

# **Policing at NSW Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (LGBTIQ) Events and Venues**

September 2013





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# Executive Summary

This document discusses a range of concerns relating to policing of Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (LGBTIQ) events and venues in New South Wales. These concerns have arisen following a string of incidents throughout the 2013 Sydney Mardi Gras Festival. These incidents have been the subject of an unprecedented number of complaints received by the NSW Police Force and LGBTIQ organisations in the days immediately following the Festival. The content of these complaints relates to incidents described as excessive, violent, intimidating, in breach of legal guidelines and in some cases, considered homophobic. Many people from our communities as well as visitors from interstate and overseas experienced or witnessed these incidents across a period of several days throughout the Festival.

In total, 58 complaints were received by Mardi Gras and ACON. These complaints can be broadly classified into four distinct categories. Firstly, a large amount of intimidation and aggression by police was reported having occurred directly after the Parade as a wall of police officers moved down Oxford Street preventing crowds from crossing the road so that street sweeping vehicles could clean the street. Secondly, there have been reports regarding homophobic language and behaviour from police at the Parade starting area and inside the Mardi Gras Party held after the Parade. Thirdly, high levels of intimidation, violence, excessive physical force and coercion were reported regarding police conduct during drug operations at both the Harbour and Mardi Gras Parties, as well as routine strip searches carried out in contravention of legal guidelines. Fourthly, similarly aggressive and intimidating police behaviour in LGBTIQ venues along Oxford Street was reported during the Festival.

This document has been developed in response. Four LGBTIQ organisations – Mardi Gras, Gay and Lesbian Rights Lobby, Inner City Legal Centre and ACON – have worked collaboratively to summarise the major themes of the complaints and community feedback they received, discuss the impact of these incidents on relations between the LGBTIQ community and the NSW Police Force, and produce twelve recommendations to ensure that the events of 2013 do not occur again. It follows the Mardi Gras Policing Forum held on 19 March 2013 at which widespread community anger regarding police conduct was vocalised. A community consultative meeting was also held on 6 June 2013 at which the major themes of this paper and the recommendations were presented for community feedback. Amendments were made to the recommendations following feedback from this meeting.

Relations between the LGBTIQ community and NSW Police Force have been fragile historically but have improved over the last decade due to a range of concerted actions that have built police capacity, community confidence and communication between the community and police. The incidents surrounding the 2013 Mardi Gras have shaken this relationship and threaten to undermine many of the advances made in recent years. Doubts have been raised regarding the safety of our

communities at LGBTIQ events and venues in the future, as well as the confidence the community has in the capacity of the NSW Police Force to interact appropriately with LGBTIQ people.

These incidents have impacted negatively on the national and international reputation of Sydney, New South Wales and Mardi Gras events. Some high profile incidents involving policing during Mardi Gras have received widespread television, radio, print and social media attention. Many international tourists experienced intimidating and degrading treatment from police at key Mardi Gras events and relayed these experiences on social media. This included tourists brought to Mardi Gras via leading LGBTIQ tour companies. These companies, who bring thousands of international tourists to Mardi Gras each year, have now written to Mardi Gras and expressed reservations about bringing future tours and vessels to Sydney in 2014 and 2015 as a consequence of negative visitor experiences with police during 2013's Festival. This commercial damage has a flow on effect to airlines, hotels and the broader local economy. Even a conservatively estimated 5% loss of visitors from reputational damage (totally 5 000 visitors) will result in a \$6.5 million loss in economic benefit to NSW as a result of visitors going elsewhere.

This document summarises the incidents of the 2013 Mardi Gras and the issues that have arisen because of them, from economic and legal perspectives, and in terms of community health and safety. It also sets out the following recommendations towards improving policing practices so as to prevent a repetition of this year's events and the damage that has ensued after them:

## Education and Training

- **Recommendation 1:** That the level of police training on LGBTIQ cultural competency provided at the Police Academy be sizeably increased. This should be accompanied by a program of ongoing training beyond the Academy for all current police officers, with an immediate focus being given to those who have not received any previous training at the Academy. This training should further recognise the importance of equal and fair treatment for all people in NSW and embark on a program of unconscious bias awareness and management education for all officers interfacing with the NSW public.
- **Recommendation 2:** That the GLOO program is maintained as an essential program to foster positive relationships between NSW Police Force and LGBTIQ communities, and that an assessment be undertaken to ensure that training, professional development and capacity building activities appropriately meet the goals of the program.
- **Recommendation 3:** That the NSW Police Force becomes a member of the ACON Pride in Diversity program to exemplify institutional support for LGBTIQ diversity

issues. The membership of Pride in Diversity should be accompanied by an action plan to ensure best practice in organisational development, diversity practice and the implementation of LGBTIQ related initiatives within the NSW Police Force.

## Briefings

- **Recommendation 4:** That all police working at major LGBTIQ events, especially the Sydney Mardi Gras Parade and Party, be required to attend a briefing on LGBTIQ history and cultural competency prior to each event, and that community organisations such as Mardi Gras, ACON and the Gay and Lesbian Rights Lobby be engaged to co-present this material with police officers, or to create multimedia material where face-to-face contact is not possible.

## Scale and risk

- **Recommendation 5:** That policing at LGBTIQ events is reduced to an appropriate scale compared with the risk presented by the event. Further that assumptions made about these risks are shared to allow appropriate input and oversight by the LGBTIQ community.
- **Recommendation 6:** That the NSW Police Force review prior years' events and develop contingency plans for a variety of unplanned alterations to the start and finish times of major events during the Mardi Gras season, such as the Mardi Gras Parade. Further that Mardi Gras is informed of these plans in advance.

## Use of drug detection dogs

- **Recommendation 7:** That the use of drug detection dogs at events and venues, which have been shown to be ineffective in policing and harmful to individuals, be brought to an end.

