

A Submission to The Special Commission of Inquiry into LGBTIQ hate crimes

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

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Foreword

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As we read back through this report, one thing is very clear: there is a power apparent when truth is free to be spoken.

We don't just mean the power of liberation, that somehow sharing our trauma and our experience of violence after years and decades of silence frees us. There are some traumas and some violences we can never be free from. Nor do we mean the power of justice to liberate us, that after years of suffering and existing on the margins our words might cause a perpetrator of violence to face the consequences of their actions. There are some violences and cruelties that no amount of justice could ever balance.

We don't mean the power that our stories gain from being written down and passed on; that we might in our own small way contribute to a body of stories, growing into an avalanche that sweeps away institutional violence and corruption. There are some stories, important stories, that we will never be able to tell safely, and there are some institutions that we may shift but which will never change, at least not in one lifetime.

What we mean, and what we were privileged to hear in the gathering of trans women and Sistergirls whose stories led to this submission, was how time and time again discrimination, violence and coercion were met with courage, strength and resilience. That's the power of speaking our stories. The power that inspires our next leaders. The power that inspires us to build community. The power to know that change, though a long time coming, always starts small, always starts from the margins, and always starts with a single story.

Acknowledgements

This report is the culmination of a series of collaborations and partnerships. It came about because of the need to record trans perspectives and experiences of hate crimes for the NSW Special Commission of Inquiry into LGBTIQ Hate Crimes. Eloise Brook and Chantell Martin first came up with the idea of running a focus group where trans elders could share stories in a supportive peer environment. They envisioned a safe space where trans people could talk about what were very real and enduring traumas. The peer model proved effective, and we are so grateful to the ten trans women who generously gave their time and shared some very challenging parts of their lives. We also thank the other trans people who spoke to the author behind the scenes for this inquiry.

Eloise and Chantell had both collaborated with Noah Riseman for his larger project on Australian trans history. They approached him to compile the historical information, run the focus group with them, and to bring all the material together into this report. Noah is a cis white man who had built important relationships

with members of Australia's trans community and had a proven ability to affirm trans voices in his work. This great partnership among the three facilitators drove the project's success, and it was an absolute privilege to be invited to be part of this important undertaking.

The research team thanks the Special Commission of Inquiry into LGBTIQ hate crimes for providing the funding that made this work possible. We note that the work was undertaken independent of the Inquiry, and the content of the report and views expressed here reflect the research team and the community members we consulted. From ACU, Ryan Li proved instrumental at resolving some challenges to sort the finances. Dr Andy Kaladelfos – a great friend to Eloise, Chantell and Noah – generously offered to review a draft of the report and gave important feedback that has been incorporated. It is a stronger document because of Andy's input. Finally, a big thanks to graphic designer Rio Ramintas who took on this project on short notice and did a splendid job.

Aboriginal and Torres Strait Islander readers are advised that this report contains the names of persons who are deceased.

All readers are cautioned that this report contains distressing content including firsthand accounts of sexual assault, physical attacks, police violence and attempted murders. Please take care in reading it, and reach out to relevant support services if necessary.

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Introduction

Global statistics about hate crimes perpetrated against trans people are damning. In England and Wales in 2021-22, police recorded 4,355 hate crimes against trans people, representing a 56% increase on the previous year.¹ In the United States, the non-profit LGBTQ+ advocacy group Human Rights Watch counted at least 38 trans people fatally shot or killed by other violent means in 2022. This was on top of 59 people killed in 2021 and 44 in 2020, and the majority of those murdered were trans people of colour.² Brazil has the highest number of reported murders of trans people: 125 in 2020-21 and another 96 in 2021-22. According to Transgender Europe's Trans Murder Monitoring report for 2022, 327 trans people were murdered globally between 1 October 2021 and 30 September 2022, with 222 of those cases from Latin America and the Caribbean.³

Criminologists regularly point out that these figures are likely only the tip of the iceberg. Differences in reporting mechanisms across local, state and federal authorities – as well as non-recognition of many people as trans – in part account for the underreporting. When it comes to murders or disappearances specifically, it is primarily trans community members or organisations who report and identify trans victims. The most prevalent reason for underreporting of hate crimes more broadly, though, is that most trans people themselves do not report when they are victims of hate crimes because of distrust and institutional betrayal from police and other authorities.⁴

Statistics in Australia are not readily available for similar reasons. Occasionally a high-profile killing of a trans person reaches the media, such as Mhelody Bruno – a twenty-five-

year-old trans woman from the Philippines killed in Wagga Wagga on 18 September 2019,⁵ or Kimberley McCrae, killed in January 2020 in her apartment in Coogee. In both instances, the perpetrators were not convicted for murder but rather the lesser crime of manslaughter. Both killings sparked outrage within Australia's trans community and resulted in public rallies and appeals for justice, including calls for a revision of judicial decisions.⁶

The silence surrounding hate crimes targeting trans people is so prevalent that Eloise Brook, media officer at the Gender Centre in Sydney, could only identify the names of three trans people murdered across Australia between 1970 and 2010. As of May 2023, The Special Commission of Inquiry into LGBTIQ Hate Crimes only had three cases listed on its website which were transgender people: Wendy Wain, Samantha Raye (who was also intersex) and Samantha Rose. Although these are important cases, they do not even graze the surface of murders of trans people from 1970-2010, let alone the more general hate crimes trans Australians have experienced.

This report addresses the topic of hate crimes from the perspective of trans Australians. It draws on a mix of historical documents and, most importantly, the lived and living experiences of trans Australians. Some of these voices come from surveys conducted in the 1980s and '90s by deceased trans activist Roberta Perkins (1940-2018). Others come from oral history interviews conducted by the author as part of a broader Australian Research Council Discovery project on Australian trans history, which has produced several public outputs on trans history.⁷ The majority come

1 United Kingdom, Home Office, "Official Statistics: Hate crime, England and Wales, 2021 to 2022," 6 October 2022, <https://www.gov.uk/government/statistics/hate-crime-england-and-wales-2021-to-2022/hate-crime-england-and-wales-2021-to-2022>, 18 April 2023.

2 Human Rights Campaign Foundation, "Fatal Violence Against the Transgender and Gender Non-Conforming Community in 2022," Human Rights Campaign, <https://www.hrc.org/resources/fatal-violence-against-the-transgender-and-gender-non-conforming-community-in-2022>, accessed 18 April 2023.

3 "TMM Update: - Trans Day of Remembrance 2022," Transgender Europe (TGEU), <https://transrespect.org/en/tmm-update-tdor-2022/>, accessed 18 April 2023.

4 Jane Gauthier, Kevin Medina, and Carly Dierkhisling, "Analysis of Hate Crimes in Transgender Communities," *Journal of Hate Studies* (2021).

5 Elise Kinsella and Andy Burns, "Mhelody Bruno's killer was jailed for 22 months. This is the information the court never heard," ABC News, 2 July 2021, <https://www.abc.net.au/news/2021-07-02/background-briefing-mhelody-bruno-investigation/100256330>, accessed 18 April 2023.

6 "#JusticeforMhelody Bruno: Trans Community Call for DPP Appeal," https://docs.google.com/document/d/16fP2v6LX50tEceELfRWwfSmLE6XHZJzvsXZCvd0bDEA/mobilebasic?fbclid=IwAR0hhHbUkNRX4_hNs-V0_tiffqxhO561DWFCOeG86-152ns7YqB51hUVsn0, accessed 18 May 2023; Jordan Hirst, "Trans advocates call for appeal in Mhelody Bruno manslaughter case," Q News, 31 March 2021, accessed 18 May 2023; Millie Roberts, "How Trans Woman Mhelody Bruno Was Failed By Australia's Justice System," Junkee, 1 April 2021, <https://junkee.com/mhelody-bruno-justice-system-investigation/291695>, accessed 18 May 2023;

7 ARC DP180100322. See Noah Riseman, *New South Wales Trans History*, The Gender Centre and ACON (2022), <https://www.transhub.org.au/101/is-trans-new#the-nsw-trans-history-report>; Noah Riseman, *Victoria's Transgender History*, Transgender Victoria (Melbourne, May 2021), <https://tg.vic.au/victorias-transgender-history-report>; Noah Riseman, *Transgender Australia: A History since 1910* (Melbourne: Melbourne University Press, 2023).

from a focus group held specifically for this inquiry. We held this focus group in April 2023 in Sydney with 10 trans women who have experienced and witnessed hate crimes from the 1970s through the present day. The majority of these participants were trans people of colour, especially Aboriginal Sistergirls, Māori and Pasifika women.

Their discussion drives the structure of this report and the recommendations. Two dominant themes came out of the focus group worth noting here:

- Police interactions with trans people are *the* central discussion point around hate crimes. Police come up both as perpetrators of hate crimes and as a distrusted institution which makes trans people less likely to report hate crimes. Moreover, police still perpetrate violence against trans people in different ways;
- The past and present cannot be separated. Although the author asked questions about the past, the respondents continued to give answers about the present. It became clear that while there have been some changes over the years, when it comes to hate crimes, most trans Australians do not distinguish between the period 1970-2010 and the period post-2010.

The long history of marginalisation, stigmatisation and abuse of trans people makes them cynical that government or police care about them. This history of distrust is the very reason that so few trans people have come forward to the Special Commission of Inquiry and previous parliamentary inquiries into hate crimes in NSW. The participants in the focus group, too, were sceptical about the potential outcomes of this inquiry. One expressed: “I think that that inquiry needs to know that this didn’t come without a cost, and it retriggered a lot of people, and to what extent, without knowing what actually the hope is from this process.” Still, the participants approached the process with honesty because they trusted the facilitators from SWOP, the Gender Centre and Professor Riseman. We convey this report to the Special Commission of Inquiry in the hope for change that can improve the lives of trans people in New South Wales and Australia going forward.

Summary of Recommendations

1. *The Police Association of NSW should reach out to organisations such as the Gender Centre and SWOP and endorse legal reforms that support trans rights around self-identification*
2. *Greater transparency and expansion of the GLLO program*
3. *Mandatory contact with a trans-focused GLLO or paid peer representative whenever a trans person is involved in a police matter*
- 4a. *Require police, courts, corrective services, coroners, medical officers, magistrates, judiciary and other instruments of the criminal legal system to, in proceedings, refer to a trans person by their affirmed name and pronouns and, unless relevant to the proceedings, not comment on genitalia*
- 4b. *Review the Computerised Operational Police System (COPS) with trans people's input to ensure that previous names are only listed as aliases and made visible to authorities only when absolutely pertinent to the matter*
5. *Strengthen the power and outreach of a peak body of trans representatives who regularly review and make representations about the NSW criminal legal system, including police, courts and prisons*
6. *Expand trans inclusion training at all levels of NSW Police and embed it within the Police Academy*
7. *Empower the Law Enforcement Conduct Commission (LECC) to compile data about police dealing with hate crimes and fund LECC to embark on a broad outreach campaign publicising its independent power to investigate allegations of police abuse, harassment or perpetration of hate crimes*
8. *Implement all outstanding recommendations of the Royal Commission into Aboriginal Deaths in Custody*
- 9a. *Expungement of prior convictions for sex work and sex work-adjacent convictions*
- 9b. *Full decriminalisation of the sex industry and adding 'sex work' and 'sex worker' as protected attributes under the Anti-Discrimination Act*
10. *Reform prison guidelines around trans people to affirm their gender identities*
11. *Greater funding and expansion of trans-specific legal services*
12. *Make Victim of Crime Compensation more accessible and remove the statute of limitations for trans people victimised by hate crimes, including in prisons*
13. *Strengthen provisions of the Anti-Discrimination Act and update the Births, Deaths and Marriages Registration Act to facilitate self-identification*
14. *NSW Government to provide visible support and funding for affirming models of health care, as well as lobbying for Medicare to cover gender affirmation surgeries*
15. *Responsible journalistic coverage of trans people and issues*
16. *Greater access to counselling services for trans people across NSW, along with services specifically tailored to people over 55 years old*
17. *Expand hate crimes inquiries to the present day and across all state and territory jurisdictions*

A note on terminology

Language around trans and gender diversity is constantly evolving, and the change has been rapid especially in the last ten years. Even the meaning of trans or transgender is contentious, so this report adopts the broad definition provided by archives scholars K.J. Rawson and Cristan Williams: “An umbrella term (adj.) for people whose gender identity and/or gender expression differs from the sex they were assigned at birth.”⁸ Historian Susan Stryker gives a longer description of trans which is also apt:

[Transgender] refer[s] to people who cross over (*trans-*) the boundaries constructed by their culture to define and contain that gender. Some people move away from their birth-assigned gender because they feel strongly that they properly belong to another gender through which it would be better for them to live; others want to strike out toward some new location, some space not yet clearly described or concretely occupied; still others simply feel the need to challenge the conventional expectations bound up with the gender that was initially put upon them. In any case, it is the movement across a socially imposed boundary away from an unchosen starting place, rather than any particular destination or mode of transition.⁹

Language can have powerful effects on trans people, particularly because identity is so personal. Many terms now considered offensive were popular words within the trans community just a few years ago, while other present terms like non-binary or even trans did not exist in the past. This is not to say that those people or identities did not exist. A common theme in oral history interviews with trans people is the adage “You can’t be what you can’t see.” It would often not be until seeing another trans person live, in a media report or on the internet that trans people could articulate the internal feelings they had about their gender. It was often by seeing or connecting with others that they could find the vocabulary which explained what they were feeling.

