive and supportive environment for the community, but also for within the Force itself."

It might have been useful if the Police Commissioner had sought leave to appear before the SC, under oath or affirmation so that these "improvements" could be examined and questioned as to their efficacy.

And whether these measures are really reaching down into the police culture of a "them verses us" mentality when dealing with our community.

This could have been done during the context hearings.

## **Where to Now?**

It is now time for the Premier and Police Minister to step up on these matters. And direct the Police Commissioner to fully implement the Recommendations.

It will be necessary for our community to keep up interest in this and for back bench MPs and Independents to continue to press for these changes.

Barry Charles

for First Mardi Gras Inc.

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