## Police searches

- **Recommendation 8:** That the process and procedures being utilised by the NSW Police Force in relation to conduct during drug searches at events and venues be comprehensively reviewed, including how they relate to diversity and sensitivity when dealing with the LGBTIQ community and that this information be published in order to support education regarding risks and reduction of access to drugs at events and venues.
- **Recommendation 9:** That adequate police training occurs to ensure searches are undertaken in accordance with the governing legislation (LEPRA), with particular concern for the level and appropriateness of the searches conducted.

- **Recommendation 10:** That all people subject to a strip search are provided with written reasons for the search. These reasons could be in the form of a checklist.

## Complaints and investigations

- **Recommendation 11:** That a transparent, representative civilian-led police complaints and investigatory body with the appropriate resources, capabilities and knowledge be established. That this body is institutionally, culturally and politically independent from the NSW Police Force, and that the findings and recommendations of this body be published and implemented unless clear-reasons can be provided for non-implementation. Further the body should have the power to periodically examine the treatment of persons in places of interview and detention, and be able to lay charges where necessary.

## Reputational impacts

- **Recommendation 12:** A new joint strategy for managing Sydney Mardi Gras events in 2014 and into the future, involving Destination NSW, the Ministry of Events, Arts and Tourism, the Department of Premier and Cabinet, the City of Sydney, Sydney Gay and Lesbian Mardi Gras and the NSW Police Force. This strategy needs to include the implementation of the following additional recommendations:
  1. Reinstatement of the Sydney Mardi Gras Parade operations plan (for end of Parade) that has worked well in previous years.
  2. The elimination of 'riot squad' uniforms, mounted police, and policing in large numbers or groups of more than three or four officers.

We believe that implementation of these recommendations will result in a significant restoration of the relationship between the LGBTIQ community and the NSW Police Force. Alongside these recommendations each of the organisations involved in producing this document are also committed to a range of actions to improve this relationship. Importantly, we remain committed to continuing to work within a partnership approach between community organisations and the NSW Police Force to enhance the safety of the LGBTIQ community.

Despite the commendable job of many police, the extent in 2013 of negative community experiences, the detrimental impact to Sydney and NSW's reputation, and the commercial damage to tourism and the local economy cannot be dismissed. Nor can the impact of these problems on the relations between the LGBTIQ community and the NSW Police Force be underestimated. There is much work to be done to improve the current situation. It is our hope that positive relations between the community and NSW Police can be restored and that Sydney's reputation as a safe and welcoming city can be protected.

# 1. Background

There have been a number of concerning incidents raised by Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (LGBTIQ) communities and organisations in relation to the conduct of the NSW Police Force during the 2013 Sydney Mardi Gras Festival.

Some of these incidents have been described as excessive, violent, intimidating, in breach of legal guidelines, and in some cases, considered homophobic. The majority of these incidents occurred over the period of a week at community venues on Oxford Street, the Harbour Party, the Mardi Gras Parade and Party itself.

The allegations of misconduct have had a negative impact on the relationship between the NSW Police Force and the LGBTIQ community, raising concerns about the public safety of members of our community in future.

This document summarises some of the issues that have arisen and sets out key recommendations towards improving policing practices to ensure the safety of LGBTIQ community members is not compromised by inappropriate policing practices.

We acknowledge the difficult job undertaken by police and the complex nature of their role, particularly when policing large scale events. The dignity and respect with which the majority of police undertake their jobs should not be forgotten when facing issues of poor performance or alleged misconduct. But there are mounting stories of bad experiences of policing coming to a head over the Sydney Mardi Gras season that cannot be dismissed.

We also appreciate the efforts made in recent years to improve policing practice and relationships between the NSW Police Force and LGBTIQ community - in relationship building and training. However, more needs to be done. Recent events highlight the growing concerns of the LGBTIQ community about policing practice and that this is being experienced by more and more people as a culture of intimidation and force.

The issues raised in this paper and the associated recommendations seek to address those concerns and provide a way in which the LGBTIQ community, the NSW Police Force and the NSW Parliament can rebuild the trust that is required to facilitate a mutually beneficial relationship between the LGBTIQ community and police.

## 1.1 History of Mardi Gras, policing and the LGBTIQ community

On 24 June 1978, following the morning protest that commemorated the Stonewall Riots of 1969, a large group of people converged on Oxford Street to rally for the end of discrimination, police harassment and anti-gay laws. Later that night a party was organised. Despite the organisers securing permission to hold the party, the police violently broke up the party and arrested 53 people. Many of those arrested spent 8 hours in custody without charge and most charges eventually were dropped but not before police released the names and occupations of many of those arrested to the press.

It was not until 1984 that homosexuality was decriminalised in NSW. However a number of incidents occurred that impacted on the trust between the LGBTIQ community and the NSW Police Force, including the disappearance and brutal murders of gay men during the 1980s and early 1990s, especially at Sydney's eastern and northern beaches. Some of these cases remain unsolved and questions persist as to whether these cases were effectively investigated by police at the time or since.

Over the years efforts have been made to improve the relationship between the NSW Police Force and the LGBTIQ community, specifically via program developments and activities such as:

- The establishment of the Gay and Lesbian Liaison Officers (GLLO) program
- The creation of a programs officer position for sexuality and gender diversity in the Operational Programs Unit of NSW Police Force
- The creation of a specific corporate spokesperson position on LGBTIQ issues
- NSW Police Force participation in community events such as Wear it Purple, Mardi Gras Fair Day and the Mardi Gras Parade, Parramatta Pride and the International Day Against Homophobia (IDAHO)
- Working within a broader partnership approach with key community organisations like Mardi Gras, ACON, the Gay and Lesbian Rights Lobby and the Inner City Legal Centre.

The development of a partnership approach has been the result of hard work and commitment from the NSW Police Force and the LGBTIQ community. Through this work the NSW Police Force has developed a better understanding of many issues facing the LGBTIQ community.