Labels can be helpful for some people, but for others they can be limiting. To put it another way: by defining, we inherently exclude those who do not fit within the definition. This has been especially problematic for trans people as, historically, it was often doctors and psychologists who defined what made someone trans. Some of the historical terms used were ‘transvestite’ or ‘transsexual’, and both these words are now generally considered inappropriate. Yet, there are some trans people who still identify with these words and those self-identities need to be respected.

Building on this, the term ‘tranny’ (sometimes spelled ‘trany’) is another contentious one within trans communities. It is now generally seen as a slur. In the 1990s-2000s, though, ‘tranny’ was common lingo within the community. Indeed, one popular event hosted by various organisations including the Gender Centre from 1994 to 2005 was the Trany Pride Ball. The area around Premier Lane and William Street in Kings Cross/Darlinghurst where most trans sex workers operated was popularly known as ‘Tranny Lane’. Many of the participants in the focus group still used ‘tranny’ to describe themselves and others who worked on ‘Tranny Lane’.

This report aims to use best practice terminology as laid out in the language guide published by ACON’s TransHub.¹⁰ Still, there are quotations and other references which refer to terminology that some trans people now find offensive. Readers please be advised that this is done not to offend, but rather to affirm the voices, histories and experiences of those individuals who use the terms, and to be faithful to the historical record.

⁸ K. J. Rawson and Cristan Williams, “Transgender*: The Rhetorical Landscape of a Term,” *Present Tense* 3, no. 2 (2014): 1.

⁹ Susan Stryker, *Transgender History: The Roots of Today’s Revolution*, 2nd ed. (New York: Seal Press, 2017), 1.

¹⁰ <https://www.transhub.org.au/language>, accessed 18 April 2023.

Historical Data on Hate Crimes

Hate crimes and abuse of trans people were happening well before 1970. Trans people recall police harassment on streets and being arrested and charged with the crime of vagrancy as early as the 1940s. They would consistently be thrown into men's gaols where they faced threats of violence and sexual assault. As one example, police entrapped 'Sascha' around 1966 when she was 13 years old. They threw her in the men's cells at Darlinghurst Gaol and, as she recalls:

They threw me into the cage with everyone. They were all boys. I was in there for quite a while. It wasn't a pretty sight. The following morning, I was put before a magistrate. I was bloody, I was in tears, I'd been smacked around, I'd been slapped around, all of this kind of stuff [by] both [police and the other inmates]. Both. I'd been raped. I'd had the whole lot done... And then, I went to court. And the judge said to the attorney, "Couldn't you have had this person hosed down before you had him brought into my court room?"

One common area of employment for trans women from the 1960s onwards was as showgirls or strippers. Venues included the Jewel Box, the Purple Onion, Capriccio's and, the most famous of all, Les Girls. Showgirl oral histories and autobiographies like from Carlotta describe these venues as having an underbelly. Owners like Sammy Lee and Abe Saffron were known to have gangster connections and, as Carlotta writes: "Gangsters, bad cops and bad bosses all made you toe the line and gave you a smack in the mouth occasionally, but never enough to spoil or damage their meal ticket – us. Many girls had their spirit broken and a lot left the whole scene because they couldn't cope with the violence."¹¹ At the focus group, one participant noted: "A lot of the girls worked for Abe Saffron, and there were girls that went missing because they never did the right thing, whatever that meant, so there were quite a few that actually went missing."

The first quantitative data about hate crimes against trans people comes from the papers

of Roberta Perkins. Roberta is best known as a trans and sex worker activist who founded Tiresias House – the present-day Gender Centre – in 1983. She was also a founding member of the Australian Prostitutes Collective – the precursor organisation to SWOP – and an academic, having completed her Master of Arts at Macquarie University. Roberta was a prolific researcher and writer, regularly conducting surveys and ethnographic interviews with sex workers and trans women, especially in the Kings Cross/Darlinghurst area. Among her most prominent publications were *The 'Drag Queen' Scene: Transsexuals in Kings Cross* (1983) and *Being a Prostitute: Prostitute Men and Prostitute Women* (1985). The title of the former book is misleading; it is not about drag queens, but rather is a snapshot of trans women's lives from Kings Cross/Darlinghurst in the early 1980s.¹² Roberta retained all her research data, including much which went unpublished, and after her death it was deposited in the State Library of NSW and the Australian Queer Archives in Melbourne.

Two sets of quantitative data exist in Roberta's papers which give important snapshots of trans experiences of hate crimes in the early 1980s. The first was a set of surveys Roberta conducted with 12 trans sex workers in 1983 to prepare a submission to the Select Committee of the Legislative Assembly Upon Prostitution. Ten of these women reported experiencing some form of violence: 4 raped (some multiple times), 2 knifed, 7 beaten (some multiple times) and 8 verbally abused.¹³ The second set of data is 52 questionnaires filled in by applicants to Tiresias House in its first year (1983-84). One question asked: "Give details of any assaults or rape you have experienced". Eighteen respondents (35%) had been raped, and eight of these were pack rapes; nine (17%) had been assaulted, ranging from being punched to being strangled. Another question asked: "Have you/do you feel you have been/are unnecessarily harassed by police" with a follow-up "Give details of any abuse from police." Twenty-three (44%) responded in the

11 Carlotta and Prue MacSween, *Carlotta: I'm not that kind of girl* (Sydney: Pan Macmillan, 2003), 99.

12 Roberta Perkins, *The 'Drag Queen' Scene: Transsexuals in Kings Cross* (Sydney: Allen & Unwin, 1983); Roberta Perkins, *Being a Prostitute: Prostitute Women and Prostitute Men* (Sydney: Allen & Unwin, 1985).

13 Surveys conducted for submission to NSW Select Committee of the Legislative Assembly on Prostitution, State Library of NSW (hereafter SLNSW), Roberta Perkins papers, box 9A.

affirmative, with responses describing verbal harassment (14), being bashed or physically assaulted (10) and being raped or sexually assaulted by police (3). Examples of responses include: “Strip searched 8 different times by 8 different policemen when arrested for abusive language” and “busted ribs”. Finally, 12 respondents (23%) also reported experiencing problems in prison, described nebulously or broadly as harassment (5) and sexual abuse (4), either from other inmates or from corrections officers.¹⁴

The first published data on trans experiences of hate crimes derives from three studies conducted in the 1990s. The first was called the Trany Anti-Violence Project and was an initiative of the activist group Transgender Liberation Coalition (TLC). Over an eight-month period in 1993-94, TLC members collated data about 44 incidents of discrimination and abuse reported by 23 individuals. The final report is lost, but fortunately one of the project coordinators saved a copy of an earlier draft. Of the 44 incidents reported, 34 were verbal or physical assaults. The draft report only provided details of four of the incidents:

1. “Trany B was living in a large NSW country town, had entered a crowded cafe/take-away food store at about 10.30 pm to buy a coffee. A man walked up to her and without saying a word punched her in the face, fracturing a cheek bone. Although the police could have pressed charges she did not pursue the case because ‘I was fearful and I didn’t want any trouble’. Needless to say she left the town to live in Sydney but has continued to experience discrimination and abuse, such as public humiliation/vilification and refusal of services in shops (eg, a ‘unisex’ hairdressing salon) as well as threats of physical abuse by a group of 6 men on a government bus service.”
2. “Trany C who lives outside the Sydney metropolitan area was visiting in the city. She walked past a group of approximately 8 people, outside an inner city terrace house. One man grabbed her breasts and

when she ignored him and kept walking he came up behind her, knocked her to the ground, kicked her in the head and chest, she became unconscious. Trany C described the police as ‘very rude’, when she gave her female name they said, ‘whats ya real name, mate?’ The trany was able to identify the house from which the assailant had emerged but the police refused to enter the premises to question the man.”

3. Trany D: “These incidences which covered four separate states of Australia, ranged from damage to personal property by neighbours, physical threats with a knife from teenage boys, discrimination from a charitable Christian organisation, vilification, threats by men with a gun, verbal abuse such as ‘your [sic] dead, faggot’ and ‘you queer cunt’, and numerous bashings to the body and face. In one instance when trany D reported the gun threat to the police, with the registration number and make of the vehicle the offender was driving, the police, ‘shook their shoulders and said, ‘so what, you’re not hurt are you?’”
4. Trany E: “On one occasion she was picked-up by a man who wanted sex and they agreed on price etc. Before performing the job the trany informed the client that she was a pre-op trany and the client went berserk tearing the trany’s clothes off, brutally grabbing her breasts and hitting her about the head and body, while shouting homophobic abuse... On reporting to the police she said; ‘I don’t know anyone in the law enforcement area I could talk to about it – it’s personal – and if you work on William st or are a sex worker... they think you deserve it... I don’t have any rights, I don’t have any respect, it’s part and parcel of the job’.”¹⁵

The second study to include hate crime data was a national survey of transgender lifestyles and needs published by Roberta Perkins in 1994. The study had 146 respondents and found that 42% of sex workers and 26% of non-sex

14 Australian Queer Archives (hereafter AQuA), Roberta Perkins papers, box 1.

15 “DRAFT Trany Anti-Violence Pilot Project Report,” 1994, 15-17, courtesy Shan Short.

workers had been raped.¹⁶ The third study, authored by Jesse Hooley in 1996, focused on trans people's health and wellbeing in inner-city Sydney and reinforced other findings: out of 90 respondents, 54% reported having been sexually assaulted and 59% reported having been physically assaulted, many of them multiple times.¹⁷ Like previous studies, respondents reported a low rate of reporting hate crimes to police or accessing support services.

Just the sample data above paints a picture of a trans community regularly victimised by both the general public and the very people who were tasked with protecting them: the police. This was nothing new; Roberta Perkins wrote in 1983:

In the early 60s, rounding up drag performers was a favourite sport of the Vice Squad, and the girls had to commute to work hidden on the floor of taxis so the scanning eye of the detective on duty at the entry into Darlinghurst Road would not notice them. One showgirl was picked up by cops and taken to a room for a gang bang; her anus afterwards received multiple stitches, not to mention the effect the episode had on her mentally. A famous stripper of the late 70s was picked up and given a choice of charges; when she refused to comply by choosing her own committal, the arresting officers called her a freak, broke her nose and ribs and let her go. She reported the incident to a doctor treating her damages, but he replied he did not want to get involved. The police hounded her unceasingly after that until she was forced to contact Civil Liberties and take out a restraining order on her persecutors.¹⁸

By the late 1970s, sex workers were the main trans targets of police harassment and abuse. In a 1983 submission to the Select Committee of the Legislative Assembly on Prostitution, a coalition of organisations representing gay, trans and cis women sex workers noted: "The transsexuals suffer much

the same experiences as do the women: police harassment, abuse, and violence. However, their greater vulnerability usually means that it happens to them first and more often."¹⁹ In *The 'Drag Queen' Scene*, sex worker Judy said of police treatment: "One of the transsexuals was gang-banged by the police; and two told me they were bashed, but it doesn't happen all that often. Usually when one of the coppers is a bit drunk and feeling a bit randy, and then it'll be us or the natural-borns [cis women] depending on what kind of mood he's in."²⁰

The memories of trans oral history interviewees and the focus group members express similar sentiments and are explored in more detail below. Many, though not all, of the examples of hate crimes described below come from former sex workers. As such, some context about the culture of trans sex work in NSW is warranted.