Tensions, however, between the LGBTIQ community and the NSW Police Force have remained, particularly in relation to policing practice at large community events. Since 2006, police activity at LGBTIQ specific events has intensified, particularly in relation to (but not only) drug operations. These operations have recently included alleged violence, excessive physical force, threats and intimidation, and strip searches that allegedly contravene legal guidelines. Police have also been reported displaying homophobic conduct during these operations.

## 1.2 2013 Mardi Gras related incidents

Over its 35 year history, Sydney Gay and Lesbian Mardi Gras (SGLMG) has earned the joint status for the Sydney Mardi Gras Parade as a Signature event as well as a Hallmark event on the NSW events calendar. The Parade and three week Sydney Mardi Gras Festival events are attended by the LGBTIQ communities of NSW and hundreds of thousands from the wider Sydney communities.

Sydney Mardi Gras regularly attracts around 23,000 visitors from interstate and internationally, many of whom spend in excess of \$5,000 per visit per person and stay up to 16 days, on average generating \$30m to the NSW economy each year.

Over recent years, specifically since 2009, the degree of police activity at Mardi Gras events has intensified, particularly in relation to crowd management, increased user pays presence and drug operations presence.

In 2013, these operations have resulted in an unprecedented number of complaints being reported to Mardi Gras, NSW Police Force and other community organisations from local and visiting guests of alleged violence, excessive physical force, threats and intimidation and in some cases strip searches that allegedly contravene legal guidelines. In total, 58 separate complaints were received by Mardi Gras and ACON. These and other incidents were vocalised at the Mardi Gras Policing Forum held on 19 March 2013.

Attendees to this year's Harbour and Mardi Gras Parties (of which interstate and international visitors represent approximately 30% of a total combined audience of 15,000 participants) reported high levels of intimidation and abuse by police which, in addition to three high profile incidents under investigation, included:

- Large numbers of police converging on a single individual in order to conduct a search.
- Patrons being pinned to the ground, walls and trees prior to a search.
- Patrons being searched in the presence of multiple police and/or other non-related 3rd parties
- Patrons being choked and asphyxiated prior to a search.
- Patrons being strip searched in public.
- Patrons being searched without indications from a drug detection dog.
- Drug detection dogs being instructed by police to indicate patrons via orders or actions to 'sit' (sitting being the indicator of detection and reasonable suspicion to initiate a search).
- Police threatening patrons with X-Rays and stomach pumping operations at nearby hospitals.
- Police threatening patrons with cavity searches.
- Police threatening patrons with charges of assaulting police unless they admit to drug possession.
- Undercover police offering to sell drugs to patrons.
- Drug detection dogs being taken through the dance floor and toilets of the Harbour Party as well as through Mardi Gras Party venues.
- The interception of a patron at the Mardi Gras Party who was walking towards the Medical Tent, with police escorting this patron from the Party, leading them away from the medical attention they were seeking.
- Police using illegal force to conduct searches where patrons' heads were shaken or mouths forcibly opened.

A significant amount of intimidation and aggression by police was also reported having occurred directly after the 2013 Mardi Gras Parade as a wall of police officers moved down Oxford Street, in what has been reported as an attempt to establish a pathway for street sweeping vehicles, which were not in the immediate vicinity at the time. This caused great confusion as previously crowds have been able to follow the Parade up Oxford Street.

The management of the change to this long standing arrangement was undertaken with what witnesses say was force and aggression.

It has since been reported that a contributing factor to policing practice following the Parade was a result of the Parade starting 15 minutes later than planned and finishing 30 minutes earlier than expected.

Inappropriate policing of the content of some Parade entries also occurred. One entry from a major community group, Sydney Leather Pride, was instructed through aggressive shouting from police to cover their “butts” before they could move up Oxford Street. Police were heard using homophobic slurs to address gay men and were seen making homophobic gestures, such as limp wrists, in relation to LGBTIQ attendees at the Parade and Party.

In addition to these problems at large events during the Festival, there were reports of similarly aggressive and intimidating police behaviour in LGBTIQ venues along Oxford Street during the intervening days. These reports describe police entering crowded venues and being physically and verbally aggressive towards patrons, triggering and then escalating confrontations that would not have otherwise occurred.

In order to address these issues, we believe systemic changes at the NSW Police Force need to occur in the following areas.

***“It was at that moment, slammed with force into a wall, at which point my gum had gone down my throat. The individuals, I then realised, were both plain-clothed and uniformed police, although I wasn’t sure who or what was going on for about the first 10 seconds. They began choking me and shouting “spit it out” repeatedly. Very quickly, and as they continued to choke me, the number of people and or police multiplied around me to several (around 8 people I believe), and I was being pushed down to the ground by what I thought was all of them or most of this group, while continuing to be asphyxiated. At no point by now, had they, the police, given me any opportunity to move or breathe freely. I was struggling to breathe and was jerking my body, trying to let them know this. “I can’t breathe, I can’t breathe”, I struggled to say. But they kept heavily pushing down into my throat and persisted to do so, repeating the same thing “spit it out, spit it out!”, whilst continuing to suffocate me. At this point, after the police persisted with their interrogation of me on possession of drugs, and after having repeatedly and painstakingly told them that I did not take, nor did I possess, any drugs, the plain-clothed officer changed his tack, and proceeded with a different line of interrogation altogether. He was telling me that I assaulted police. It was a remarkable shift, and quite unbelievable. He kept telling me that assault of an officer was much worse of an offence, and how I should have just admitted to possession and taking of drugs. I couldn’t believe what I was hearing. I think he was doing this to try to get a drug confession out of me and to intimidate me. They took me into the police van and continued to interrogate me. During the questioning, one of the officers began to touch his chin, to infer that I had made contact with him too, which I did not. It felt like all of a sudden it became an assault story.”***

Male, 35, Marrickville, Mardi Gras Party



# 2. Issues, impacts and considerations

## 2.1 Education and training

Since 2009 all police officers who go through the Police Academy receive a two hour briefing from the NSW Police Corporate Spokesperson on LGBTIQ awareness. This is a welcome development but more is needed. There is no mandatory ongoing training for general police officers, though individual Local Area Commands (LAC) can choose to undertake professional development in this area. However, many police working at LGBTIQ specific events have never been provided sensitivity training on how to deliver culturally appropriate services to the LGBTIQ community.