16 Roberta Perkins, *Transgender Lifestyles and HIV/AIDS Risk: National Transgender HIV/AIDS Needs Assessment Project*, School of Sociology, University of New South Wales (1994), 39.

17 J Hooley, *The Transgender Project: A Needs Assessment for People with Transgender Practices*, Central Sydney Area Health Service (Sydney, 1996), 42, 46.

18 Roberta Perkins, "Transsexuals and Police Persecution," *Alternative Criminology* (June 1983): 7.

19 Task Force on Prostitution, "Submission to The Select Committee of the New South Wales Legislative Assembly on Prostitution," 30 July 1983, SLNSW, Roberta Perkins papers, box 9B

20 Perkins, *The 'Drag Queen' Scene: Transsexuals in Kings Cross*, 118.

NSW Trans Sex Worker Community

By the 1970s, there was a thriving sex industry in Sydney in parts of Darlinghurst and Paddington. The NSW parliament partly decriminalised sex work in 1979, but there were many restrictions. For instance, police could still arrest sex workers for violating laws prohibiting soliciting near residences, schools or hospitals, as well as for committing homosexual acts, which were not decriminalised until 1984. Even after the 1979 reforms, male sex work was still illegal; given there was no mechanism for trans people to be recognised in their affirmed gender until 1996 (notwithstanding the 1988 Supreme Court case *R v Harris and McGuinness* and other isolated examples), trans women could be charged as men for performing sex work.²¹

There were separate spaces where cis women, gay men, and trans women practiced street-based sex work. Both clients and workers knew the different spaces, and workers could face assault from other sex workers if they encroached on the wrong territory. Prior to the 1970s, trans sex workers operated at Boundary Street near Rushcutters Bay, on the edge of Darlinghurst and Paddington. From the 1970s, Darley Street in Darlinghurst was a popular place. This came to an end after a campaign by Darlinghurst residents sparked a series of police raids in December 1982. Over 40 police arrested 70 sex workers, 20 of whom were trans. This became known in the media as the Battle of Darlo.²²

Subsequently, trans sex workers shifted to the laneways around William Street and Premier Lane – an area that over time became known as Tranny Lane. Most of the participants in the focus group performed sex work in Tranny Lane at some stage during the 1980s-90s. Sex workers could be in the industry for just a few weeks or upwards of ten or twenty years. At Tranny Lane there was a strict hierarchy, which ‘top dogs’ and their posse would enforce. Normally someone had to start on William Street at the bottom of the Chard Stairs before they could graduate up to work on Premier Lane.

Trans sex workers came from all walks of life, though disproportionately they were Blak, Indigenous and people of colour. A police submission to a 1983 parliamentary inquiry into prostitution indicated that half of the sex workers in Tranny Lane were Māori.²³ For a while there were separate spaces for Indigenous, Pasifika and white sex workers, but over time the divisions between the Indigenous and Pasifika women broke down. Surveys by Roberta Perkins along with other reports suggest that in the 1980s, about 20 trans sex workers were on Tranny Lane most nights. Recollections suggest that by the 1990s, this number ballooned, especially on weekends, to upwards of 50-100.

Trans sex workers could see anywhere from one client through to several dozen over many hours. Sometimes they worked in doorways, clients’ cars, on the streets or in other known locales. Submissions to inquiries suggest that oral sex was the most common service, and women charged anywhere from \$20-\$40 for a blow job. On a good night, according to submissions to inquiries in the 1980s, someone could make up to \$700. Simone Lyndon-Pike testified to the Select Committee of the Legislative Assembly Upon Prostitution in 1984 that on average: “A lot of transsexuals make only \$30, \$40 or \$50, maybe \$100, a night and they work four nights a week. That is still a good income.”²⁴ There were generally set rates, and any girl found to be undercutting would face severe punishment from a top dog and could be relegated to part of William Street where some of the worst clients were known to lurk.

Although Sydney was the site of most sex work, it was not the only place. Trans sex workers operated across New South Wales in brothels, parlours or, particularly after the advent of the internet, through private bookings. Street based sex work, though, was primarily in Sydney and to a lesser extent in Newcastle. Bronwyn Walsh told the NSW Select Committee of the Legislative Assembly Upon Prostitution in 1984 that approximately 20 sex

21 *R v Harris and McGuinness*, 17 NSWLR 158.

22 Perkins, “Transsexuals and Police Persecution,” 7.

23 “Statement by the NSW Police Force to the Select Committee of the Legislative Assembly upon Prostitution,” 16 May 1983, SLNSW, Roberta Perkins papers, box 9A.

24 Simone Lyndon-Pike, “Minutes of Evidence Taken in Camera Before the Select Committee of the Legislative Assembly Upon Prostitution,” 11 July 1984, p. 4, SLNSW, Roberta Perkins papers, box 9B.

workers operated in Newcastle around Hamilton Railway Station in Islington and the Criterion Hotel.²⁵ Trans women from Newcastle and other centres like Wollongong often did work in Sydney.

Starting around 1985, Roberta Perkins and the Australian Prostitutes Collective (founded in 1983) began to compile and disseminate information among sex workers about abusive clients. They dubbed this information the Ugly Mug List, and over time it evolved to a pamphlet handed out by SWOP with physical descriptions, pictures and licence plates of dangerous clients. The Ugly Mug List did not distinguish between whether the sex workers attacked were cis or trans women, but an early list from 1985 includes descriptions like “Abducted at gun point, raped + robbed. Thrown from car at Liverpool,” “Throat cut. Managed to crawl to safety,” and “Pick up by one man and taken to motel room where another man was hidden in wardrobe: raped, genitals and breasts burnt with cigarette butts.”²⁶

Changes came around 1995 because of new legislation, demographic shifts and technology. First, amendments to the *Disorderly Houses Act* made brothels commercial businesses. The 1995-97 Royal Commission into the New South Wales Police Service – popularly known as the Wood Royal Commission – exposed police corruption and led to substantial reform to the NSW Police. On the back of these reforms, police harassment of sex workers reduced substantially, so sex workers often mark 1995 as a moment of further decriminalisation. From the late 1990s onwards, gentrification and development changed the demographic profile of Darlinghurst to be more affluent, pushing out many of the sex workers. Finally, from the 2000s the advent of the internet shifted much sex work into private bookings made online. This did not diminish the danger facing sex workers, but rather shifted it primarily from the streets to private or commercial spaces.

25 Bronwyn Walsh, “Minutes of Evidence Taken in Camera Before the Select Committee of the Legislative Assembly Upon Prostitution,” 11 July 1984, p. 3, SLNSW, Roberta Perkins papers, box 9B.

26 SLNSW, Roberta Perkins papers, box 5A.

Experiences of Hate Crimes from Public

One common thread throughout oral histories and other reports is that it was people who were visibly trans who were more likely to be targets of hate crimes. Trans communities sometimes speak of ‘passing privilege’, referring to those who blend indistinguishably from cis people and do not attract attention or derision. The term ‘passing’ is controversial because there is an implication that those who do not look like cis people are ‘failing’, plus it presumes a standard of appearance for particular genders. Importantly, even those people who are not visibly trans and have ‘passing privilege’ still fear being discovered as trans and could then be subjected to harassment, bullying and hate crimes.

Trans experiences of hate crimes range from verbal abuse through to physical assaults, rapes and murders. Hate crimes could affect trans people anywhere from inner-city enclaves that are supposedly more LGBTIQ+ friendly through to country towns. One interview participant who lived in Dubbo from 1975-79, for instance, recalls her house being egged. This was on the minor end of the spectrum, though. More common reports were of physical or sexual assaults. Such experiences could have dire effects on a person which lasted long after the physical wounds healed. One interviewee describes a physical assault she experienced in 2003 in Newtown:

I was coming home from a venue, a local venue here one night, and I was assaulted. And that was horrendous. I didn't go, I talked to a couple of gay friends about it. I'd called the police, the police came and spoke to me and took me down to have a look at the scene and all that... The police were very good. We had actually trained the Newtown police to be human beings. What some of them might have said behind their back was something else but they were very good face-to-face... But the assault really set me downhill for a long time. I wouldn't go out the door.

As the next section shows, this person's positive interactions with the police were in the minority.

If visibility could make a person a target for hate crimes, then there was nobody more visible than the trans sex workers around Tranny Lane and in other areas like Newcastle. Historical reports about danger again come primarily from Roberta Perkins' research and publications. For instance, Roberta quoted the Māori showgirl, sex worker and public figure Carmen Rupe as saying: “There have been lots of transsexuals threatened with knives, guns, hammers and crowbars. There has been a lot of that happening. It goes with the job and you have to be prepared.”²⁷ Roberta testified to the 1983 Select Committee of the Legislative Assembly on Prostitution:

In addition they [trans sex workers] suffered from poofter bashers who were suffering from homophobic fears. They bashed the transsexuals because they were more vulnerable. There is more resistance among gays to poofter bashing, but transsexuals are open to that sort of violence. There seems to be a build-up of resentment and hateful forces operating against transsexuals. To the transsexuals, it seems the whole world is hostile.²⁸

It was common for groups of young men, often coming from the western suburbs of Sydney, to drive to Tranny Lane and verbally or physically harass the trans sex workers. They may hurl abuse out of their cars or projectiles like water bottles, cans, frozen chips or other items. In a 1993 article published in the *Sydney Star Observer*, activist Norrie wrote:

The abuse that William Street workers get is phenomenal! Passing “animal buses” full of drunk Westies hurling their homophobia, sexual insecurities, and occasionally missiles; leering yuppies not missing the opportunity to kick another oppressed minority while they're (perceived to be) down; small-minded men who seem to achieve some obscene gratification from shouting “It's a bloke! It's a bloke, isn't it? Show us your balls!”²⁹

27 Perkins, *The 'Drag Queen' Scene: Transsexuals in Kings Cross*, 124.

28 Roberta Perkins, testimony to NSW Select Committee of the Legislative Assembly on Prostitution, 4 October 1983, SLNSW, Roberta Perkins papers box 9A.

29 Norrie-May Welby, “Tranny Pride,” *Sydney Star Observer*, 28 May 1993: 22.

Sometimes the trans workers would cleverly retaliate. One focus group participant recalls:

I remember being in the lane [Premier] once and these guys were kept going around yelling out abuse, and all the girls were in the lane and then all of a sudden the two cars in front stopped to talk to girls and then the guys, they pulled up behind them, and then another car pulled up behind them, so they couldn't go anywhere. So all the girls just surrounded the car and they were kicking the shit out of the car. And they had the newspaper and they spread the newspaper across the windscreen. So here's the guys in the car and they are shitting themselves and all the girls with heels were booting the car and the wipers and so they couldn't see to go anywhere. So they were like driving the car blindly up the street once they could get through to get past us, it was hilarious.

Another participant recollected a similar story of a car coming through Upper Forbes Street to Premier Lane, driving like mad and the passengers hurling bottles at the trans sex workers. The participant describes what happened next:

They made the worst mistake by showing themselves out the front because they went to try and come back around again, but this time they weren't so lucky. And as they were coming down Forbes Street, we were all standing there and they had nowhere else to go because there were cars behind them. So they had to keep coming towards us. And I remember standing on a can and flattening it and then going like this and throwing it and the girls had bottles and that poor car got pelted. And you know what happened? They actually got out of the car, four of them got out of the car and ran and they left their car there. And what we did was...we ripped the front door off. One of the front doors, we literally, the four of us just yanked, yanked, yanked and it just came off.

Although the focus group participants remember such moments of retaliation with humour, there were far more disturbing examples of individual or group attacks.

Physical assaults of sex workers were often tied to men feeling they could possess trans women and do what they wished with their bodies.

Carmen Rupe explained in 1983: "The guys I really hate are those that have tied girls up and cut them with a razor blade. I've not had anything like that, but I know girls who have. The most I usually get are those that threaten me with a crowbar to hand over all my money."³⁰ *The 'Drag Queen' Scene* also includes a tale by Nancy about one client who viciously attacked her:

I always jump out at a set of lights if they don't go where I tell them to. One night this guy took off in a different direction than I'd told him and he raced through the lights so that I couldn't leap out. And he drove down this path to a park. I'm sure that he has raped girls there before because he knew where he was going. He told me to shut up and when he pulled up I made a bolt for the door. He grabbed my handbag, which had \$150 in it from previous jobs, but I wrenched it out of his hand. I ran as fast as I could, but the ground was wet and my high heels kept sticking in the mud, so I took them off. And I had a white top on, so I took it off so that he couldn't see me, and I ran to the top of this mound but I couldn't get out of the park because it was fenced off. The only way I could get out was past him, so I tied my shoes together – they were stilettos – to use them to hit him. It was four in the morning, cold and wet and windy, and I thought he was coming from every direction. I heard a dog bark behind me, so I knew he must be there, and I bolted the other way. I cut my feet. I could hear him yelling, but I kept going until I found a phone box in which I crouched and hid. When I heard his car drive off I rang a taxi. I'm sure he would have robbed me, raped me, and bashed me too. I saw him some weeks later in this pub, and I went up and smashed him in the face. He recognised me then. On another occasion I had this guy twist my arm up my back and force me to give him a head job. He was so violent to me, and then afterwards he broke down and cried.³¹

30 Perkins, *The 'Drag Queen' Scene: Transsexuals in Kings Cross*, 124.

31 Perkins, *The 'Drag Queen' Scene: Transsexuals in Kings Cross*, 111.

Several focus group participants gave examples of witnessing stabbings which amounted to murder or attempted murder:

There was an older Sistergirl, and she was murdered; she was stabbed so many 30-odd times. But like I said, there wasn't anything that came of it. We never heard that anyone got charged.

Back in 1990 [someone] was literally stabbed outside of, 22 times outside of Woolloomooloo fucking police station while the pigs are sitting behind the door fucking laughing. I don't know whether many people remember that. She was a Sistergirl. They just got up and walked away.

One focus group participant shared a frightening tale of helping a friend survive an attempted murder:

We had a serial killer; he was killing hookers. He didn't care if you were trans, or a female, he just wanted to get the hookers. He took one girl up into the Blue Mountains, and it was a trans woman; they didn't find her for probably 12 months, and the police referred to her "male." And he almost got caught because Ashley and I were working one night really late... And he wanted to cut her throat because he said she'd taken his wallet. He had a knife up to her, but he didn't see me come down the stairs. I took the knife out of his, you know, wrestled the knife out of his hands and threw it far, and I said, "Get out of here before we get the police." And he just left. But he drove around that woman – the lane and William Street for weeks, and that really scared the hell out of us. He was on the Ugly Mugs list for a long time.

The other common hate crime experience was rape. As noted above, often clients or other men would rape sex workers because they felt they could possess their bodies. The idea of entitlement to possess trans women's bodies went beyond just the sex worker context. Two focus group participants shared traumatic experiences they had of being raped. The first was sometime circa 1979/80:

I was inside there [Flo's Palace on Oxford Street] having a few drinks with a friend of mine, and then I went out and I got picked up by three guys, and they took me over to

Moore Park and I thought, you know, they're friends, but they're not. And they ended up raping me inside the park, and nobody's there to help me and I ended up crawling to the main road to call for help. And lucky this old man stopped the car and took me over to St Vincent's Hospital, and I was inside there for two weeks. Like, what you says what the cops says about your story, they don't take anything from you. They say, "It's your fault because you're a tranny, you're a man in a dress, that's all." And that is so painful for me, those days when I got raped by three guys, and sorry, I can't say anymore.

The second story similarly expresses compounding trauma of being raped – or in this case attempted rape – followed by police dismissiveness and abuse. This one happened in Newcastle:

I had an incident maybe about 30 years ago where I was partying and I was at a pub drinking and I hooked up with one of the guys and after the pub closed. They said, "Oh, we're going to get some beer and we're going to go drinking." So, we went driving in their car, and anyway I was hooking up with one of the guys and then the other two guys started to try and take my clothes off, and I hadn't told the guy that I was with that I was trans, so I didn't want them to find out that I was trans, so I started fighting back so that they couldn't get my pants off, and they took my shirt off, they took my shoes off and trying to take my jeans off. We were in the middle of nowhere, it was out past Newcastle in the sand dunes, and they had a four-wheel drive and we'd been driving around, and in the end, I put up such a fight because I thought if they find out that I'm trans, then they might kill me, and I was in such an isolated spot that I'd been making out with one of the guys, so they chucked me out of the car and it was in the middle of nowhere, and I had no shirt on, no shoes, just a pair of tight jeans.

I was wandering... I could hear the road noise off in the distance and every time I heard a car, I would hide thinking it was them coming back to get me again. Anyway, I found, it looked like an industrial area and it was about 3am in the morning, there was no

one around, so there was an old ute there, and all the windows were wound up and I found a rock and I smashed the window and got in the ute and went to sleep. And when I woke up, this copper was pulling me out of the ute and I, you know, was like, “Oh fuck, what’s going on,” and started fighting back thinking that it was the guys come to get me.

Anyway, they took me to the police station, I was in a pair of jeans only and a top, and they charged me with breaking into this ute, and for assaulting the copper that was dragging me out of the car because I was, you know, fighting back. Anyway, I was a heroin addict then, and you know, I don’t even think I went to court for the charges against me, I was pretty fucked up. And then, I got clean, maybe about two years after that I got clean, and I get this fucking letter in the mail in my old name and I’m like, you know, I haven’t seen a letter, you know, something come in the mail in that name and at that address that I was living at, and it was this fucking copper had applied for compensation that I’d hit him.

Although hate crimes generally targeted trans sex workers, one participant wanted it noted that clients, too, could be victims of hate crimes. She gave this example:

I worked alongside another Asian sister, and these guys ran out and they just bashed his [client’s] face in so badly. I got him into a taxi, went back to his place in Woollahra, cleaned him up and he said to me, “What do I tell my daughter?” And why I say this, because it’s a hate crime, because our sisters have to be mindful not only for ourselves but who we keep in our company.

Police Encounters

A persistent theme across the focus groups, oral histories and other archival records is that police have consistently been both enablers and perpetrators of hate crimes against trans people. This is clear in many of the examples presented above, and experiences with police dominated the focus group discussion. In 1983, Roberta Perkins explained to the Select Committee of the Legislative Assembly on Prostitution that police oppression came for two reasons. First, trans sex workers were extra vulnerable as both trans people and sex workers, experiencing double stigma. Police were aware of this vulnerability and took advantage of it when enforcing the law, knowing most trans sex workers would plead guilty to whatever charges laid against them. The other reason came down to ideas of hegemonic masculinity. Roberta explained:

The police are men. They have clear conceptions of what a man is supposed to be. They are certain of their masculinity. Many young policemen are disturbed by the presence of transsexuals. They do not understand transsexualism. They still work on an archaic interpretation of what was known to the police as transvestites in the last century; that is, that men disguised themselves as women in order to commit all sorts of crimes, not the least of which is molesting women and little children, as well as dressing to fool guys. The police still work on that premise. Therefore they have a very sad lack of knowledge of what transsexualism really is. They carry that sort of attitude in their heads when they are confronted with a transsexual. They are working at all sorts of levels. They have the idea that transsexuals are disguised to trick men, or to molest women or little children. The police cannot cope with the idea that transsexuals, who are supposed to be men, are dressed as women. I can understand their attitude. When all those things are weighed up, it becomes understandable why police tend to persecute transsexuals more than others.³²

Police round-ups on Tranny Lane were a regular occurrence. Sometimes the more experienced sex workers sensed as to when a round-up was coming, such as when a dignitary was visiting Sydney or when there was political noise about cleaning up the streets. Sometimes a friendly cop may warn some of the sex workers that a raid was imminent. But it was almost inevitable that anyone performing street-based sex work for a period of time would get caught up in a raid. Given sex work was supposedly decriminalised, police would use other laws as grounds to arrest people. As one participant put it, “They’d have a quota of having to pick up 15 workers back in those days. Once they got their quota of 15 workers then that was it. But they’d do that every fortnight the warrant checks and then you’d have to go into Surry Hills [Police Station].”

Across oral histories and the focus groups were a few common themes about police round-ups. The first was that police would take any money from those whom they arrested. One person explained: “Back then the cops, the detectives, there’d be Green and I think it was the one that, Rogerson, who’d go and pick up the girls. They’d watch them all night, make sure you had made a lot of money then they’d come, confiscate your money and say, you can work the rest of the week.”

Second was that police, too, would often expect and demand sexual favours with the promise of, supposedly, more lenient treatment or even releasing the sex workers. The flipside of this would be further abuse if the trans sex workers did not give into sexual coercion. One Sistergirl participant recalls:

I hopped in the car, one of them [police] hopped in the back with me. They drove me around for about an hour trying to get a fuck out of me. They pulled their dicks out and I looked at the one in the back and I said, “That wouldn’t fill a hole in my toe.” Anyways I ended up getting locked up... It was a Friday night; it was a long weekend. They took me back to Central Police Station and they were terrible. They were calling me everything but my name, you know, the coon from [redacted], because that’s where I come

32 Roberta Perkins, testimony to NSW Select Committee of the Legislative Assembly on Prostitution, 4 October 1983, SLNSW, Roberta Perkins papers box 9A.

from, AIDS carrying, you know, boong, blah, blah, blah...

Another participant describes how the demand for sexual favours could happen at the police station: "They took a heap of us up to the Darlinghurst Police Station and put us in the little stock, or whatever they call that, and see them talking together and you'd see they'd separate and take you to the cells and someone'd be off and asking you to... and if you said no you'd be locked up." Another participant shares an even more disturbing example of police threats of violence if the person did not give into sexual demands:

I had them one night take me up to The Gap and he put his service vessel into my face and turned around and told me if I didn't suck them all he's going to... the gun was empty. He's emptied the gun, I didn't know it was empty, I thought it was still full, loaded. He's just pulled it and said, "Next time it's going to be, next time faggot it's going to be full and they will never find you because I'm going to fry your dick if I ever catch you up here."

The third common theme, which is interconnected with the others, was police driving trans sex workers to far, remote areas and leaving them there. One person summarised: "They would also come down and pick us up individually and then drive us out of the area and then say, okay, right, now you have to have sex with me or you have to suck me off, and then if we said no, then they would arrest us because we were out of the red light district, right. So we really didn't have any leg to stand on, you know." Another participant recalls a specific example:

They came down and I'd already done a couple of jobs and so they took my money off me, threw me and my sisters inside the paddy wagon and then they drove us all the way out to Parramatta and dropped us up on the highway and then they said, you need to find your own way back. By this time it was late at night and so, well we were dressed up in high heels and fishnets and everything, we were already looking like odd material, right. But they did that, they did that to us because

they knew, they wanted us to get hurt, right, and they knew by taking us out of the area that we were familiar with and putting us way out there, they were hoping that we would get bashed.

Although most examples of police perpetrating abuse and hate crimes come from Tranny Lane, they were not exclusively in that space. Police harassment extended to trans people just living their daily lives, and it was their visibility and vulnerability that made them soft targets. One person recalls being questioned by police when she was babysitting, and another remembers:

There was an incident when I was walking, I had a trolley, shopping trolley full of food. I was pushing my trolley out because I used to live in Surry Hills and I was pushing it up and I was near the little shop there where I was living and the police pulled up. They came past and then they wheeled straight around and, you know, screech along and he got out. The young fella got out and he said, he said, "What are you doing?" I said, "I just went and did shopping, why, what do you think I'm doing?" He said, "Oh there was an incident just down the road that someone matching your description did a break and enter." I said, "What?" Because I was bigger then, I said, "I can't even climb through all that going through the front door let alone going through a window or anything else." Yeah. Anyways, and I said, "What's your name?" He wouldn't give it to me. I said, "What's your badge number?" He wouldn't give it to me. I said, "Okay, that's alright because I'm actually on the anti-discrimination board, I'm on the gender committee, Transgender Committee." Anyways, I said, "I'll mention it to them when we have our meeting next."