The only police officers that receive training in LGBTIQ cultural sensitivity issues are the Gay and Lesbian Liaison Officers (GLLOs) and Domestic Violence Liaison Officers (DVLOs). There are approximately two hundred GLLOs throughout NSW and taking on this position is voluntary. GLLOs are meant to undertake two days of training on commencement of this role and no further training is mandatory. They are also expected to undertake capacity building activities within respective LACs to improve Police responses to the LGBTIQ community, although it is understood that these capacity building activities rarely occur.

We support the GLLO program and the useful work GLLOs do across the state. However, the expectation put on GLLOs of changing police culture and practice on their own requires review and evaluation. Similarly, the NSW Police positions of LGBTI corporate spokesperson and senior programs officer for sexuality and gender diversity have proven helpful in developing and sustaining positive relationships with the community. These are important structural advances that ought to be maintained and enhanced. However, recent events have demonstrated that additional measures and support are also necessary.

Further, current interventions have failed, in some instances, to deliver the desired learning outcomes and it can be assumed therefore that recent behaviours and events within the LGBTIQ community are symptomatic of more deeply rooted values, beliefs and unconscious biases. With a duty of care to all people in NSW it is important that such values, beliefs and unconscious biases are identified through a program of unconscious bias awareness and management education for all officers interfacing with the NSW public.

- **Recommendation 1:** That the level of police training on LGBTIQ cultural competency provided at the Police Academy be sizeably increased. This should be accompanied by a program of ongoing training beyond the Academy for all current police officers, with an immediate focus being given to those who have not received any previous training at the Academy. This training should further recognise the importance of equal and fair treatment for all people in NSW and embark on a program of unconscious bias awareness and management education for all officers interfacing with the NSW public.

- **Recommendation 2:** That the GLLO program is maintained as an essential program to foster positive relationships between NSW Police Force and LGBTIQ communities, and that an assessment be undertaken to ensure that training, professional development and capacity building activities appropriately meet the goals of the program.
- **Recommendation 3:** That the NSW Police Force becomes a member of the ACON Pride in Diversity program to exemplify institutional support for LGBTIQ diversity issues. The membership of Pride in Diversity should be accompanied by an action plan to ensure best practice in organisational development, diversity practice and the implementation of LGBTIQ related initiatives within the NSW Police Force.

***“Also heard Police yelling at people to cover up their butts and calling them “fags” and “faggots” or “queens” or “fairies” etc. This is only my second Mardi Gras as a gay man, and I don’t recall last year being like this. This year it was totally disgusting and I have to say, walking from Oxford Street to get to the Mardi Gras party I was actually scared, because so many police were getting heavy handed with so many people and I just wanted to stay out of trouble.”***

Male, Mardi Gras Parade

## 2.2 Briefings

Police working at large scale LGBTIQ events, such as the Mardi Gras Parade, should be provided with adequate briefings on the social significance of these events and the historical context of police activities at these events. This is critical as it has become clear that a large number of police officers are enlisted from various suburban and regional areas where the local contexts and experiences will differ greatly.

However, it should be noted that police from inner city LACs have also been reported to have behaved inappropriately during the recent Mardi Gras season, including entering crowded LGBTIQ venues on Oxford Street and intimidating patrons.

Providing pre-event briefings would better equip the police to manage public safety and improve the experiences of the LGBTIQ community at these events.

- **Recommendation 4:** That all police working at major LGBTIQ events, especially the Sydney Mardi Gras Parade and Party, be required to attend a briefing on LGBTIQ

history and cultural competency prior to each event, and that community organisations such as Mardi Gras, ACON and the Gay and Lesbian Rights Lobby be engaged to co-present this material with police officers, or to create multimedia material where face-to-face contact is not possible.

***“We all watched a senior policeman (looked like a commander) gesture with limp wrist motions having a laugh with 2 other policemen. I’ve been going to the MG party for the last 13yrs and this year it just seemed as if they had no respect.”***

Male, Mardi Gras Party

## 2.3 Police operations at LGBTIQ events

### 2.3.1 Scale and risk

There has been concern for some time that the scale of police operations at NSW LGBTIQ events is disproportionate to the size and potential risks associated with these events.

This disproportionate level of policing has given rise to perceptions that police target LGBTIQ community events in a biased and deliberate way, when there is little evidence to suggest that this level of policing is necessary or required.

LGBTIQ community parties have seen declining incidents of crime over the last several years. However reports of heavy handed policing have grown each year. The degree of police activity at these events appears to be out of proportion to the risks presented.

Many reports from this year’s Mardi Gras include accounts from people being overwhelmed by the large police presence, witnessing police congregating in large groups, describing the number of police (in various forms including on horses, bikes and in riot uniforms) as excessive and their behaviour as aggressive and unpredictable, inducing fear rather than a sense of safety.

- **Recommendation 5:** That policing at LGBTIQ events is reduced to an appropriate scale compared with the risk presented by the event. Further that assumptions made about these risks are shared to allow appropriate input and oversight by the LGBTIQ community.
- **Recommendation 6:** That the NSW Police Force review prior years’ events and develop contingency plans for a variety of unplanned alterations to the start and finish times of major events during the Mardi Gras season, such as the Mardi Gras Parade. Further that Mardi Gras is informed of these plans in advance.

***“The volume of police at the parade was far too high. More than any other year in my view.”***

Male, Mardi Gras Parade

### 2.3.2 Use of drug detection dogs

The use of drug detection dogs has been of serious concern for some time. The 2006 NSW Ombudsman’s Review of the Police Powers (Drug Detection Dogs) Act 2001 found that drug detection dogs were costly, harmful to public health and ineffective in achieving their stated aim of reducing drug supply<sup>1</sup>. It found that drug detection dogs make a large number of false indications, and when accurate, most often find minor quantities of drugs (usually cannabis).