Another participant describes an incident when “They were stripping our sisters in the main street at Taylors [Square] where one of the sisters got stripped, broad daylight, and was told to pull everything down and lift her dress up, you know. So I think things need to change because even though we’re talking about like incidences from the past, things need to still change.” Police harassment could happen anywhere, including in country towns. One participant recalls:

I got arrested in Bourke when I was 17 [1987], down there, down near Anson Street, across the road from the showgrounds. I lived there. I went outside, I was sitting on the veranda and they come running up and fucking grabbed me and threw me in the back, and took me down to, into the cells, and I was there overnight. My parents come down to try and get, and find out, and they turned...I was, because here are my parents, and yet I was in the holding cell, and yet I was told if I say anything it’d be the last time I talked.

Notwithstanding anti-discrimination protections for trans people after 1996, the opportunities to lodge complaints against police abuse were few and far between. Most trans people did not have the means to pursue such claims, and even then such complaints could lead to nought. Moreover, there was a longstanding culture of harassment to scare trans people into not reporting police abuse, harassment or hate crimes. One focus group participant shares this tale about a trans woman from Aotearoa New Zealand who bravely challenged police abuse from Kings Cross in the early 1980s with dire consequences:

She got in touch with Internal Affairs in New Zealand and she reported the cops and the carry-on and how the police were at Kings Cross and what they were doing to her, and then she went back into the police station and said, “Right, I’ve gone and reported you to the New Zealand Internal Affairs and you’ll be hearing from them soon.” And like came back home and she was really like adamant that she’d done the right thing, and we were fearful for her. Next thing we know, her place had been firebombed a couple of days later,

because she had a unit in Springfield Ave and her unit was right on the laneway on ground floor, and we were all up at the Rex [Hotel] drinking and we went home, and then it was on fire, so somebody had thrown that in and so, you know, we kind of like didn’t put two and two together until they actually arrested her a couple of weeks later and they took her into Kings Cross Police Station, and she was in there for about five days, and we had been going into Kings Cross finding out and asking where our sister was, how is she, we want to make sure she’s okay, and they were saying she was fine, she was fine. But they released her five days later, she was black and blue. Black and blue. She had been beaten so much that she was almost unrecognisable. That was horrible, you know? And that was all because she stood up and spoke up for herself, she wanted to stand up for herself.

Although this inquiry is focused on New South Wales, focus group participants lived in multiple jurisdictions and wanted it noted that the rampant police abuse and perpetration of hate crimes against trans people were a national phenomenon. One participant who lived in Melbourne in the 1990s recalls:

The cops down in Victoria shot Kathryn, shot her dead in the corner of St Kilda Road and Kings Way there. We just got back from doing a job, got out...just walked up to her and says, “You owe me money,” and next thing you hear is a bang. “Fuck.” And he looked at me and he says, “Ever say a word about this, Cunt, and you’re next. Any of you faggots say anything about this, you’re dead.” They shot Kathryn, six months later they shot Sophie, twelve months later they shot Maria, and I don’t know what it was like here in New South Wales after ’95, but they hunted, literally hunted trans women in Melbourne, and they didn’t think you were – they took you to the Botanic Gardens and fucking put a bullet in you if they caught you.

As another example, in 1995, police recovered the body of trans woman Adele Bailey in a mineshaft near Bonnie Doon, Victoria. Adele was a sex worker last seen in St Kilda in 1978, and it has always been suspected that police

were involved in her murder and a cover up.³³ When Adele's body was recovered, "Carmen" (likely Carmen Rupe) commented in the LGBTIQ+ press that Adele was one of seven unsolved murders or disappearances of trans women from late 1970s Melbourne that she knew of.³⁴

Given all the police perpetration of harassment and abuse, it is not surprising that trans people have been hesitant to report hate crimes. Perhaps one quotation from the focus group encapsulates the entrenched discrimination within the force: "I asked for help from the police, they treat[ed] me like as if it's my fault just because I am trans. The police a long time ago told me I can't be raped, I'm a trans person, or tranny as they put it."

33 Robin Bowles, *No Justice* (Sydney: Pan Macmillan, 2000).

34 Mathew Jones, "New Clues Surface; Tranny remembers mystery murders," *Capital Q*, 11 August 1995: 1.

Trans Men and Non-Binary people

This report so far has almost exclusively given examples from trans women. This reflects that trans women have generally been more visible than trans men and non-binary people and thus have been more obvious targets for hate crimes and discrimination. The Trany Anti-Violence Project published in 1994, for instance, noted that only 1 of the 44 reports of discrimination and abuse came from a trans man. Otherwise, there is no distinguishing in any of the quantitative data from the 1980s-90s about trans men, let alone non-binary people. The draft Trany Anti-Violence Project report stated: “One defensible argument is that f-m tranys [trans men] are much more ‘invisible’ than their trany sisters, who have a higher profile, but not necessarily acceptance, in the gay and general communities.”³⁵

Some of the (in)visibility of trans men relates to historical discourses and pathologisation around transness. Before the 1990s, medical discourses about ‘transsexualism’ focused heavily on the body and gender affirmation surgeries. Because phalloplasty was so rare, and in Australia not available before 1996, doctors often would not recognise the existence of trans men. For those trans men who did medically transition with hormones and top surgery, the dominant discourse about blending indistinguishably into cis society was easier than for trans women. The physical changes facilitated by masculinising hormones – facial and body hair, male pattern baldness, dropping of the voice – make trans men blend in easily with cis men. Tied to this was also the safety that came with trans men’s ‘passing privilege’.

The author did consult with a few trans men who have been advocates for trans men’s visibility, rights and support since the early 1990s. They agreed that trans men’s ‘passing privilege’ meant that they were not subjected to the same sorts of hate crimes as trans women, but they made a few important points about trans men’s experiences and vulnerability. First, trans men were aware of the hate crimes their trans sisters experienced as well as high-profile hate crimes against trans men overseas, such as the 1993 murder of Brandon Teena (the

subject of the 1999 film *Boys Don’t Cry*). Such awareness certainly made trans men fearful of the possibility of hate crimes.

Moreover, before transitioning, trans men could themselves be subjected to hate crimes if they were living as butch lesbians or had an androgynous appearance. One trans man recalled being in a Newcastle bar and a patron perplexed by his gender felt up his body to see if he had breasts. In return, the trans man grabbed the guy’s balls; the guy angrily pulled out a set of nunchakus and chased the trans man out of the bar. As another example, in Kings Cross a group of men knocked a pre-transition trans man to the ground. Trans men report examples of people on trains intimidating them, like verbally harassing and pretending they were going to assault them physically. One trans man described the situation for those trans men who had not transitioned medically: “If you looked mannish or boyish, that was a red flag for some people in the community to be a target.”

The combination of hearing stories affecting trans women, trans men overseas, and the living experiences of misogyny before their transitions made trans men just as fearful of hate crimes as trans women. Their fear was particularly about what would happen if someone discovered that they were trans. One trans man gave the example: “That prevailing fear of what if someone opens the toilet door or if there is a medical accident and my clothes need to be removed” – a fear he still has today. In some clubs, the men’s toilet stall door may even be missing or the lock not functioning, which heightened the fear that someone would enter and discover their identity. That same trans man recalls one time when he was using a toilet at Central Station in Sydney and a guy was looking under the stall door. The peeper looked more shocked than the trans man, but still he worried that the man may wait outside the toilet and assault him. As he put it, “If you are discovered, does that lead to opportunistic rape?”

35 “DRAFT Trany Anti-Violence Pilot Project Report,” 1994, 10, courtesy Shan Short.

Trans men have expressed similar sentiments to trans women about cis men – both gay and straight – feeling a sense of entitlement or ownership over their bodies. Hate crimes against trans men have not been as public per se as for trans women, but trans men have been subjected to sexual assaults in private or in clubs. One trans man also pointed out that trans men who visit beats face the same dangers of hate crimes as cis gay or bisexual men. Moreover, trans men or trans masculine people who are sex workers face similar threats of violence as trans women.

Non-binary people, too, face threats of hate crimes which are both distinct from and in common with trans women or men. The main difference is facing verbal harassment and misgendering, including denial of non-binary existence. How members of society read non-binary people – either as men or women – tends to influence whether their experiences of hate crimes being more in common with trans women or trans men. Common across all these experiences, though, is the idea of cis men feeling entitled to possession and ownership over trans bodies.

Ongoing Violence

“Four policemen came to my door last night following a report of noise in our block of units. One, a sergeant, referred to me as ‘he’. This disturbed me greatly and I said, ‘Can’t you see I’m a woman?’ I look like a female and was wearing a nightdress and gown. He answered, ‘You could have fooled me.’ By this stage I was very upset and said to him, ‘Do you want me to prove it?’ He replied: ‘Yes.’ I then asked, ‘And how would you like me to do it?’ The conversation then went back to the matter of the report, but the damage had been done, the young men with him, who were by now all inside my door, were sniggering.”³⁶ – Roberta Perkins letter to NSW Police, 28 May 1981

“I live in Redfern and I cop it every day, misgendering in the shops, the misgendering from people on the street. The physical stuff is, I cop that every day. I get spat on every day, called a freak. Within the past three days I’ve been told I shouldn’t exist four times, I should take a long walk off a short pier...I got slapped a couple of times. I’m at that point now where it’s a waste of time reporting anything to anybody because it just, nobody listens anyway.” – focus group participant, April 2023

These two quotes are separated by 40 years yet show remarkably similar experiences of recurring harassment. There is no data about hate crimes experienced by trans people across this 40 year gap to show what, if anything, has changed. Hate crimes continue to affect trans people from both the general public as well as police. One focus group participant describes constantly facing hate crimes in her daily life: “I am ghosted every day, I am degraded, made feel less, told to die bitch die, and my neighbours started off with looking in my windows every night and I said something and the whole community turned on me like a snake.”

These examples also illustrate the second huge theme, besides police abuse, which came out of the focus group: continuity of hate crime experience well past 2010. Notwithstanding decades of anti-discrimination legislation, the presence of police LGBTIQ+ Liaison Officers (GLLOs) and some police going through

LGBTIQ+ inclusion training, still trans people report high levels of police abuse that makes them hesitant to report hate crimes. Police physical violence and sexual coercion may not be as prevalent as in the 1970s-90s, but that does not mean that it has completely gone away. One focus group participant shared: “Back in my community, one of our Sistergirls, the police took a fancy to her, and because she wouldn’t give him sex, he pulled a gun on her. Anyway...we took him to Court, but he never got dismissed; he got moved.”

Most other examples suggest that police physical abuse is much less common than that described in earlier sections of this report. But violence continues through other means. The most common which came out of the focus group are misgendering and deadnaming (referring to a trans person by their previous name), verbal abuse, dismissing trans people and treating trans people as perpetrators of crime.

Two examples of police misgendering effectively illustrate how it both perpetuates violence against trans people, as well as discourages trans people from reporting crimes. The first comes from the north coast of New South Wales. A trans woman reported a case of verbal harassment and the threat of physical violence to the police, and describes what happened:

The next day I went in to give my statement and they said, “Oh we’ve located her [perpetrator], but when we charge her, we’ll have to charge her using your previous name.” So I’m married, so I’ve got a marriage certificate. I’ve legally changed my name a long time ago. I’ve changed my gender marker on my birth certificate. I spent money at Births Deaths and Marriages to do this. So then I had to have this whole fight with the police officer, who was insistent that that is my name and that’s what they have on record, despite me showing him my driver’s licence, my birth certificate.

36 Roberta Perkins, to Superintendent Gruggon, NSW Police Academy, 28 May 1981, AQUA, Roberta Perkins papers, box 2.

The second example comes from Sydney:

Just recently, I got done for a traffic fine. I was taken into the police station; they demanded my male name. I said, “How does that count when I’ve been a woman for over 30-something years? So, please stick to what’s on the paper,” and still demanding my male name, and being told I was being, you know, contrary, not allowing them to have what they believed was right.

In neither instance was it necessary or appropriate to deadname the trans person, and it is questionable if it were even legal to do so.

One assumption commonly made is that inner-urban police stations would be more friendly to trans people. Indeed, one of the earlier examples noted that police at Newtown Station were affirming and supportive when a trans person reported an assault in 2003. Focus group participants, however, reported quite different experiences, specifically naming Newtown Station as a site of the second, third and fourth forms of police violence: verbal abuse, dismissing trans people and treating them as perpetrators. Two examples explicitly mention Newtown Station; the first describes an incident in 2020 after someone spiked a participant’s drink and sexually assaulted her:

I went to report him [perpetrator] to Newtown Police Station. While I was there, I saw the CIB [Criminal Investigation Branch], and the way the CIB interrogated me was...I didn’t want to go back there again. “Did he put it in your ass twice?” So that was to me it was like...he wasn’t listening, you know, so I just got up and left and didn’t go back, and the questions they have in there, like I said, the way they question people like myself, it’s just derogatory, and you don’t want to go back to actually follow up.

In the second example from c. 2019-20, the trans woman was in an altercation with a cis man partner. The people who reported the incident to police presumed that the trans woman was the aggressor. Indeed, police misidentification of aggressors is a large and

known problem nationally when it comes to their treatment of family and domestic violence, with particular contexts and impacts for trans women.³⁷ The focus group participant explains what happened at Newtown Station:

The police, when I was being interrogated, were like, “But like you’re bigger than him [partner], right?” And I was like, “I don’t think you understand the impacts that HRT [hormone replacement therapy] has on muscle development.” Like, “I am much weaker than he is, and like he’s a trained Jiu-jitsu fighter, like there’s no way that I’m going to be able to...” And [police] just kept constantly being like, “But your frame is bigger, but you must be stronger than him.” Like, just completely invalidating my womanhood and I was like, “I don’t think you understand what’s happening here.” And I was like, “My name is this, it’s not the name that all of my ID has,” and they just would say my old name and be like, “Oh sorry, I forgot, oh sorry, I forgot.” And it was one of the most like vilifying times that I think I experienced, because even though like I had explained my side of the story, they weren’t taking into account how I felt, they were just like, “But you’re bigger, you must be stronger.”

When the participant had to go to court, again authorities insisted on using her deadname, further exacerbating her discomfort and the lack of support she received. As she summarised: “It is 2023, but we have very little faith in these institutions that are meant to keep us safe, that we assume has gone through levels of reform, that have gone through training and I don’t see it, I don’t think it’s there.”

This is the challenge that trans people face. At one point, when focus group members were asked what options do trans people have if they are victims of hate crimes, the answer was they can contact the police and hope for the best. This is not an acceptable situation. One participant articulated:

White cis women are not hoping the police are going to care for them; they have an

37 Madeleine Ulbrick and Marianne Jago, “‘Officer she’s psychotic and I need protection’: Police misidentification of the ‘primary aggressor’ in family violence incidents in Victoria,” Women’s Legal Service Victoria, Policy Paper 1, July 2018, <https://womenslegal.org.au/files/file/WLSV%20Policy%20Brief%201%20MisID%20July%202018.pdf>, accessed 18 May 2023.

inherent belief that the police are there to keep them safe. It's not a belief that we share, and that's part of the problem, that intersection of like, "Do I call them? Is it worth calling them? I've just been bashed, but if I call them something worse may happen." That's where trans people exist, and it constantly wears at our energy, at our spirit, at our soul because we don't feel like there's anyone in power, anyone with any form of governing system that actually is here to care for us.

Names of Hate Crime Murders

Focus group participants were aware that one of the key objectives of the Special Commission of Inquiry into LGBTIQ Hate Crimes is to identify the names of other trans people murdered between 1970-2010. Focus group facilitators did ask the participants if they could give other names, but they were hesitant for several reasons. One reason is that when trans people disappeared from the community, it may have been because they were victims of foul play or it may have been because they moved on to another region or state. But the more prevalent reason that they would not give names was a sense that naming more trans victims will not achieve any outcomes for those individuals or the trans community. As one participant put it:

I think that there are probably more than, as we were saying, we would ever be able to account that we've lost, and I think it's nice to assume that our community are going to know these names, but I think back then a lot of the reasons our community were together was because we were having to work, because no one else was going to be able to give us jobs, so we had to build a community that we didn't stay with forever.

The focus group participants were also uncomfortable because several of the names listed on the inquiry's website as gay men were, in fact, trans women being deadnamed. This is not necessarily the fault of the inquiry, as this information may not have been available to the inquiry staff. It is not uncommon for trans hate crime victims' identities to be erased, deadnamed, and recorded mistakenly as men – either gay or straight. Moreover, often the language in historical newspaper reports could create ambiguity about whether a person was trans or not, using terms like 'cross-dresser' or 'drag queen'. When facilitators asked if the focus group participants would be willing to identify which of those people were trans, there was a huge silence and discomfort in the room. One participant did indicate: "Two or three of those so-called gay murders they actually investigated were actually our sisters; they were to do with two, a couple of them, were put out as being gay men when they were actually transgender."

Another participant also pointed out that while the majority of hate crimes being investigated happened in urban areas, there would also be hate crimes in regional parts of NSW where the names are even more unknown. As she put it: "I think that there are probably tons of trans people who haven't had to move to the city, who don't have the connections that we have, who've grown up and stayed in their areas, who've also been met with harm and violence and death, that we would have no idea of."

The names that the focus groups were willing to add are more high-profile deaths which have not adequately been investigated. Like so many of the gay hate murders which sparked this inquiry, the coroner or police ruled several of these deaths as suicides when they were possible hate crimes: Catherine Moore (died 1997), Veronica Baxter, known also as Paris (died 2009 in a men's prison) and Nadine Stransen (died 2016).

Investigating these cases as potential hate crimes would be an important start to healing the wounds, cynicism and distrust that trans community members have of the criminal legal system. As one participant put it: "At the end of the day, they can do a million of these inquiries, but they will never know how many have perished. And a lot of people that they would love to hear from have already passed away. There's not too many of us out there left, and a lot of us just won't talk."

Recommendations

One challenge that emerged from the focus group was to come up with pragmatic recommendations for the Special Commission of Inquiry. There is almost a catch-22: trans people generally distrust police and other criminal legal institutions because of the long history of involvement in, perpetration of, and cover-up of hate crimes. In the wake of the global Black Lives Matter movement – not to mention related causes like Trans Lives Matter – there have been calls to abolish the police and to channel police funding into preventative and rehabilitative services instead. Focus group participants recognised that such revolutionary ideas are not so realistic, so they instead came up with a series of recommendations which are more pragmatic and which we convey to the inquiry.

1. The Police Association of NSW should reach out to organisations such as the Gender Centre and SWOP and endorse legal reforms that support trans rights around self-identification

The issue of distrust looms large between the trans community and police. Clearly there needs to be a circuit-breaker to start building trust. In the past certain leaders and police commissioners have reached out to the LGBTIQ+ community, but many of the challenges facing trans people in relation to police operate on the ground and are distinct from those facing gay, lesbian and bisexual people. The Police Association of NSW, as the union that represents the interests of police officers themselves, is a more representative body of police culture and as such is vital to be part of any reform process. One trans participant eloquently expressed both the entrenched feelings of distrust, as well as how proactive actions taken by the Police Association of NSW could be a start to bridging the gap between police and the trans community:

I don't personally think the police feel they've done the wrong thing; they were just enforcing the law, they were just following the laws of policies that were in place when they were locking us up, bashing us, harassing us. They were doing their job. And we also have a right to live freely, so I don't think that we can sit at the table with police and have them be like, "This was our fault completely. We shouldn't have done these things." They're not going to do that because it requires a deeper level of self-reflection that I think the institution itself can do, but I think maybe if we're trying to think practically, a thing that I think would be great to see is the police force support self-ID more for trans people to be able to identify with their affirmed gender without requiring certificates, because I think that this particular type of policy is going to start coming up... I think that they always have an opportunity; they could really lead this space, and really turn up for queer and trans people.

On a similar note, another participant suggested that it would be worthwhile for the Police Association of NSW to publicise what policies and steps they are taking to protect LGBTIQ+ people, including their own members.

2. Greater transparency and expansion of the GLLO program

The NSW Police established the GLLO program – now referred to as LGBTIQ+ Liaison Officers – in response to demands from the NSW Gay and Lesbian Rights Lobby over police abuse. According to the NSW Police website, there are currently over 300 GLLOs and 6 regional advocates who are identifiable by a triangle badge they wear on their uniforms.³⁸

Focus group participants identified numerous challenges around the GLLO program as it currently stands. A major one is that there is no published list of who the GLLO officers are, where they are stationed and how trans community members can contact them. There

³⁸ https://www.police.nsw.gov.au/safety_and_prevention/your_community/working_with_lgbtqia/lgbtqia_accordian/glls_lgbtiq_liaison_officers_and_region_advocates_communities, accessed 24 April 2023.

is a worry that GLLOs tend to be concentrated in inner-city Sydney, meaning there is under-servicing in western suburbs and regional NSW. This can be resolved by publishing the names and contact stations for all GLLOs or, at the very least, publishing a list of all stations that have a GLLO officer posted. Where the NSW Police find an area that is under-serviced, they need to consider redeploying existing GLLOs or training additional GLLOs in that area.

3. Mandatory contact with a trans-focused GLLO or paid peer representative whenever a trans person is involved in a police matter

Another challenge is that GLLOs tend to be better versed in gay and lesbian matters and are less adept at working with trans clients. One solution to this would be to train more trans GLLOs. Even that may not be so simple, so the other idea floated by the focus group was to have trans civilians who are on call to work with GLLOs as peer facilitators when there is a case involving trans people. These would be specially trained and paid individuals who, as one participant put it, “speak the language” of trans people and can be available as peer support when working with the police. As one participant explained: “Alongside the GLLOs there needs to be peer-led, lived experience workers who are then able to challenge the decisions of the police with weight behind their decisions to care for us, because I don’t care, it’s just like the idea of good cops being in the system; it’s still a system that aims to oppress.”

Linked to this point, the focus group members recommended to make it mandatory for police to contact a GLLO immediately when there is any complaint, arrest or case involving a trans person. The idea is modelled on a program that already runs in most states and territories, including NSW, for Aboriginal and Torres Strait Islander people. Under the Custody Notification Scheme, anytime there is an Aboriginal or Torres Strait Islander person in custody, police contact the Aboriginal Legal Service 24-hour

RU OK phone line.³⁹ This recommendation would, modelled on that program, require local police stations to contact a GLLO immediately when any trans person is in custody or contacts police. The person need only self-identify as trans and, no questions asked, NSW Police would be obligated to make contact with a GLLO.

4a. Require police, courts, corrective services, coroners, medical officers, magistrates, judiciary and other instruments of the criminal legal system to, in proceedings, refer to a trans person by their affirmed name and pronouns and, unless relevant to the proceedings, not comment on genitalia

4b. Review the Computerised Operational Police System (COPS) with trans people’s input to ensure that previous names are only listed as aliases and made visible to authorities only when absolutely pertinent to the matter

Focus group participants reported persistent misgendering and deadnaming by police, even when people had legally changed their birth certificates and/or names by deed poll. This is unacceptable. Moreover, trans people who have not changed their legal names or gender markers may not have done so for a variety of reasons: the strict surgery requirements currently in place in NSW; the cost; or administrative burdens. Genitalia do not define a person’s gender or their transness. As such, references in court

39 “What is the Custody Notification Service?” Aboriginal Legal Service NSW/ACT Ltd, https://www.alsnswact.org.au/what_is_cns?fbclid=IwAR16slbmNTa7eFTiNmT9pHR3QIAeD5f6H7D0tmmgcxDdE-BXvaI6GdOZid8, accessed 26 April 2023.

proceedings or other reports to a trans person's genitalia should, unless they are relevant to the proceedings, be avoided (as reference: in the case against Mhelody Bruno's assailant, the judgement commented on Mhelody having "male genitalia" even though this had no bearing on the case⁴⁰).

While there is a recognition that when charging someone it must be done under their legal name, that does not mean that police, courts and other authorities cannot still use the person's affirmed names and pronouns in their interactions. Continuing to deadname or misgender a person may mean little to the person who does it, but it means a lot to the trans person who has to live with the degradation. As one focus group participant put it: "We're going to keep hearing, 'Well, that's just the name that I have,' and for them, that's them being a smartarse, but to us, that's completely dehumanising." That same person flipped this on its head and explained: "I think it's powerful if trans people know they [authorities] actually have to say our affirmed name, because we have no power. But if we then lobbied and changed this, and we then knew that every trans person, when dealing with police, was able to be called their affirmed name, that then gives us power, and we're then able to challenge."