The NSW Ombudsman reported that one dog had a success rate of 7%, and the highest success rate was only 56%<sup>2</sup>. Nonetheless, this ineffective strategy continues to be deployed at large events, including those over the Mardi Gras season, with increasing frequency and number.

The high number of false indications is particularly problematic when coupled with police conduct that is, or is alleged to be, violent and aggressive. The use of drug detection dogs has increasingly become a justification for the poor treatment of people attending these events or venues, with the dogs’ routine false indications resulting in reports of innocent people being subjected to threats, intimidation and physical force.

Police dog handlers report that indications made by their dogs are part of a training process that is often specific to the dog and the handler themselves. As a result, an indication of the presence of a banned substance by a drug detection dog is a subjective communication between dog and handler. This form of indication removes the accountability and transparency appropriate for when an individual is required to undergo the personal indignity and loss of liberty of a strip search.

Project Blue has been an initiative undertaken over the past three years between Inner City Legal Centre, Mardi Gras and ACON to provide the community with legal and emotional support when subjected to invasive and threatening police investigative processes at events such as these. Over the period, Project Blue volunteers have witnessed and engaged with a substantial number of event patrons who have been stopped and searched. The number of patrons who were found with illegal substances was significantly less than the number of patrons routinely stopped after indicated by a detection dog or on the basis of other forms of reasonable suspicion which appeared to be subjective.

As well as low detection rates, this form of policing does not result in harm minimisation<sup>3</sup>. It has been observed that the use of drug detection dogs results in community members reacting in ways that are potentially harmful, which includes

the prompt consumption of any drugs held by a person all at once to avoid detection. Such behaviour, as a result of the use of drug detection dogs, has been reported as a major factor in the death of 17-year-old woman attending the Perth Big Day Out festival in 2009<sup>4</sup>.

At the very least, the use of drug detection dogs at events ought to be suspended until arrangements can be made for there to be appropriate independent oversight of the training of drug detection dogs and their handlers, the effectiveness of this training is independently assessed and there is clear public understanding of how detection dogs operate and what actions constitute an indication. It is our understanding that NSW Police have not managed to put an accredited training process for handling drug detection dogs in place despite their agreeing to this recommendation in the 2006 Ombudsman's Review. The importance of this issue has now become even more pronounced given the very subjective interpretations of dogs' behaviour, the consequent flawed formation of reasonable suspicion and the many groundless and invasive searches being carried out on this basis.

- **Recommendation 7:** That the use of drug detection dogs at events and venues, which have been shown to be ineffective in policing and harmful to individuals, be brought to an end.

***"A friend of mine also was approached by a policeman who said 'the dog has detected nothing on you but I know you have drugs so you are going to be searched'"***

Male, Mardi Gras Party

***"No specific movement is needed by the dog for action to be taken. It depends on the relationship with the handler. The handler and the dog have a relationship, and the indication may not always involve sitting down, but may be any change in behaviour which the handler can recognise. That is the starting point, and it is up to the police officer there to build a case of reasonable cause from there."***

Mark Watters, Acting Commander, NSW Police Dog Squad, Mardi Gras Policing Forum, 19 March 2013

## 2.4 Police searches

Reports suggest that searches at LGBTIQ events have been conducted in a manner that is inconsistent with the Law Enforcement (Powers and Responsibilities) Act 2002 NSW ('LEPRA').

Indications are that the necessary 'reasonable grounds to suspect' (LEPRA Section 21) have been speculative in nature

and not have the requisite factual basis that is 'more than a possibility'. A body of case law precedents support the position of police exercising common sense and experience, not value judgments, to form the basis for reasonable suspicion. In certain instances, patrons have been searched just because they were adjusting an element of clothing.

The basis for reasonable suspicion is quite subjective. Our recommendation is simply that the person being searched has a document to take away with them that would assist in making police procedure more accountable. Without documentation of objective reasons for their 'reasonable suspicion' provided to people enduring a search, all of the power rests with the police officer who as part of their job records each incident. Most people searched for drugs are not in a position to make notes about what is happening to them.

The type and extent of searches have also been an area of specific concern. Strip searches have been routinely conducted without adequately establishing the elements of necessity, seriousness, and urgency (LEPRA section 31). Patrons have been identified on purported grounds of suspicion and immediately subjected to strip searches without any consideration being given to conducting less invasive search methods such as frisk or ordinary searches (LEPRA section 30, 32(5)).

On the occasions where ordinary searches were conducted, reports indicate excessive force was often used – patrons' heads were shaken and mouths forcibly opened (LEPRA section 21A). Where strip searches were conducted care was not taken to ensure the necessary privacy and dignity of the individual being searched were preserved (LEPRA section 32 & 33). Searches have been conducted in the open and outside of specifically designated private search areas, demonstrating deliberate disregard for the need to maintain privacy.

- **Recommendation 8:** That the process and procedures being utilised by the NSW Police Force in relation to conduct during drug searches at events and venues be comprehensively reviewed, including how they relate to diversity and sensitivity when dealing with the LGBTIQ community and that this information be published in order to support education regarding risks and reduction of access to drugs at events and venues.
- **Recommendation 9:** That adequate police training occurs to ensure searches are undertaken in accordance with the governing legislation (LEPRA), with particular concern for the level and appropriateness of the searches conducted.
- **Recommendation 10:** That all people subject to a strip search are provided with written reasons for the search. These reasons could be in the form of a checklist.

***"I asked him for his name. He turned around, charged towards me with his name tag in hand and shoved it in my face stating "Bligh..... Captain (constable?) Bligh.....go ahead and complain.....it won't do you any good""***

Male, 50, Zetland, Oxford Hotel

## 2.5 Cost / benefit of operations

There are further questions that ought to be raised regarding the substantial costs of these operations, their benefit and the value for money they represent.

At least 30 police spanning licensing, drug dogs and undercover police were at the Harbour Party. Using the \$100 per hour plus GST rate that Mardi Gras is charged to have a small number of police at Mardi Gras events, the cost of this level of policing is \$24 000 for one night. This does not include the cost of the time spent planning operations. This number of police is in addition to the 42 security guards paid for by Mardi Gras over the course of this event which costs \$25 000. For the Mardi Gras Party, policing costs an estimated \$96 000, including the \$16 000 user pay charge paid by Mardi Gras. This is in addition to \$67 000 for security guards. The estimated cost of police at the 2013 Parade, where attendees reported being overwhelmed by the excessive number of police, is \$450 000.

Furthermore, it is understood that police are paid significant over-time rates to work at weekend events such as Mardi Gras and along Oxford Street. For the amount of fines and arrests relative to the number of police rostered, these operations - often accompanied by alleged violence and resulting in significant community intimidation and discord, and now also damage to the NSW economy - are also costing the community a substantial sum in tax dollars.

## 2.5 Complaints and police investigations

There is widespread community concern about the appropriateness and independence of the police investigating complaints about police misconduct<sup>5</sup>, which is the current arrangement in NSW. This is not limited to the LGBTIQ community and includes incidents such as the death of Tyler Cassidy in 2008, who was the youngest person in Australia to be shot dead by police. The handling of the case was broadly criticised at the time, as the police themselves undertook the primary investigation into his death. In a similar scenario, Brazilian student Roberto Laudisio-Curti was chased and tasered by police despite him proffering "no threat to anyone". Police investigation into this incident was criticised because they failed to deal with the issue of police misconduct. In fact following these incident, the NSW Ombudsman, in its report tabled in Parliament, highlighted the need for independent civilian oversight of critical incident investigations<sup>6</sup>.

Previous reviews of police accountability processes have focussed on mitigating against all forms of corruption and police activities that appear to provide personal benefit to members of the NSW Police Force. However, major reforms within NSW Police over the past two decades have not necessarily addressed the implementation of an appropriate system for complaints by the public about violations of their basic rights. It is now appropriate to review NSW Police conduct, procedures and accountability mechanisms with a focus on the best protection for the NSW community, the promotion of the dignity of community members and the enhancement of the strong and respectful relationship that should exist between the NSW Police and the communities it works with.

The existing self-examination process re-traumatises victims of violence by forcing them to appeal to the source of that violence for redress. In some areas of law, including industrial law and sexual assault law, such a requirement of victims of crime is considered unacceptable.

There is a significant body of literature nationally and internationally describing the shortcomings of such an arrangement in facilitating community confidence in policing and justice. Following the death of Tyler Cassidy, it was argued that by neglecting to ensure independent and effective investigation into these circumstances, Australia violated the International Covenant on Civil and Political Rights (ICCPR). The United Nations Human Rights Committee, and Committee on Torture, have both expressed concern about the inadequacy of Australia's police accountability systems.

Complaints regarding NSW Police misconduct must be investigated by an independent, civilian-led organisation without institutional, cultural or political links to the NSW Police Force. This arrangement is already in place in several jurisdictions including the UK and other parts of Europe.

A 2009 Council of Europe Commissioner for Human Rights Report stated that 'an independent and effective police complaints system is of fundamental importance for the operation of a democratic and accountable police service'<sup>7</sup>. The European Court of Human Rights has developed five principles for the effective investigation of complaints against police: independence, adequacy, promptness, public scrutiny and victim involvement, and a 2009 analysis by the Victoria Law Foundation added to these that it is the duty of the state to initiate such investigations<sup>8</sup>.

International human rights bodies and treaties outline a number of principles that should be the framework of a police oversight organisation. These include:

- Functional independence, including independence of their personnel;
- Experts have the required capabilities and professional knowledge;
- Gender balance and the adequate representation of ethnic and minority groups;

- Provided with necessary resources for the functioning of the investigatory mechanisms;
- Apply principles relating to the status of institutions for the promotion and protection of human rights;
- Granted at a minimum the power:
  - (a) To regularly examine the treatment of persons in places of arrest, interview and detention;
  - (b) To make recommendations to the relevant authorities;
  - (c) To submit proposals and observations concerning existing or draft legislation; and
  - (d) To have proposals respected, responded to and implemented in law or policy clear reasons can be provided for non-implementation.
- No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the complaints body whether true or false, and no such person or organization shall be otherwise prejudiced in any way.
- Confidential information collected by the complaints body shall be privileged. No personal data shall be published without the express consent of the person concerned.

The NSW Government should then examine the recommendations of the complaints body and enter into a dialogue with it on possible implementation measures. The Government should undertake to publish and disseminate the annual reports of the complaints body.

The current complaints and investigation system in NSW is not well understood in the community<sup>9</sup>. Furthermore, complainants have no enforceable right to be informed about the extent of any investigation or its findings. Complainants generally receive very little information following the investigation – they may just receive response stating their complaint has been investigated, and often that the complaint was not substantiated without being given any reasons.

To ensure the safety of the community the police serve, it is paramount that the community understand the process and the support resources available to them. Support is available from services like ACON's Anti-Violence Project and the Inner City Legal Centre after an incident has occurred; however a more proactive approach is also required.

We need a police complaint process and system that instils public confidence, one that both the Police and the Community can trust.

- **Recommendation 11:** That a transparent, representative civilian-led police complaints and investigatory body with the appropriate resources, capabilities and knowledge be established. That this body is institutionally, culturally and politically independent from the NSW Police Force, and that the findings and recommendations of this body be published and implemented unless clear-reasons can be provided for non-implementation. Further the body should have the power to periodically examine

the treatment of persons in places of interview and detention, and be able to lay charges where necessary.

## 2.6 Reputational impacts

As a result of these operations and conduct, significant damage has occurred on a number of levels:

### 2.6.1 Visitor experience

A significant number of visitors reported negative and humiliating experiences of attending Mardi Gras events in contrast to what has always been a safe, friendly, welcoming event and events held in other states and countries. Many visitors reported experiences of aggressive and intimidating contact with NSW Police as a result of the post Parade crowd management.