The NSW Police data system COPS opens files and retains information about individuals when they have any interaction with police, be it as a suspect, witness, person of interest or someone who reported a crime. It is understandable that for matters such as criminal background checks, there is a need to check every name or alias attached to an individual. But for other regular dealings with police as witnesses and victims of crime, for instance, there is no reason that authorities need to know someone's previous names. Examples in this report show how the maintenance of people's deadnames and previous gender markers can be disempowering and demeaning, not to mention are irrelevant to most cases.

This is clearly a complex space; it will necessitate a review of how COPS can manage data from a systems side, along with clear demarcations of in what circumstances it is absolutely pertinent for authorities to access someone's previous name and/or gender marker. One possible model is from Queensland, where police have an online form that people can fill out to request a change of name and gender marker in the Queensland Police Records and Information Management Exchange (QPRIME) computer system.⁴¹ There may be other models or learnings from the shortcomings of Queensland's approach, which is why the recommendation here is to review COPS. Most importantly, trans people must be members of the review team.

Focus group participants similarly noted that coroners' reports may misgender or deadname a person as well. This is a form of trans erasure. Indeed, as already pointed out, some focus group participants were distressed because some of the cases being investigated in the Special Commission of Inquiry are actually trans people who have been misrepresented as gay men and deadnamed. As such, a similar protocol should apply for coroners' reports: even if a legal name needs to be used in the reference to the file, the report can note their affirmed name and pronouns and use that language throughout.

This links to a bigger point raised in the focus group: the need for the NSW Government to update all forms and government systems ranging from health, legal, education, welfare and anything else so that they accurately reflect terminology around gender and sex. It is recommended that questions around sex and gender follow best practice around demographic indicators as outlined in TransHub.⁴²

40 *R v TOYER* [2021] NSWDC 69.

41 Queensland Police, "Change of Personal Details Notification Form," https://forms.police.qld.gov.au/SexNameChange?AspxAutoDetectCookieSupport=1&fbclid=IwAR2c6Qa6uCG2z5s71A7OBXKAkndxIU7n22_u_Y-nlyQBJmzA0xSijYazo3k, accessed 18 May 2023.

42 "Researchers," TransHub, <https://www.transhub.org.au/allies/researchers>, accessed 24 April 2023.

5. Strengthen the power and outreach of a peak body of trans representatives who regularly review and make representations about the NSW criminal legal system, including police, courts and prisons

Several focus group participants advocated for the formation of a peak committee of trans representatives which can regularly advocate for ongoing reforms to the criminal legal system. Such a body would be able to represent the needs of trans people who are the victims of hate crimes and make representations about ongoing reforms to NSW Police to build the trust necessary for trans people to report hate crimes. Such a body needs to be trans-specific, rather than part of an LGBTIQ+ body, or else the distinct needs of trans people risk being subsumed or subservient to the priorities of the gay and lesbian community. The focus group participants noted that any peak body must be reflective of the needs of trans people across NSW, with representatives who are trans women, trans men, non-binary, Sistergirls and Brotherboys, and also must geographically include members from regional NSW and western Sydney. Where possible, committee members should also include people who have living experience interacting with the criminal legal system, including people who have been incarcerated.

It was only after the completion of the focus group that the author learned that such a body has existed since 2020: the NSW Trans and Gender Diverse Criminal Justice System Advisory Council (TAGDAC). According to the Women's Justice Network, this body meets bi-monthly and:

envisages contributing to significant change for trans, gender diverse and intersex people in all aspects of their involvement with the NSW criminal justice system, including

police, corrective services and the judiciary. The work of the NSW TAGDAC is being recognised by other states in their attempts to redevelop their corrective services policy and practices regarding the treatment of trans and gender diverse individuals.⁴³

That none of the focus group participants had heard of this body suggests that it needs a higher profile within the trans community, including transparency about membership, meetings, initiatives and outcomes. A short online search shows that the body produced a comprehensive “Briefing Paper on Protecting the Human Rights of Trans People in NSW Prisons” in September 2021.⁴⁴

As there is no information online about TAGDAC, including its membership or terms of reference, there needs to be greater outreach. It is vital that members of the trans community know about its activities and can contact the group. Increasing the visibility of TAGDAC will strengthen and empower the group in its dealings with bodies like NSW Police and Corrective Services NSW, as well as will provide a conduit for communication between trans community members and relevant government departments.

6. Expand trans inclusion training at all levels of NSW Police and embed it within the Police Academy

Since the 1990s, LGBTIQ+ organisations have delivered different training programs to NSW Police in a variety of forums. There was substantial scepticism within the focus group about the effectiveness of existing training because there is such an embedded transphobic culture within the NSW Police. Some focus group participants advocated for more training from the top down starting with the NSW Police Commissioner, while others advocated for expanded training starting at the NSW Police Academy. The Police Academy seems a fitting

43 “Advocacy”, Women’s Justice Network, <https://www.womensjusticenetwork.org.au/advocacy/>, accessed 18 May 2023

44 NSW Trans and Gender Diverse Criminal Justice System Advisory Council, “Briefing Paper on Protecting the Human Rights of Trans People in NSW Prisons,” September 2021, https://static1.squarespace.com/static/5d8c2136980d9708b9ba5cd3/t/62ba538b61678e018092107f/1656378254015/Briefing+Paper+and+Policy_Trans+People+in+NSW+Custody.pdf, accessed 18 May 2023.

site because police regularly move across stations, so getting the training at the beginning of police officers' careers is the only way ensure that all cops have training. These discussions highlighted the fact that training is needed across the entire force.

Another key point is that there needs to be trans specific training as distinct from the LGBTIQ+ umbrella. While there are certainly important shared histories of oppression, activism and solidarity across the rainbow community, trans people also have distinct experiences and needs. As one participant put it: "I think they need to learn our language, because transgender people, we've got our own unique language. There's things that we talk about, and which we know what we're talking about, but we could be sitting here talking like we are now, and a gay person doesn't even know what we're saying." Like the above recommendation about hiring trans peers, this recommendation would entail hiring trans trainers – be they independent consultants or organisations such as the Gender Centre, SWOP or ACON which already offer trans-specific training programs.

7. Empower the Law Enforcement Conduct Commission (LECC) to compile data about police dealing with hate crimes and fund LECC to embark on a broad outreach campaign publicising its independent power to investigate allegations of police abuse, harassment or perpetration of hate crimes

Focus group participants unanimously agreed that it is problematic for NSW Police to conduct their own internal investigations of any complaint about police behaviour. There is

no transparency in this system, and it merely fuels the distrust trans people have of the NSW Police to manage their complaints fairly. As one person put it, "When a case is brought up against police, it's police investigating them, so therefore, it's not going to get, it probably won't even get investigated." The *only* solution, as put by another person, was "We need to look outside of that system to a body that has higher power, like an independent body when we do have inquiries into people's deaths that are queer, that can challenge this, that's nuanced."

Focus group participants seemed not to be aware of the existence of the Law Enforcement Conduct Commission (LECC), established in 2017 for the very purpose outlined above.⁴⁵ The fact that the focus group participants were unaware of the LECC's existence highlights the need for greater outreach activities and promotion of the commission's existence, powers and the outcomes it can achieve. To put it another way: if police abuse, misconduct and hate crimes are more likely to target vulnerable communities like trans people, then those are the people most in need of easy access to the LECC.

Looking to overseas models provides an opportunity to empower LECC as a trusted site where trans (and other) people can report hate crimes. The UK, for instance, has some of the best data about hate crimes because, since 2014, the UK Statistics Authority standardised how police forces should record crimes – including identification of what constitutes a hate crime. The UK government also runs the Crime Survey for England and Wales (CSEW) – a face-to-face survey with victims to record qualitative information about their hate crime experiences.⁴⁶ The LECC could run a similar face-to-face survey service with NSW victims of hate crimes, including trans people. To do so will require LECC to build trusting relationships with trans community members. Moreover, it will require that LECC be properly resourced and for staff to undergo trans-inclusion and cultural competency training.

⁴⁵ The author thanks Dr Andy Kaladelfos for pointing him to the LECC.

⁴⁶ "Hate crime, England and Wales, 2021 to 2022," 6 October 2022, <https://www.gov.uk/government/statistics/hate-crime-england-and-wales-2021-to-2022/hate-crime-england-and-wales-2021-to-2022#introduction>, accessed 26 April 2023.

8. Implement all outstanding recommendations of the Royal Commission into Aboriginal Deaths in Custody

The Royal Commission into Aboriginal Deaths in Custody, published in 1991, found that Indigenous Australians were not dying at a higher rate in custody than non-Indigenous people. The problem was that Aboriginal and Torres Strait Islander people were disproportionately incarcerated at substantially higher rates, and this was the consequence of over 200 years of colonialism, racism and systemic inequalities which the criminal legal system perpetuates. The Royal Commission made 339 recommendations which were designed both to reduce the rates of incarceration of Indigenous people *and* the rates of deaths in custody. Only about 2/3 of the recommendations of the original report were ever implemented.

Over 30 years later, Aboriginal and Torres Strait Islander rates of incarceration have only increased, and they continue to die in custody in numbers even larger than those that sparked the Royal Commission. This is pertinent to the Special Commission of Inquiry because Blak, Indigenous and people of colour also disproportionately represent the number of trans people in police custody. Being both trans and Aboriginal or Torres Strait Islander (or any other person of colour) is an intersectional identity where the individual faces the scourges of both transphobia *and* racism and are doubly disadvantaged. The first step to undo the systemic discrimination they face in the criminal legal system is to hark back to the recommendations of the Royal Commission into Aboriginal Deaths in Custody and implement them in full.

9a. Expungement of prior convictions for sex work and sex work-adjacent convictions

9b. Full decriminalisation of the sex industry and adding 'sex work' and 'sex worker' as protected attributes under the *Anti-Discrimination Act*

As noted across this report, a huge site of trans people's encounters with hate crimes from the general public and police was while performing sex work. Moreover, even though the NSW Government decriminalised sex work in 1979, police used other laws around homosexuality, zoning and vagrancy to continue to criminalise sex work. These are what constitute sex work-adjacent convictions.

In November 2014, the NSW Parliament amended the *Criminal Records Act* to allow gay or bisexual men convicted for homosexual acts prior to decriminalisation in 1984 to apply to have those convictions extinguished. This recommendation is to implement a similar reform for sex work and sex work-adjacent convictions. Such a reform would allow sex workers to apply to have their convictions expunged or extinguished. It would go a long way towards rebuilding trust with government and the criminal legal system and thus empower trans and other sex workers to report hate crimes.

Furthermore, so long as aspects of the sex industry remain restricted or criminalised, sex workers remain vulnerable to hate crimes and will feel unsafe about reporting them. Full decriminalisation in NSW means removing zoning restrictions on brothels, which are primarily relegated to unsafe areas with poor lighting. It means repealing parts of the *Summary Offences Act* which make it illegal for other individuals (e.g. partner, spouse) to live off the earnings of a sex worker. It means amending the *Migration Act 1958* (Cth) and associated frameworks to ensure safe and accessible pathways for migrant workers. Given this is a federal immigration law, the NSW

Government should lobby through National Cabinet for the reform.

Finally, sex workers need protection under the *Anti-Discrimination Act* if they are to feel safe and empowered to report hate crimes. Under the current situation, someone can be denied bank loans, employment opportunities or even housing because they are a current or former sex worker. Such lawful discrimination makes it hard for current or former sex workers to participate in society as equals and contributes to unequal power relations in dealings with police and other institutions. As part of a suite of full decriminalisation, the NSW Government should adopt the definitions from the *Northern Territory Sex Industry Act 2019* as protected attributes under the *Anti-Discrimination Act*. The Northern Territory law defines sex work as “the provision by a person of services that involve the person participating in sexual activity with another person in return for payment or reward” and sex worker as “a person who performs sex work.” The attributes “sex work” and “sex worker” should be included for protection under the *Anti-Discrimination Act* as a new Part 4H to secure protection from discrimination in relation to work, education, accommodation, registered clubs and in the provision of goods and services. Moreover, there should be no exceptions relating to sport, superannuation, insurance or public health. Sex workers also need vilification protection under the *Anti-Discrimination Act* and by inclusion in section 93Z(1) of the *NSW Crimes Act*.