We have received an unprecedented number of complaints from our visitors of being subjected to wrongful, heavy handed, intimidating, deceptive and degrading conduct of searches.

Both Mardi Gras' and Destination NSW's post event surveying reports a significant increase in poor visitor experience ratings (this year and relative to past years), as well as a large number of negative open ended responses relating to policing (the largest in any survey conducted over the last four years since inception).

Atlantis Cruises - a leading LGBTIQ international cruise company - brought 2,500 international tourists to Sydney for Mardi Gras. A significant number of Atlantis cruise visitors reported allegations of inappropriate searches despite none being found with any illegal substances.

### 2.6.2 Reputational damage to Sydney, New South Wales and Mardi Gras events

Negative visitor experiences as well as the You Tube footage of a young Parade visitor being aggressively handled by NSW Police (now viewed over 2 million times worldwide) were and continue to be widely reported in community, local and international media.

Widespread television, radio and print mainstream and international media reporting of NSW Police behaviour also ignited viral, worldwide social media coverage of these incidents and together these have resulted in significant reputational damage to Sydney and New South Wales.

Both Atlantis Cruises and Mardi Gras received significant complaints posted on respective Facebook pages in excess of 65,000 subscribers.

Until recent times, Sydney had a strong international reputation as a global leader in welcoming LGBTIQ communities from across the world. Unfortunately this image is being increasingly tarnished by the harrowing experiences

that many LGBTIQ visitors are having at events in Sydney. These visitors take these accounts back to their countries of origin and understandably, generate further damage to Sydney's reputation as a welcoming, progressive and friendly environment for LGBTIQ people.

### 2.6.3 Commercial damage to Mardi Gras, tourism and the local economy

Despite being a high performing event that attracts 23,000 unique visitors, in recent years Mardi Gras and all major events have faced significant challenges to sustain and grow visitation as a result of a persistently high Australian dollar and reduced numbers of visitors from traditional markets being able to travel as a result of lower levels of disposable income. This is in addition to the inherent barriers to international visitation to Australia –the long distance to travel and relatively high expense of holiday travel to Australia against alternative tourism destinations that compete against Sydney offering cheaper and closer travel distances (Europe and USA).

Instead of working to support events to overcome these challenges by creating a positive and welcoming experience for visitors who have made the investment to travel to Sydney, the conduct of the NSW Police Force has made matters significantly worse. Their actions have served to damage Mardi Gras commercially with the loss of future event ticket sales from many visitors reporting they will not return to Sydney and will actively deter their friends and family visiting Sydney as a holiday destination. This is especially concerning given that historically 80% of first time Mardi Gras attendees have heard about the Festival by word of mouth.

This commercial damage is not confined to Mardi Gras. Airlines, hotels, retailers and the broader local economy have suffered commercial damage as a result. Tour operators have expressed concerns to both Mardi Gras and Destination NSW of losing future and repeat bookings as a result of negative visitor experiences and reputational damage to the event and to Sydney – not only to Mardi Gras but also to the other signature events on the NSW Events calendar.

Large scale tour operators such as Atlantis, as well as others with whom Mardi Gras are negotiating, including other global cruises and air carriers have written and expressed reservations about bringing future tours and vessels to Sydney in 2014 and 2015.

As a result of negative visitor experiences and the widespread reporting of poor visitor experiences from police operations this year, they are concerned about the commercial risk of investing and committing to tours that will not sell because potential visitors will not want to spend their holidays and money to travel to Sydney Mardi Gras to experience an unfriendly holiday experience nor support a part of the government that is treating its local LGBTIQ community with intimidation.

The loss of these cruise ship and airline tour operators combined with a conservatively estimated 5% loss of visitors

from reputational damage (totalling 5,000 visitors) will result in the loss of approximately:

- The equivalent of 22% of total 2012 inbound visitation
- \$800,000 in lost tickets sales to Parade Glamstand and the Mardi Gras Party (representing 20% of 2013 turnover) and
- \$6.5m in forgone economic benefit to NSW as a result of visitors going elsewhere

Even if the estimated commercial losses were limited to 40% of the above estimates, the losses to Mardi Gras would be catastrophic given that the Mardi Gras Party is the dominant source of funding for the Mardi Gras Parade and the organisation.

These events highlight the growing concerns of the LGBTIQ community about NSW policing practice acting as a deterrent and a repellent force to participation and visitation. That such conduct is being experienced by more and more visitors to Sydney at our events as well as all major events is creating and spreading a reputation of intimidation and force towards the local community and visitors alike. In reality, a culture of helpfulness and service to the community and a reputation of being a welcoming city to visitors should be our major point of difference to the rest of the world, given the high Australian dollar and distances and expense of travel here.

A reduction in local as well as visitor participation and ticket revenues at the 2014 Sydney Mardi Gras puts the event and the organisation at significant risk in terms of its viability and at the minimum, result in financial losses that will take many years from which to recover.

Unless the conduct of the NSW Police Force at Mardi Gras events is significantly improved, our recommendations are urgently implemented, and this improvement is publicised widely, the ongoing sustainability and growth potential to the Mardi Gras Parade and the organisation will be in jeopardy. So too will Mardi Gras' capacity to contribute to and help realise the NSW government's strategies of making Sydney and NSW one of the world's most successful tourism destinations and doubling visitor expenditure by 2020 .

- **Recommendation 12:** A new joint strategy for managing Sydney Mardi Gras events in 2014 and into the future, involving Destination NSW, the Ministry of Events, Arts and Tourism, the Department of Premier and Cabinet, the City of Sydney, Sydney Gay and Lesbian Mardi Gras and the NSW Police Force. This strategy needs to include the implementation of the following additional recommendations:
  1. Reinstatement of the Sydney Mardi Gras Parade operations plan (for end of Parade) that has worked well in previous years.
  2. The elimination of 'riot squad' uniforms, mounted police, and policing in large numbers or groups of more than three or four officers.