10. Reform prison guidelines around trans people to affirm their gender identities

Representatives of the Gender Centre worked with Corrections NSW in 1998 to develop some of Australia’s first coherent guidelines around trans people’s treatment in the carceral system. Those guidelines have gone through updates over the years, but still trans people in custody consistently report being housed in prisons that do not match their affirmed gender or being forced into solitary confinement. Being in such situations makes trans people vulnerable to hate crimes including physical and sexual assault

in prison. It is well past time that Corrections NSW revisits these guidelines and works with stakeholder organisations such as SWOP and the Gender Centre and implement whatever recommendations those and likeminded groups put forward.

11. Greater funding and expansion of trans-specific legal services

If distrust of police and the criminal legal system is a major barrier to trans people reporting hate crimes, then there needs to be an advocacy service that can assist trans people to do so. Since 2018 the Inner City Legal Service has offered a Trans and Gender Diverse Legal Service, but it is very limited. The service operates only one afternoon per month, and none of the focus group participants were even aware that it existed. Moreover, by being located in Kings Cross and as part of the Inner City Legal Service, it does not have the same reach to western Sydney, other cities and regional NSW. It is clear that there is greater demand than this one service – important though it is – can provide.

As such, focus group participants call for the expansion of and greater funding for trans-specific legal services. Moreover, there needs to be greater marketing so that police and trans people are aware of the existence of these legal services and they become a default contact, similar to Aboriginal Legal Services.

12. Make Victim of Crime Compensation more accessible and remove the statute of limitations for trans people victimised by hate crimes, including in prisons

Given the history of hate crimes, most of which were unreported, goes back decades, any attempt at justice needs to include access to victim of crime compensation. Many trans people are still living with the physical and emotional wounds of hate crimes yet cannot

access victim of crime compensation schemes because of time limits. Moreover, focus group participants pointed out that sometimes they were victims of hate crimes in prisons and they should be eligible for victim of crime compensation for those as well. This recommendation therefore calls for the NSW Government to amend section 26 (3c) of the *Victims Compensation Act 1996* to remove time limits on applications for compensation in relation to historic hate crimes. Such a reform would align with reforms that removed the time limit for sexual assault, family and domestic violence and child abuse.

Moreover, in cases where the trans person was murdered, there needs to be a review of the process to determine recipients of victim of crime compensation. As noted earlier, trans people may be estranged from their biological families due to transphobia. In such situations, chosen family should be the ones eligible to receive any victim of crime compensation.

13. Strengthen provisions of the *Anti-Discrimination Act* and update the *Births, Deaths and Marriages Registration Act* to facilitate self-identification

Amendments to the *Anti-Discrimination Act* in 1996 added ‘transgender’ as a protected category. At the same time, the NSW parliament passed amendments to the *Births, Deaths and Marriages Registration Act* to allow trans people who had gender affirmation surgery to change the sex marker on their birth certificates. In 2018 – to comply with the federal government’s recently-passed marriage equality legislation – the NSW Government amended the *Births, Deaths and Marriages Registration Act* further to remove the requirement that trans people must divorce a spouse to change their birth certificates. Besides this one reform imposed by Canberra, there has been no update to trans rights in either of these acts since 1996.

It is long overdue for the NSW Government to review these pieces of legislation to strengthen protections for trans people from

discrimination, vilification and hate crimes, and to facilitate changes to birth certificates grounded in self-identification without requiring medical or surgical interventions. Indeed, as of June 2023, NSW is one of only two jurisdictions - the other being Western Australia - which does not allow self-identification to update birth certificates. Just before Christmas 2022 the Western Australian government announced plans to update their birth certificate legislation to facilitate self-identification. Only in NSW has there been no movement on this issue.

Given the aforementioned problems of misgendering and deadnaming which continue to hinder positive relations with police, courts, coroners and other authorities, such reforms are vital to ensure that trans people can feel safe in their interactions. Such safety would also make trans people more likely to report hate crimes.

14. NSW Government to provide visible support and funding for affirming models of health care, as well as lobbying for Medicare to cover gender affirmation surgeries

Legal issues surrounding trans people are intricately connected to trans people’s physical and mental health and wellbeing. Trans people who suffer poor mental or physical health are more vulnerable to hate crimes and less likely to report them. Moreover, poor mental health is a common effect of being the victim of hate crimes or discrimination.

Affirming models of care are about tailoring health care to meet the needs and desires of trans individuals. The Australian Professional Association for Trans Health (AusPATH) defines gender affirming care as:

A non-judgemental, respectful, shared-decision making model to support a person in their gender in a way that is tailored to their individual needs. Shared-decision making draws on and respects the ability and agency of most clients, including many trans youth, to provide informed consent

for their healthcare. Gender affirming healthcare emphasises affirming language, psychological and peer support, support for social affirmation, and/or medical affirmation (e.g. puberty blockers for young adolescents, or feminising or masculinising hormones and/or surgery for older clients), as medically necessary and clinically relevant.⁴⁷

Gender affirming care builds on a model of informed consent, where trans clients take ownership over their own health care. For some trans people this may mean access to psychological support, for others it may mean affirming hormones, and for others it may mean gender affirmation surgery. Access to affirming care is patchy across NSW because there is no universal training in trans health care; it is primarily doctors who have taken an interest who offer affirming care and market themselves to trans clients. It also does not help that conservative media, commentators and politicians often disseminate misleading and transphobic information which attacks affirming models of care.

There is also substantial cost involved for trans people seeking affirming care. The number of doctors who bulk bill is on the decline, and most gender affirmation surgeries are not covered by Medicare. Given NSW Health has a huge role to play in this space, focus group members would like to see the NSW Government:

1. Be more vocal in support for affirming models of care;
2. Expand funding to services which provide affirming models of care (similar to Victorian government support for primary clinics⁴⁸);
3. Lobby the federal government through National Cabinet to add gender affirmation surgeries to be covered by Medicare.

15. Responsible journalistic coverage of trans people and issues

One focus group participant put it succinctly: “Journalists need to be responsible when they are reporting on trans issues. The words they use, what they do fuels the violence.” Transphobic media coverage has a long history in Australia and across the globe. It often perpetuates misunderstandings of what it means to be trans, along with ideas of trans people as deceptive, innately criminal or mentally ill. Media consistently platforms transphobic individuals and their views, sometimes in an attempt to appear ‘balanced’, and other times with the clear objective to demonise trans people. Yet there is nothing balanced about platforming hatred and positions which deny the living experiences of trans people.

Another way that media can be problematic is by misgendering and/or deadnaming trans people – particularly trans people who have died. This can happen especially if the trans person’s biological family did not know they were trans or if they were rejecting and estranged. Therefore, media needs to ensure that they affirm the identity of their subjects, and in cases where biological family are not affirming, they should be speaking to chosen family and friends to ensure that trans person’s dignity is affirmed and respected.

47 “AusPATH: Public Statement on Gender Affirming Healthcare, including for Trans Youth,” 26 June 2021, <https://auspath.org.au/2021/06/26/auspath-public-statement-on-gender-affirming-healthcare-including-for-trans-youth/>, accessed 24 April 2023.

48 See <https://www.yourch.org.au/service-access/trans-and-gender-diverse-health/>, accessed 24 April 2023; Victoria, Department of Health, “Trans and gender diverse health and wellbeing,” <https://www.health.vic.gov.au/populations/trans-and-gender-diverse-health-and-wellbeing>, accessed 18 May 2023.

16. Greater access to counselling services for trans people across NSW, along with services specifically tailored to people over 55 years old

Quite a few focus group participants expressed frustration at being unable to access counselling and other mental health services in a timely manner. As one person described it, “A lot of my trauma is about just not getting the right service when I did reach out for it.” For some people the challenge was geographic: the limited trans-specific counselling services offered by organisations like the Gender Centre are based in inner-city Sydney and it is hard for people in western Sydney or regional NSW to access them. For others, there is the challenge that many new services are tailored to specific groups like trans children and young people or parents. This is in no way meant to challenge the need for those groups, which are also perpetually under-funded, under-resourced and unable to keep up with demand. But, as one person explained, “There should be more access to counselling services for us as well as outreach services for over 55s transgender, and looking at more advocacy work as far as advocating for diversity within our own communities.”

A mapping exercise conducted by the NSW Ministry of Health in 2019 found that the Gender Centre offers 93% of all services to trans people in NSW. The focus group participants indicate a clear need to expand services both within and beyond the Gender Centre, which will necessitate increase in funding as well as greater implementation of trans-inclusive training programs for counselling providers across the state. As a participant summarised it: “I think access to services are really important, regardless of your region or where you’re geographically based. There should be access to everyone, regardless what your orientation may be, or your gender status, or how you choose to be addressed.”

17. Expand hate crimes inquiries to the present day and across all state and territory jurisdictions

As this report has consistently highlighted, hate crimes are an ongoing problem well after 2010. Indeed, there are unsolved hate crimes and outstanding issues of police abuse and distrust which linger well past 2010. It is vital that the NSW Government continue its push to investigate hate crimes by continuing such inquiries to explore the period post-2010.

Moreover, a theme highlighted by the experiences of trans participants who lived across state lines is that the same issues that affected trans people in NSW happened across the country. It is vital that other states and territories, too, look at cold cases as well as the broader cultures and contexts which led to hate crimes and the underreporting of hate crimes. While of course the NSW Government cannot compel other state and territory governments into action, it can raise the topic in relevant forums like National Cabinet and the Standing Council of Attorneys-General. The NSW Premier and Attorney-General should table the final report of the Special Commission of Inquiry in LGBTIQ+ Hate Crimes and lobby their counterparts in other states and territories to enact similar inquiries and reforms.

Final Reflections

This report has highlighted the interconnections between the criminal legal system, police, the past and the present when it comes to trans people's experiences of hate crimes. There is a lot of distrust which has built up over decades of police at best ignoring, and at worst perpetrating, hate crimes against trans people. Winding back this historical baggage and building trust will take time, and as noted in the recommendations above, also will require substantial culture change and a *willingness* to reform on the part of NSW Police, the Police Association of NSW and all officers. It cannot be left just to individuals, which has generally been the practice to date. As one focus group participant noted: "If you've got an officer, or someone higher up in the ranks who gives a shit about the community, then they're much more likely to facilitate or to create more opportunities of GLLOs. But that person gets moved on, and they start from scratch."

The recommendations and desires of the trans focus group participants aim to find ways to empower trans people so that they are less likely to be victims of hate crimes, and in such circumstances that hate crimes do happen, for them to feel comfortable to report to police. They need to have confidence in a system that will respect them, take their complaints seriously, and will deliver justice. There also needs to be a paradigm shift in how NSW Police relate to trans people. As one focus group participant put it:

When we deal with queer people in these spaces, a lot of the time, and I think it's very similar with [Aboriginal and Torres Strait Islander] mob as well, it's like they will fund up into the bare minimum for the system to run, but for the system to not improve the lives of the people that it's dealing with, but merely cope with them. And I think it happens a lot to queer people where we're not resourced to thrive, we're purely resourced to survive. And those of us who deal with intersecting oppressions fall further than that; what happens to the disabled trans black sex worker, as opposed to the able-bodied, white trans woman going to the police? What does that disparity look like? What does access to services look

like? I think that we need to stop viewing the queer community, and our needs, and our experiences, and our intersections as challenges, as something we need to get over. It's like we are very beautiful people, and our queerness and our intersections make us special. These services, especially the police, need not look at us and be like, "This is another thing we have to deal with." They're saying, "We need to make our spaces safer for them," when actually, anyone is privileged to be able to be in a space where they're adequately supporting our communities, when they're helping to undo the trauma that we carry, when they're helping to right the wrongs of the systems that we've had to navigate for 30, 40 plus years.

Any step to reform needs to work closely with the trans community and to centre their voices and perspectives. That was the approach underpinning this report, and it is therefore fitting that one of the focus group participants has the final word: "If there is one thing I'd like to end on is that we're experts in our lived experience. Like we know what we need, and we are the ones that deserve consultation – nothing about us, without us. Yes, and I like really acknowledging that we are experts in what we need as a community."