## 3. Summary

Despite the commendable job of many police, the extent this year of negative community experiences, the detrimental impact to Sydney and NSW's reputation, and the commercial damage to tourism and the local economy cannot be dismissed. Nor can the impact of these problems on the relations between the LGBTIQ community and the NSW Police Force be underestimated. The problems described in this document have jeopardised the community's confidence in NSW policing practice, compromising the many years of efforts it has taken for this confidence to develop. The instances of alleged violence, widespread intimidation and abuse, excessive and heavy-handed policing, poor operational decisions, and homophobia from individual police officers at LGBTIQ events and in LGBTIQ venues suggests there is much work to be done to improve the current situation and avoid another damaging Mardi Gras season for NSW Police and Sydney more generally in 2014.

We hope that we can work together to address the issues outlined in this paper. It is our hope that positive relations between the community and NSW Police can be restored and that Sydney's reputation as a safe and welcoming city can be protected. We believe that implementation of the recommendations in this paper will constitute a significant step towards these aims.

## 4. Our Commitment

In addition to the recommendations above, we are committed to a number of actions to improve the relationship between the LGBTIQ community and the NSW Police Force. These include:

- The relaunching of ACON's Safe Place program.
- Continuing to work with the NSW Police Force to deliver cultural sensitivity and capacity building initiatives.
- Continuing to work within a partnership approach between key LGBTIQ community organisations and NSW Police Force to enhance the safety - both real and perceived - of the LGBTIQ community.
- Engaging with the NSW Police Force via the Pride In Diversity program.
- Holding community forums to raise awareness in the LGBTIQ community on issues of safety, rights and complaints procedures.
- Continuing to offer support services to those who experience violence and harassment via ACON's Anti-Violence Project (AVP), the ACON Counselling Service, Safe Relationships Project (SRP), and Inner City Legal Centre (ICLC) legal support services.
- ICLC and AVP to continue accepting referrals from NSW Police and provide court based support services for LGBTIQ domestic violence.
- ICLC, GLRL and ACON to provide accurate legal resources and education to the LGBTIQ community via various channels and media.

# 5. List of recommendations

## Education and Training

- **Recommendation 1:** That the level of police training on LGBTIQ cultural competency provided at the Police Academy be sizeably increased. This should be accompanied by a program of ongoing training beyond the Academy for all current police officers, with an immediate focus being given to those who have not received any previous training at the Academy. This training should further recognise the importance of equal and fair treatment for all people in NSW and embark on a program of unconscious bias awareness and management education for all officers interfacing with the NSW public.
- **Recommendation 2:** That the GLOO program is maintained as an essential program to foster positive relationships between NSW Police Force and LGBTIQ communities, and that an assessment be undertaken to ensure that training, professional development and capacity building activities appropriately meet the goals of the program.
- **Recommendation 3:** That the NSW Police Force becomes a member of the ACON Pride in Diversity program to exemplify institutional support for LGBTIQ diversity issues. The membership of Pride in Diversity should be accompanied by an action plan to ensure best practice in organisational development, diversity practice and the implementation of LGBTIQ related initiatives within the NSW Police Force.

## Briefings

- **Recommendation 4:** That all police working at major LGBTIQ events, especially the Sydney Mardi Gras Parade and Party, be required to attend a briefing on LGBTIQ history and cultural competency prior to each event, and that community organisations such as Mardi Gras, ACON and the Gay and Lesbian Rights Lobby be engaged to co-present this material with police officers, or to create multimedia material where face-to-face contact is not possible.

## Scale and risk

- **Recommendation 5:** That policing at LGBTIQ events is reduced to an appropriate scale compared with the risk presented by the event. Further that assumptions made about these risks are shared to allow appropriate input and oversight by the LGBTIQ community.
- **Recommendation 6:** That the NSW Police Force review prior years' events and develop contingency plans for a variety of unplanned alterations to the start and finish times of major events during the Mardi Gras season, such as the Mardi Gras Parade. Further that Mardi Gras is informed of these plans in advance.

## Use of drug detection dogs

- **Recommendation 7:** That the use of drug detection dogs at events and venues, which have been shown to be ineffective in policing and harmful to individuals, be brought to an end.

## Police searches

- **Recommendation 8:** That the process and procedures being utilised by the NSW Police Force in relation to conduct during drug searches at events and venues be comprehensively reviewed, including how they relate to diversity and sensitivity when dealing with the LGBTIQ community and that this information be published in order to support education regarding risks and reduction of access to drugs at events and venues.
- **Recommendation 9:** That adequate police training occurs to ensure searches are undertaken in accordance with the governing legislation (LEPRA), with particular concern for the level and appropriateness of the searches conducted.
- **Recommendation 10:** That all people subject to a strip search are provided with written reasons for the search. These reasons could be in the form of a checklist.

## Complaints and investigations

- **Recommendation 11:** That a transparent, representative civilian-led police complaints and investigatory body with the appropriate resources, capabilities and knowledge be established. That this body is institutionally, culturally and politically independent from the NSW Police Force, and that the findings and recommendations of this body be published and implemented unless clear-reasons can be provided for non-implementation. Further the body should have the power to periodically examine the treatment of persons in places of interview and detention, and be able to lay charges where necessary.

## Reputational impacts

- **Recommendation 12:** A new joint strategy for managing Sydney Mardi Gras events in 2014 and into the future, involving Destination NSW, the Ministry of Events, Arts and Tourism, the Department of Premier and Cabinet, the City of Sydney, Sydney Gay and Lesbian Mardi Gras and the NSW Police Force. This strategy needs to include the implementation of the following additional recommendations:
  1. Reinstatement of the Sydney Mardi Gras Parade operations plan (for end of Parade) that has worked well in previous years.
  2. The elimination of 'riot squad' uniforms, mounted police, and policing in large numbers or groups of more than three or four officers.



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